



W.P.(MD)No.10153 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.11.2022

PRONOUNCED ON : 09.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.10153 of 2015

A.Kumaravadivel

... Petitioner

vs.

1.The Management,
Dindigul District Central Cooperative
Bank Limited,
Trichy Road, Dindigul.

2.The Presiding Officer,
Labour Court, Trichy

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned award in I.D.No.109 of 1998 passed on 27.09.2013, by the 2nd respondent and to quash the same as not valid and illegal and thereby, to direct the 1st respondent to reinstate the petitioner in service with back wages and continuity of service and all other attendant benefits.



W.P.(MD)No.10153 of 2015

WEB COPY

For Petitioner : Mr.V.Ajay Khose
for Mr.G.M.Xavier
For R1 : Mr.D.Shanmugaraja Sethupathy

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned award passed in I.D.No.109 of 1998 on 27.09.2013 to direct the 1st respondent to reinstate the petitioner in service with backwages and continuity of service and all other attendant benefits.

2. The petitioner working as Driver in the 2nd respondent Cooperative Bank from 19.05.1995. The 1st respondent is a District Central Cooperative Bank having 24 branches. Apart from banking activities, the 1st respondent is having several transactions with other cooperative societies, cooperative banks, credit and thrift societies etc., which are getting loans and making deposits with the 1st respondent. At the time of the petitioner's employment, the 1st respondent was having five vehicles in the Head Office. Those vehicles were used purely in



W.P.(MD)No.10153 of 2015

WEB COPY

relation to the works of Cooperative Society. The officers of the 1st respondent used the same for various purposes such as taking away the amounts from the Head Office to other branches and receiving amounts from other branches to the Head office. Further, the vehicles were used for official visits by the officers of the 1st respondent to its various branches and other cooperative banks and societies. The petitioner and other two other Drivers were employed by the 1st respondent. The petitioner was paid wages on daily rate basis but the same was paid once in every month. The 1st respondent obtained signature in the salary register, whenever he was paid salary. Similarly, a bonus register was also maintained. The petitioner has completed more than 240 days in 12 calendar months. Hence, the 1st respondent ought to have regularized the service and made the petitioner permanent and he was regularly demanding to regularize his service. The 1st respondent informed him he would be regularized shortly. However, instead of regularizing the petitioner, he was terminated with effect from 15.11.1997. Similarly, the petitioner's coworkers were also terminated. The contention of the petitioner is that the 1st respondent did not issue any notice



W.P.(MD)No.10153 of 2015

WEB COPY

indicating the reason for termination. Hence, the same was illegal retrenchment. Moreover, the 1st respondent employed new employees / workers in the petitioner's place. Hence, the petitioner raised an industrial dispute and filed 1.D.No.109 of 1998. Similarly, the co-workers filed cases which were numbered as I.D.Nos.110 and 111 of 1998. The above said 3 cases including the petitioner's case were enquired by the 1st respondent in joint trial. The 1st respondent disputed the continuous service from the date of joining till termination. Hence, the burden of proof is on the 1st respondent. However, all the documents which prove that petitioner's continuous service, were in the possession of the 2nd respondent. Hence, the petitioner filed I.A.No.221 of 2005 to direct the respondents to produce the documents namely attendance register, wage register, bonus register for the period from 1995 to 1997 and also the register which shows the permanent and temporary employees for all the Drivers who have been engaged for the period from 1997 to 2005 and their attendance registers. The 1st respondent contested the I.A. and after hearing both the sides, the said I.A. was allowed on 05.09.2006, directing the respondents to produce the documents. In spite of the



W.P.(MD)No.10153 of 2015

WEB COPY

order, the 2nd respondent did not produce any documents. Thereafter, the Labour Court after hearing the main petition passed the impugned award, dated 27.09.2013, dismissing the Industrial Dispute. Aggrieved over the same, the present writ petition is filed.

3. The respondents had filed a counter affidavit before the Labour Court stating that the Central Cooperative Bank is a Society governed by laws for regulating the service conditions of their employees. The main function of the Cooperative Bank is to accept the deposit from the public and provide financial assistance to the Primary Agricultural Cooperative Banks and other institutions within Dindigul District. Hence, the management has intensive drive to mobilize deposits from the public and to recover the dues from the defaulters. In such occasions, the management engaged Drivers purely on daily wages according to the exigencies. As such the petitioner was one such person engaged by the Management purely on casual and temporary basis. Whenever a person is engaged on casual and temporary basis, the law is settled that such person would



W.P.(MD)No.10153 of 2015

WEB COPY

be engaged only for a specific period or for a particular work and as soon as the work is over, their engagement automatically come to an end and there is no rule or law which contemplated that such an employee must be given work by the employer. Since the petitioner was engaged temporarily, as and when need arises, there was no termination and so there was no question of reinstatement. Moreover, the by- laws of the Society, which deals with appointment and regularization, mandates certain conditions for employment. The petitioner is not coming within the purview of such appointments. Further, the petitioner was not appointed to the post in accordance to the rules, but was engaged on the basis of needy. Hence, his disengagement from service cannot be construed as retrenchment under the Industrial Disputes Act. The averment in the petition that the petitioner had worked for 3 years are false, baseless and without any proof. Hence, the respondents prayed to dismiss the industrial dispute before the Labour Court.

