



W.P.(MD)No.15375 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 25.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.15375 of 2019

S.Ilangovan

... Petitioner

Vs.

1.The Registrar,
Co-operative Society Office,
Special Cell,
Keelpakkam, Chennai-1.

2.The President,
R.S.844 Sivagangai Electricity
Distribution Circle,
Employees Co-operative Thrift and
Credit Society Ltd.,
TNEB Complex,
Sivagangai.

3.The Joint Registrar,
Co-operative Societies,
Sivagangai.

4.The Deputy Registrar,
Co-operative Societies,
Sivagangai.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order issued by the first respondent in his proceedings in Na.Ka.No.48623/2018 Sa Pa 1 dated 25.04.2019 and quash the same and consequently direct the respondents to continue to pay the selection grade pay to the petitioner along with arrears.

For Petitioner :Mr.R.Udhayakumar

For Respondents :Mr.K.S.Selvaganesan
Additional Government Pleader
for R1, R3 and R4

ORDER

This writ petition is filed to quash the impugned proceedings passed in Na.Ka.No.48623/2018 Sa Pa 1 dated 25.04.2019 by the first respondent.

2. The petitioner herein was initially appointed as a contract labourer in R.S.844 Sivagangai Electricity Distribution Circle Thrift Society. On 29.09.1995,



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he was appointed as permanent employee in the said society. The contention of the petitioner is that the Special Officer has illegally appointed one Sankaran as Secretary, which was challenged by the petitioner. In retaliatory measure, the petitioner was suspended from service on 30.07.1996 without any reason and subsequently reinstated into service on 17.10.1996 by the Special Officer and on the same day, he was illegally terminated from service by the Special Officer on the same set of charges. Thereafter, the petitioner raised I.D.No.68 of 1998 and by order dated 02.12.2002, the petitioner was reinstated into service with continuity of service but without back wages. The further contention of the petitioner is that as per G.O.Ms.No.262(2) dated 21.08.2007, if any employee completes 10 years of continuous service, the employee is eligible for selection grade pay. The petitioner's junior namely Uma Saravanan was granted with selection grade pay from 01.04.2009 and one Sankar was also getting from 2007 onwards.

3. Since the petitioner's request was not granted, he filed W.P.(MD)No.3441 of 2010 and this Court directed the respondents to consider and pass orders on merit. But the respondents rejected the request of the petitioner on the ground that the society is running with cut of half of the expenses and hence it is financial not



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viable. Therefore, the petitioner preferred an appeal on 09.02.2010 under Section 153 of the Cooperative Societies Act, 1983 before the Deputy Registrar regarding selection grade pay. The same was rejected vide order dated 31.07.2013, wherein it is stated that without regularization of the period of dismissal, the selection grade pay cannot be granted. Hence the petitioner filed an appeal before the Industrial Dispute Officer, Ramanathapuram in Na.Ka.No.37/14 under Section 18(1), to regularize his services and the Administrative Officer had regularized the period and Selection Grade pay was granted by order dated 27.10.2018.

4. In the meanwhile, one Vinayaga Moorthy, who was the erstwhile President of the society has given a false and vexatious complaint against the petitioner with regard to payment of the Selection Grade pay before the Joint Registrar. The Joint Registrar, without considering the above facts, directed the Deputy Registrar to enquire into the same and mechanically appointed one Vijayakumar to enquire. The Enquiry Officer in collusion with the said Vinayagamorthy, in a biased manner, conducted the enquiry and without any reference to the order under Section 18(1) of Industrial Disputes Act, by referring to G.O.Ms.No.262 (2) dated 21.08.2007 passed an order based on the principles



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of 'no work no pay'. Based on the said report, the auditor also colluded with the above officers and had suspended the payment of selection grade payment for the years 2014-15 and 2015-16. Further on 29.06.2017, the Deputy Registrar passed an order stating that during audit, selection grade payment was suspended. Without any basis, surcharge notice was issued on 29.04.2018 against 8 members, including the petitioner herein. Further on 30.04.2018, in connection with the election of the office bearers of the said society, nominations were filed. However, the same was rejected by the Election Officer, in view of the pendency of the surcharge proceedings. Due to the life threat to the petitioner by the 8 members, he paid a sum of Rs.3,09,686/- to the society on 16.05.2018.

