



W.P.No.11107 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.11107 of 2015

P.K.Arumugam (deceased)

1.A.Vimala Mani

2.A.Gokila Vani

3. A.Jothikumar

...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



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I.D.No.31/2010 passed by the 1st respondent, quash the same in so far as denying the petitioners back wages and other attendant benefits for the period from 07.03.2000 to 10.06.2012 and consequently direct the 2nd respondent to pay the petitioners backwages and other attendant benefits for the period from 07.03.2000 to 10.6.2012 after adjusting a sum of Rs.1,00,000/- which was already ordered to be paid as compensation and also to pay the petitioners the terminal benefits payable as on 10.06.2012 after adjusting the amounts already paid.

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

For Respondents : R.1 Court
: Mr.L.P.Shanmugasundaram [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.31 of 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 10.06.2012 and consequently direct the 2nd respondent to pay the petitioners back wages and other attendant



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benefits for the period from 07.03.2000 to 10.06.2012 after adjusting a sum of Rs.1,00,000/- which was already ordered to be paid as compensation and also to pay the petitioners the terminal benefits payable as on 10.06.2012 after adjusting the amounts already paid.

2. The facts are briefly set out hereinbelow:-

2.1. The husband of the 1st petitioner, P.K.Arugumugam had joined the services of the 2nd respondent Society on 01.07.1981 as an Assistant Appraiser and the last salary drawn by him was a sum of Rs.4,100/-. The 1st 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 1st petitioner would submit that at the time of the retrenchment of her husband, the 2nd respondent Society had on its rolls 8 permanent and 3 temporary workers including her husband. Though the 2nd respondent Society was running with the permitted



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number of employees, the 2nd respondent had issued a notice dated 31.01.2000 to the husband of the 1st petitioner stating that the Society had decided to retrench him. He had objected to the said retrenchment notice pointing out that it 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.96,585/- 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 1st petitioner's husband, 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



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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 1st petitioner's husband and others 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 1st petitioner's husband and others 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 in I.D.No.31 of 2010 and the disputes of the other workmen were numbered as I.D.Nos 32 to 34 of 2010.



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2.5. The 1st petitioner would submit that her husband had examined himself as a witness and mark Ex.W.1 to W.8. The 2nd respondent Special Officer examined himself as M.W.1 and Ex.M.1 to M.19 were marked.

2.6. Pending the dispute, the 1st petitioner's husband had died on 10.06.2012 and petitioners 1 to 3 were brought on record as his legal heirs. Thereafter, the 1st respondent after hearing both sides passed the impugned award dated 14.03.2014. Challenging the same, the petitioners are 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 1st petitioner's husband was retrenched after following due procedure and after paying



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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 petitioners would submit that the Presiding Officer has dismissed the petitioners' claim relying upon a judgement of this Court reported in **2000 (2) LLN 294(MAD) – Management of Singanallur Co-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 granted only a sum of Rs.1,00,000/- as compensation. The Presiding Officer had found the retrenchment order to be bad and had set aside the retrenchment. The learned counsel would submit that the Presiding Officer has totally overlooked the fact that the husband of the 1st petitioner had been diligently prosecuting the Writ Petition



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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 petitioners would rely upon the recent judgement of the Hon'ble Supreme Court passed in ***SLP (Civil) No.77665 of 2018 - Purni Devi & Anr. Vs. Babu Ram & Anr.***, wherein the Hon'ble Supreme Court had held that where a proceedings 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 husband of the 1st petitioner has ought to have raised an Industrial Dispute immediately but had chosen to file a Writ Petition belatedly and therefore he would not be entitled to back wages.

7. Heard the counsels on either side.



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8. The records would show that as soon as the retrenchment order had been issued, the 1st petitioner's husband 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 to withdraw the Writ Petitions with a liberty to approach the proper forum and immediately the husband of the 1st 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 husband of the 1st petitioner only in the year 2009 and immediately thereafter, he had taken steps to file appropriate proceedings.



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Therefore, the observation of the Presiding Officer that there has been an inordinate delay on the part of the 1st petitioner's husband 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 direction to the 2nd respondent to pay the petitioners back wages and other attendant benefits for the period from 07.03.2000 to 10.6.2012 after adjusting a sum of Rs.1,00,000/- which was already ordered to be paid as compensation and also to pay the petitioners the terminal benefits payable as on 10.06.2012 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



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

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2.The Additional Secretary to Government,
Health and family Welfare Department,
Secretariat, Chennai-600009.



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P.T.ASHA. J.,

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