4. After hearing the rival submissions, the Labour Court dismissed the said



W.P.(MD)No.10153 of 2015

WEB COPY

three I.D. petitions stating that the petitioners are not entitled to reinstate with continuity of service and backwages. Aggrieved over the same, the present writ petition is filed.

5. Heard Mr.V.Ajay Khose for Mr. G.M. Xavier, the Learned Counsel appearing for the petitioner and Mr.D.Shanmugaraja Sethupathy appearing for the respondents and perused the records.

6. The learned Counsel appearing for the petitioner relied on the bonus cheque, dated 18.05.1996 for Rs.934/- and 30.12.1996 for Rs.1309/-, wherein the 1st respondent has granted bonus to the petitioner A. Kumaravadivel. Also relied on the voucher payment on 17.12.1996 for Rs.530/- and 01.08.1997 Rs.1495/- and claims that the petitioner was engaged by the 1st respondent Society and has completed 240 days. It is seen for the month of December 1996, the petitioner had received payment on 17.12.1996 for Rs.530/- through voucher and 30.12.1996 for



W.P.(MD)No.10153 of 2015

WEB COPY

Rs.1309/- through cheque and also received payments for some months. There is no uniformity in the payment. Hence the above payment may not indicate any wages / salary payment, but may indicate that the petitioner was paid based on vehicle trips. Moreover, such payment is not proving the employment with the respondents. The claim of the 1st respondent is that the petitioner was engaged whenever need arises on daily basis. It was also submitted that the 1st respondent Society is not having any sanctioned post of Driver. Therefore, this Court is of the considered opinion that the 1st respondent is not having a sanctioned post, hence the 1st respondent rightly pointed out that it is only outsourcing the work of the Driver and the voucher payment and cheque payment also clearly indicates, as when the petitioners were engaged they were paid on daily basis and the petitioners were not paid any salary on monthly basis.

7. The Learned Counsel appearing for the petitioners further relied on the bills which were issued to fill the petrol to the cars. The 1st respondent has not denied the engagement of the petitioner for service but they deny that the



W.P.(MD)No.10153 of 2015

WEB COPY

petitioner was engaged or appointed in permanent post in permanent basis. Therefore, the bills would not prove the claim of the petitioner. Moreover the bills has not mentioned the names of the drivers and hence the same cannot be a proof to establishment employment.

8. Admittedly the petitioners were not appointed by any appointment order and no procedure was followed in appointing the petitioners. No condition of service was agreed to and the nature of his employment was entirely adhoc. Admittedly the appointments in the respondent bank are regulated by statutory rules, when such rules were not followed while appointing the petitioners, hence the disengagement of the petitioners cannot be construed as retrenchment as contemplated under the Industrial Dispute Act. The concept of retrenchment cannot be stretched to such an extent as to cover the petitioners. Moreover, the persons appointed without following any rules and regulations have no right to the post and his disengagement is not illegal. Hence the claim of the petitioner for retrenchment also fails.



W.P.(MD)No.10153 of 2015

WEB COPY

9. The petitioner has filed I.A. with a prayer to direct the respondents to produce the records. In spite of the order, directing the 1st respondent to produce the same, has not produced the said records which the petitioner intended to rely on. The Labour Court had directed the 1st respondent to produce the records and allowed the I.A. In spite of the said order, the 1st respondent has not produced the same stating that the records are old record pertaining to the year 1995 to 1997, the I.A. was filed in the year 2005. Hence, the said records were not traceable which are more than 7 years old. Therefore, this Court is of the considered opinion that the claim of the 1st respondent that it is not traceable because it is old records is acceptable. Moreover, the 1st respondent has not denied the engagement of the petitioner but has denied the engagement of the petitioner in any permanent post. From the available records it is evident that the petitioner was engaged only on need basis and the petitioner was not engaged on permanent basis. Even the voucher payment and the cheque payment indicates that the petitioner was not paid salary every month and it is only paid on a daily basis. Therefore, the claim of the petitioner cannot be entertained. The Labour Court



W.P.(MD)No.10153 of 2015

WEB COPY

has rightly come to the conclusion that the petitioner is not entitled to permanency and declined reinstatement. Therefore, this Court is confirming the order of the Labour Court.

10. The petitioner is claiming retrenchment compensation. As stated supra the persons appointed without following any rules and regulations have no right to the post and their disengagement is not illegal and the claim of retrenchment compensation cannot be entertained. However, this Court on equity is directing the 1st respondent to pay Rs.7,500/- to the petitioner.

11. With the above said direction, the writ petition is disposed of. No costs.

Index : Yes / No
Internet : Yes

09.02.2023

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W.P.(MD)No.10153 of 2015

To

The Presiding Officer,
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W.P.(MD)No.10153 of 2015

S.SRIMATHY, J

Tmg

W.P.(MD)No.10153 of 2015

09.02.2023