5. The main contention of the petitioner is that as per the orders passed in I.D.No.68 of 1998 dated 02.12.2002, he was reinstated with continuity of service but without back wages. But the impugned order has declined the same, hence, the petitioner is before this Court. As per the order passed dated 27.10.2018 of the Industrial Dispute Officer, Ramanathapuram in Na.Ka.No.37/14 under Section 18(1), the period of non-employment period is regularized and the petitioner is entitled to Selection Grade pay.



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6. The respondents filed a counter affidavit stating that the second respondent society without verifying records properly and granted selection grade to the petitioner. The same was brought to the notice through the complaint by the elected president. The same was scrutinized based on the complaint. The fourth respondent vide proceedings dated 04.09.2017 ordered for an inspection under Section 82 of the Tamil Nadu Cooperative Societies Act and appointed an investigation officer. After investigation, it was found that the petitioner is not entitled to selection grade. After receipt of the report from the investigation officer, the fourth respondent issued surcharge notice under Section 87 of the Tamil Nadu Cooperative Societies Act. In pursuance to the same, the petitioner appeared before the fourth respondent and admitted his guilt and paid the entire amount of Rs.3,09,230. Since the petitioner paid the surcharge amount, the fourth respondent vide his proceeding dated 06.06.2018 closed the surcharge proceedings. Hence, no interference is warranted and prayed to dismiss the writ petition.



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7. Heard Mr.R.Udhayakumar, the learned counsel appearing for the petitioner and Mr.K.S.Selvaganesan the learned Additional Government Pleader for 1, 3 and 4 respondents and perused the materials available on record.

8. It is seen that the petitioner had filed the petition in I.D.No.68 of 1998 before the labour Court challenging his dismissal and based on the order of the Labour Court he was reinstated with continuity of service. Aggrieved over the same, the respondents preferred an appeal. Pending appeal, the petitioner had approached the respondents to end the litigation and for amicable settlement. Thereafter the parties had agreed and had entered into 18(1) settlement before the appropriate authority. In the settlement, reinstatement with continuity of service with effect from 13.09.2001 was agreed, backwages was declined. The parties further agreed that the petitioner is entitled to promotion from 13.09.2001. The contention of the respondents is that without taking into account the terms of agreement under Section 18(1) settlement, the then authorities granted selection grade to the petitioner. When the same was brought to the knowledge of the respondents, after verifying the records the same was cancelled. The respondents



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claim is that when the petitioner agreed that promotion would be considered from 13.09.2001, then the petitioner is not entitled to calculate the past non-employment period for calculating the period of service to grant selection grade.

9. It is seen that the petitioner and the respondents have entered into 18(1) settlement, in the settlement it was agreed between the parties that the petitioner is entitled to continuity of service and the petitioner is entitled to promotion from 13.09.2001. If the petitioner is entitled to continuity of service, then the non-employment period also should be counted for calculating period of service of 10 years for granting service benefits like selection grade etc. If the claim of the respondent is accepted that the petitioner is entitled to promotion from 13.09.2001 onwards, then the “continuity of service” would become redundant. The issue of granting continuity of service and giving up backwages is considered in a judgment rendered by Hon’ble Division Bench in *W.A.(MD)No.2302 of 2021* dated **03.02.2022**. In the said decision, it has been held that the employees giving up their right of backwages cannot be stretched too long and take away the service benefits attached to the post. If the petitioner is not granted such benefits, it would amount to punishing the employee for giving up the backwages. The



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relevant portion is extracted hereunder:

