# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Order reserved on 19.06. 2024**

**Order delivered on 22.10.2024**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**
**AND**
**THE HONOURABLE MR.JUSTICE P.DHANABAL**

**W.A. No. 397 of 2024**

1. K.Aslam S/o Khadar Khan
2. K. Rangasamy S/o Kaveri Chettiar
3. B. Ameer Basha S/o Babu
4. A. Mathiyan S/o Appu Gounder
5. P. Srinivasan S/o Perumal Nattar
6. M.Narasimhan S/o Munivenkatappa
7. Shameem W/o Late Mohammed Sherief
8. Suguna W/o Late Muniraj
9. R. Naveen Kumar S/o Late B. RamaKrishnan
10. Padmavathi W/o Late M.Mohan

All at C/o D.A.Mohammed Khan
Labour Law Consultant
No.HIG 6/A, Avalapalli Hudco,
Bagalur Road, Hosur 635 109 ...Appellants

vs.

The Management of
Dharmapuri District Cooperative Milk Producers Union Ltd.,
Rep. by its General Manager,
P.R. Kamaraj, Salem Main Road,
Kanagamutlu Post,
Krishnagiri District ... Respondents

**Prayer:** Writ Appeal filed under Clause XV of the Letters Patent Act, to set aside the order passed in W.P.No. 654 of 2023 dated 28.11.2023 and consequently direct the Respondent to pay the amount as computed in C.P.No. 28 of 2019 dated 13.07.2022 to the appellants.

For Appellants : Mr. Balan Haridas

For Respondent : Mr. S.Silambannan
Senior Counsel for
Mr. I. John Arockiadas

**JUDGMENT**

(The Judgment of the Court was delivered by J.Nisha Banu,J.)

This Appeal has been filed challenging the order passed in W.P.No. 654 of 2023 dated 28.11.2023 and consequently, direct the Respondent to pay the amount as computed in C.P.No. 28 of 2019 dated 13.07.2022 to the appellants.

2. The brief facts of the case of the Appellants are as follows:

(i) The appellants were appointed in the year 1984 through Employment Exchange as Milk Salesmen by the respondent at Hosur Milk Sales Unit in Krishnagiri District. They worked for more than five years continuously and Provident Fund deduction was also made from their wages. Suddenly, their services were terminated orally without any reason from 16.08.1989. No charge memo was issued and no enquiry was held. They raised Industrial Disputes individually in the Labour Court, Vellore. The appellants 9 and 10 are the legal representatives of the deceased B.Ramakrishnan and M.Mohan respectively,(2nd and 3rd petitioners in C.P.28/2019). The Tribunal passed a common award granting compensation of Rs.4000/- to each appellant and dismissing their claim for reinstatement. Aggrieved by the common award, the appellants filed a writ petition in W.P.No.2304 of 1996 and this Court, vide order dated 12.03.2004, directed the respondent to reinstate all the appellants/petitioners in service w.e.f.

01.01.2004 with continuity of service. However, it was made clear that the petitioners will not be entitled to any arrears of salary from the date of termination till 01.01.2004.

(ii) Against the said order, the respondent Milk Union filed Writ Appeal in W.A.No.799/2005 before the Division Bench of this Court and the Division Bench, vide judgment dated 04.12.2006, dismissed the same confirming the order passed by the Writ Court. Even though the Writ Appeal was dismissed, the respondent Milk Union did not implement the order. Therefore, the appellants/petitioners filed Contempt Petition No.395/2007. In the meanwhile, the respondent Milk Union filed SLP(C)No.8369/2007 before the Hon'ble Supreme Court and obtained an interim stay of the order on 14.05.2007. Hence, the contempt petition was dismissed on 15.06.2007. Subsequently, the said SLP(C)No.8360/2001 was dismissed on 08.07.2014 and the interim order passed on 14.05.2007 was also vacated. Therefore, in view of the order passed in the SLP by the Hon'ble Supreme Court, the order passed in W.P.No.2304 of 1996 dated 12.03.2004 became operative and in force.

