



W.P.No.11053 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

W.P.No.11053 of 2015

S.Balasundaram

...Petitioner

-Vs-

1.The Presiding Officer,
Labour Court, Coimbatore

2.The Management of
The Sirumugaipudur Sree,
Ramalinga Sowdambigai Weavers Coop.
Production & Sales Society Ltd., Ch-14,
Sirumugaipudur, Srimugai,
Mettupalayam Taluk

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records pertaining to the award dated 14.03.2014 in I.D.No.33/2010 passed by the 1st respondent, quash the same in so far as denying the petitioner backwages and other attendant benefits for the period from 07.03.2000 to 04.02.2010 and consequently direct the 2nd respondent to pay the petitioners backwages and other



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attendant benefits for the period from 07.03.2000 to 04.02.2010 in addition to and apart from the relief already granted and also to pay the petitioner the terminal benefits payable as on the date of superannuation after adjusting the amounts already paid, award costs.

For Petitioner : M/s.M.Mahamani for
M/s.S.Varsha

For Respondents : R.1 Court
: Mr.M.Loganathan [R.2]

ORDER

The Writ Petition is filed to call for the records pertaining to the award dated 14.03.2014 in I.D.No.33/2010 passed by the 1st respondent, quash the same in so far as denying the petitioners backwages and other attendant benefits for the period from 07.03.2000 to 04.02.2010 and consequently direct the 2nd respondent to pay the petitioner backwages and other attendant benefits for the period from 07.03.2000 to 04.02.2010 in addition to and apart from the relief already granted and also to pay the petitioner the terminal benefits payable as on the date of



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superannuation after adjusting the amounts already paid.

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2. The facts are briefly set out hereinbelow:-

2.1. The petitioner had joined the services of the 2nd respondent Society on 01.07.1981 as a Yarn Distributor and the last salary drawn by him was a sum of Rs.5,300/-. The petitioner would submit as per the circular issued by the Director of Handlooms, a loss making Society functioning under his control could employ up to 11 workmen.

2.2. The petitioner would submit that at the time of his retrenchment, the 2nd respondent Society had on its rolls 8 permanent and 3 temporary workers including him. Though the 2nd respondent Society was running with the permitted number of employees, the 2nd respondent had issued a notice dated 31.01.2000 to the petitioner stating that the Society had decided to retrench him. He had objected to the said retrenchment notice pointing out that it



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was contrary to the circular issued by the Director of Handlooms.

However, the 2nd respondent without considering his objection had retrenched him from service on 07.03.2000. Along with the termination order, a cheque for a sum of Rs.1,47,000/- towards one month's notice period's pay, provident fund, earned leave salary and gratuity was paid. The 2nd respondent had not paid the compensation at the rate of 15 days salary for each completed year of service.

2.3. Along with the petitioner, 3 others were also retrenched. Therefore, they have filed Writ Petitions Nos.4881 to 4884 of 2000, challenging the retrenchment order passed by the 2nd respondent. The Writ Petitions were filed immediately after the orders of retrenchment was issued. The Writ Petitions were taken up for final hearing only in the year 2009. In the interregnum, the Constitution Bench of the Hon'ble Supreme Court in Marappan's case reported in **2004 (4) CTC 689** had held that a Writ Petition would not lie against a Cooperative Societies as it is not a state within the meaning of Article 12 of the Constitution. Therefore, the petitioner and others



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had withdrawn the Writ Petitions seeking liberty to raise an Industrial Dispute against the retrenchment and termination. This Court by an order dated 01.07.2009 was pleased to permit the petitioners to withdraw their Writ Petitions with a liberty to work out the remedy in the manner known to law.

2.4. Consequent to this order, the petitioner and other had raised Industrial Disputes on 11.01.2010 and as the 2nd respondent was not willing for a settlement, the conciliation talks had failed and the matter was referred to the Labour Court and in ID.No.33 of 2010 and the disputes of the other workmen were numbered I.D.Nos 31, 32 & 34 of 2010.

2.5. The petitioner would submit that he had examined himself as a witness and mark Ex.W.1 to W.11. The 2nd respondent Special Officer examined himself as M.W.1 and Ex.M.1 to M.18 were marked.