“8. On conjoint consideration of the above leads to the conclusion that, on the face of the approval petition of the appellant / Management qua the termination of service of the respondent / workman having been rejected by the competent authority by a speaking order and further the said order having been confirmed by this Court in writ petition and this writ appeal, the next question is, what would be the consequence thereof. Since learned Single Judge attempted to balance the equities between the parties and for that purpose concession was given on behalf of the workman that he forgoes the actual payment of arrears towards back wages for the said period, we find that, the said concession cannot be stretched to the extent that the said period is to be counted as non-pensionable service. The Management cannot be heard contending that, in absence of any actual payment of arrears, there will not be any payment to Pension Trust Fund and that is how that period has to be excluded as non-pensionable service. We are of the view that the concession on behalf of the workman cannot be understood to that extent. As noted in order dated 01 December 2021, at one stage, we had also thought of relieving the workman from that concession, however it would result in additional liability on the public exchequer, therefore we have thought it proper not to do so. This is because, even if it would not have been on the basis of concession, but on the basis of adjudication by the competent court, it cannot be said that the period during which the workman was not in actual employment will automatically be excluded from consideration as non-pensionable service. Once the action of the Management is held to be illegal, the said action is illegal for all purposes and for all consequences. In a given case, either Labour Court or the Writ Court, in the facts of the case may exercise discretion, on permissible parameters, of granting / not granting back wages but exercise of that power under no circumstances can be read as exclusion of that service as non-pensionable service as sought to be canvassed on behalf of the appellant / Management. We make it clear that even in those cases, where back wages is not granted for valid



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reason, the very fact that the termination was held to be illegal, the period during which the workman had remained out of employment for no fault attributable to him, has to be counted as pensionable service unless it is so specifically ordered / provided by the Court. Even with the aid of stipulation 10 e as quoted above, permitting the Management or the Pension Trust to exclude the said period as non-pensionable service would result in acceptance of the said termination to be valid for limited purpose which is already held to be illegal. No one can be permitted to take advantage of / benefited from his own wrong. The workman cannot be asked to suffer, for not being in the employment for the fault of his employer. Keeping this in view, we find that, harmonious reading of all the decisions relied by learned advocate for the Pension Trust would lead to this conclusion only. So far financial constraints are concerned, it is a matter to be reconciled by the Pension Trust and the Management of the respective Transport Corporations. Such administrative difficulties cannot be permitted to be stretched to the extent of reduction of pension for no fault on the part of the workman.”

10. This Court had occasion to consider “continuity of service” and “continuity of service excluding some period” in **W.P.(MD).No.11608 of 2018** dated **14.06.2022** and has held as follows:

10. The Labour Court has granted reinstatement with continuity of service except for the period from 12.06.2003 and 29.11.2011 and without back wages. Now the question that ought to be considered is that how to construe the phrase “continuity of service” and “continuity of service excluding some period”. The judgment relied on by the petitioner held that the direction to grant continuity means to given notional



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increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. The continuity would also mean the notional pay fixation by taking the period between his removal and reinstatement as having been in employment for pension, gratuity and contributions to provident fund etc. Then the converse is that the “continuity excluding period from 12.06.2003 and 29.11.2011” means not to given notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. The “continuity excluded period from 12.06.2003 and 29.11.2011” would also means the period cannot be taken for notional pay for the period 12.06.2003 and 29.11.2011 for pension, gratuity and contributions to provident fund etc.

11. Therefore this Court is of the considered view that as per the Mahabir Prasad judgment stated supra, the petitioner is entitled to continuity of service excluding for the period from 12.06.2003 and 29.11.2011 means the petitioner is entitled to continuity of service from 01.04.1992 to 11.06.2003 and then from 30.11.2011 to until superannuation for the purpose to grant notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. And notional pay fixation by taking the period between his removal and reinstatement as having been in employment for pension, gratuity and contributions to provident fund etc. This Court makes it clear that the petitioner is not entitled to calculate this period from 12.06.2003 and 29.11.2011 for the purpose to grant notional increments for the duration he was out of employment, in the grade



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and the equivalent grade which replaced it later, till he reached the end of the pay scale. And notional pay fixation by taking the period between his removal and reinstatement as having been in employment for pension, gratuity and contributions to provident fund etc.”

11. Therefore if it is without continuity of service, the employee is not entitled to any benefits for non-employment period including pension selection grade, special grade, annual increments, etc., If relief is granted with continuity of service, then the employee would be entitled for selection grade, special grade and annual increments and any revision of salary attached to the said period. Therefore, this Court is of the considered opinion that the petitioner is entitled to the selection grade by calculating the period of non-employment also for calculating 10 years of services. Since already that was granted to the petitioner, subsequently, the same was revoked. This Court directs the respondents to repay the amount, however, the said amount shall not carry any interest.



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12. Accordingly, this writ petition stands allowed. There shall be no order as to costs.

25.04.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

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S.SRIMATHY, J

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