



W.P.(MD)No.12991 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 12991 of 2016

and

W.M.P(MD)Nos. 9804, 12482, 12483 of 2016

The Management,
NN 565, Thiruvetriyur Primary Agricultural
Cooperative Credit Society,
Thiruvetriyur Post,
Ramanathapuram District.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
District Court Campus, Madurai – 20.

2. K.Muniasamy

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records of the order passed by the 1st respondent mad in C.P.No.97 of 2014 dated 29.02.2016 and quash the same.

For Petitioner : Mr.G.C.Pethanaraj

R-1 : Court

For R-2 : Mr.V.O.S.Kalai Selvam



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W.P.(MD)No.12991 of 2016

ORDER

This Writ Petition is filed challenging the order dated 29.02.2016 in C.P.No.97 of 2014.

2. The 2nd respondent was working as Attender in the petitioner's Society. From 22.09.1993, the 2nd respondent was dismissed from service, hence raised industrial dispute before the 1st respondent in I.D.No.131 of 1997 and the same was ordered directing the 2nd respondent to reinstate with continuity of service with backwages on 28.01.2010. Aggrieved over the same, the petitioner's society had filed a writ petition in W.P.No.3875 of 2008 and the same was pending. The petitioner society had paid 17B wages by calculating the last drawn wages. Subsequently, the writ petition was dismissed on 30.04.2014. The petitioner's society claims that they have preferred a writ appeal in M.P.No.1 of 2014 in W.A.(SR) No.31945 of 2014 and the same is pending. In the meanwhile, the 2nd respondent has filed a claim petition claiming arrears of salary, bonus before the 1st respondent and the same was allowed, vide the impugned order, dated 29.02.2016. Aggrieved over the same, the writ petitioner is before this Court.



W.P.(MD)No.12991 of 2016

WEB COPY

3. Heard Mr.G.C.Pethanaraj, learned Counsel appearing for the petitioner and Mr.V.O.S.Kalai Selvam, learned Counsel appearing for the 2nd respondent. Perused the material documents available on record.

4. The contention of the petitioner's society is that the 2nd respondent has joined in the petitioner's society, without any sanctioned post and without following any recruitment rules. The 2nd respondent was working on temporary basis and therefore, the employment itself is illegal. Hence, the 2nd respondent is not entitled to claim any relief. The said plea was rejected by the Labour Court in Industrial dispute as well as in the writ petition by this Court. Even though the petitioner's society claims that, they have preferred writ appeal in the year 2014, until today it is still in MP stage. Therefore, the Labour court has entertained the claim petition in the year 2014 and vide order, dated 29.02.2016, directed the petitioner's society to pay backwages of Rs. 3,98,817/- to the 2nd respondent employee. The said amount was modified, after deducting 17B wages which was paid to the 2nd respondent. The C.P.No.97 of 2014 was allowed with Costs of Rs. 1,000/-. This Court is of the considered opinion that the order of the Labour



W.P.(MD)No.12991 of 2016

WEB COPY

Court deserves no interference. However, this Court is inclined to set aside the Cost portion alone. Accordingly, the petitioner's society is directed to pay the balance amount of Rs.3,98,817/-, within a period of eight weeks, from the date of receipt of a copy of the order. It is submitted that the said amount was already deposited by the petitioner's society. The 2nd respondent is at liberty to withdraw the entire amount.

5. The Learned Counsel for the 2nd respondent submitted that the petitioner's society directed the 2nd respondent to serve as “Salesman” since there is no vacancy in the existing post of “Attender”. However, the claim of the 2nd respondent is that he is not qualified or trained to serve in the Sales Division and sought to appoint him in any other vacancy. It is also submitted that the 2nd respondent has not joined the salesman post and he is aged 60. The said claim of the 2nd respondent cannot be entertained and the 2nd respondent cannot have any choice or choose any post. The said order to join the post was passed on 01.08.2016 and the 2nd respondent has not joined until now. Therefore this Court is of the considered opinion that the 2nd respondent is entitled to claim service benefits until 01.08.2016 and he is not entitled any benefits thereafter.



W.P.(MD)No.12991 of 2016

WEB COPY

6. With these observations, this Writ Petition is disposed of. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes
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To

1. The Presiding Officer,
Labour Court,
District Court Campus,
Madurai – 20.



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W.P.(MD)No.12991 of 2016

S.SRIMATHY, J

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**Order made in
W.P.(MD)No. 12991 of 2016**

25.01.2023