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2.6. Thereafter, the 1st respondent after hearing both sides passed the impugned award dated 14.03.2014. Challenging the same, the petitioner is before this Court.

3. The 2nd respondent has filed a counter denying the claim of the petitioners in which they would justify the award passed by the Presiding Officer by stating that the Industrial Dispute had been filed with a delay of 9 years and taking into account the above factor the Presiding Officer has awarded compensation to meet the ends of justice. They would submit that the petitioner was retrenched after following due procedure and after paying compensation as contemplated under Section 25(F) of the Industrial Dispute Act. They would therefore seek to have the Writ Petition dismissed.

4. The learned counsel appearing on behalf of the petitioner would submit that the Presiding Officer has dismissed the petitioner's claim relying upon a judgement of this Court reported in

2000 (2) LLN 294(MAD) – Management of Singanallur Co-



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operative Society (Rep by its Secretary, Coimbatore

Vs. T.Sathiyamoorthy (deceased) and Others wherein this Court had held that where a workman has raised an industrial dispute with a delay, the workman is entitled to back wages only from the date of the claim made by him. Relying upon the said judgement, the Presiding Officer had set aside the retrenchment order issued by the 2nd respondent dated 07.03.2000 and directed the 2nd respondent to reinstate the petitioner into service with continuity of service, with full back wages and other attendant benefits from the date of filing of the above said petition i.e. 05.02.2010. The learned counsel would submit that the Presiding Officer has totally overlooked the fact that the petitioner had been diligently prosecuting the Writ Petition from the years 2000 to 2009 which would clearly show that the retrenchment order had been questioned at the earliest point in time.

5. The learned counsel for the petitioner would rely upon the recent judgement of the Hon'ble Supreme Court passed in **SLP**



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Anr., wherein the Hon'ble Supreme Court had held that where a proceeding has been bonafidly and diligently pursued by a party, the time taken for prosecuting the same has to be taken into consideration when calculating the delay.

6. The learned counsel for the 2nd respondent would submit that the 1st petitioner has ought to have raised an Industrial Dispute immediately but has chosen to file a writ petition belatedly and therefore he would not be entitled to back wages.

7. Heard the counsels on either side.

8. The records would show that as soon as the retrenchment order had been issued, the petitioner and the similarly placed persons had filed W.P.Nos.4881 to 4884 of 2000. These Writ Petitions came to be disposed of on 01.07.2009, in the light of the judgement in Marappan's Case. The writ petitioners were permitted



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to withdraw the Writ Petitions with a liberty to approach the proper

forum and immediately the petitioner has raised the dispute.

Therefore, the period taken for diligently prosecuting the Writ Petition has to be given due weightage. The order of the Labour Court does not give any reasons as to why this period taken for prosecuting the Writ Petition has not been included and had this been included, the learned Presiding Officer would not have concluded that there is a delay of 9 years. It is only during the pendency of the Writ Petition that the Constitution Bench Judgement in Marappan's case had been passed and this factum was brought to the notice of the petitioner only in the year 2009 and immediately thereafter, he had taken steps to file appropriate proceedings. Therefore, the observation of the Presiding Officer that there has been an inordinate delay on the part of the petitioner to approach the Court is absolutely without any basis.

9. Therefore, the Writ Petition is allowed and the impugned award of the 1st respondent dated 14.03.2014 is set aside with a



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direction to the 2nd respondent to pay the petitioner backwages and

other attendant benefits for the period from 07.03.2000 to 04.02.2010

in addition to and apart from the relief already granted and also to

pay the petitioner the terminal benefits payable as on the date of

superannuation after adjusting the amounts already paid, within a

period of 12 weeks from the date of receipt of a copy of this order.

No costs.

13.06.2024

(shr)

Index : Yes/No

Speaking / Non Speaking Order

Neutral Citation : Yes/No

To

1.The Secretary to Government

Heath and Family Welfare Department,
Secretariat, Chennai-600009.

2.The Additional Secretary to Government,

Health and family Welfare Department,
Secretariat, Chennai-600009.



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P.T.ASHA. J.,

(shr)

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