(iii) The appellants/petitioners submitted representation to the respondent Milk Union requesting to reinstate them into service w.e.f. 1.1.2004 with all continuity of service and to pay backwages and other benefits which they are legally entitled to. Inspite of receipt of the representation, the respondent did not come forward to comply with the order passed in the said writ petition. Subsequently, eight out of ten appellants/petitioners were called for discussion at Hosur Milk Sales Office on 28.10.2014, leaving the legal heirs of the deceased two petitioners. The respondent, orally, agreed to comply with the terms of the order passed in the said writ petition. But to their shock and surprise, vide order dated 14.11.2014, the respondent directed seven of them, leaving B.Ramakrishnan, to join as afresh daily wage workers. Therefore, the appellants again submitted their representation dated 19.11.2014, but there was no response. Hence, they were forced to file Contempt Petition in C.P.No.2803/2015 before the Division Bench of this court. The Contempt Petition was dismissed as withdrawn by observing that "*After some arguments, learned counsel for the petitioners seek to withdraw the contempt petition and states that in case the petitioners claim any substantive rights of regular employment, they will take recourse to* *separate independent legal remedy. Endorsement is made.*"

(iv) The appellants/petitioners are legally entitled to reinstatement with effect from 01.01.2004 with all continuity of service and to receive the backwages and other benefits on par with their juniors. However, due to the irresponsible and illegal attitude of the respondent Milk Union, they are forced to struggle all these days. Hence, they filed Claim Petition No.28 of 2019 seeking to compute the monetary value of the benefits due to each of the petitioners based on the provisions of Section 33C(2) r/w Section 33-C(5) of the Industrial Disputes Act, 1947. The said C.P. was allowed directing the respondent to pay Rs.32,55,882/- each to the petitioners 1 to 8 and Rs.11,71,815/- to 11th petitioner and Rs.25,75,543/- to 12th petitioner, Rs.97,885/- to 9th petitioner and Rs.2,95,900/- to the 10th petitioner,within 2 months.

(v) Aggrieved by the award passed in the said C.P.No.28/2019, the respondent Milk Union filed a writ petition in W.P.No.654 of 2023 and the Writ Court, vide order dated 28.11.2023, allowed the writ petition by setting aside the award passed in the said claim petition. Hence, the present Writ Appeal.

3. (i) Learned counsel for the appellant would state that though W.P.No.2304 of 1996 was allowed, the appellants were not reinstated into service with effect from 01.01.2004 with continuity of service. Even after the SLP being dismissed, the respondent failed to reinstate the appellants, however, reluctantly sent communication asking the employees to join as fresher on daily wage basis. The Writ Court erred in holding as if the employees were reinstated as daily wages and they did not join duty and therefore, there cannot be any claim for backwages from 01.01.2004 onwards and that they are not entitled to backwages on the principle of 'No Work No Pay'.

(ii) Learned counsel would further state that as per the order in W.P.No.2304 of 1996, the reinstatement was with all continuity of service and consequently, the wage has to be fixed by taking the entire service into account and paid the current wages and not on daily wage basis as a fresh hand. Learned counsel would further state that the Labour Court, after considering both oral and documentary evidence, passed a detailed order dated 13.07.2022, allowing the claim petition, but the learned Judge, in a proceedings under Article 226 of the Constitution of India, upturned the order of the Labour Court, on presumption and assumptions.

(iii) Learned counsel would further state that the SLP(C).No.8369 of 2007 was dismissed on 08.07.2014 and the employees gave representation to reinstate them and the respondent did not comply with the order, instead sent illegal order dated 14.11.2014 without mentioning about reinstatement of the appellants. In Ex.P14, there is no mention about reinstatement and it only expressed that the employees will be appointed on daily wages and the same is not in terms of the order of the Hon'ble Court and thus, the respondent prevented the employees from joining duty and kept the employees out of work. But the learned Judge interfered with the order of the Labour Court by setting aside the order in C.P.No.28/2019 on the ground that the employees are not entitled for wages on the principle of 'no work no pay' and also erroneously held as if the employees failed to join duty. He would further submit that the Labour Court, relied upon the salary particulars of Matheswaran, who was junior to the appellants and who joined along with them.

(iv) Learned counsel would further state that the appellants are entitled to V, VI and VII Pay Commission which was implemented in the respondent Milk Union as per Ex.P18 and accordingly, the claim petition was computed. The computed amount was not disputed by the respondent by letting in oral or documentary evidence. The claim made on the basis of the pay details of Madeshwaran, who is junior to the appellants, is just and proper and there is no justification to set aside the order of the Labour Court.

(v) Learned counsel would further state that the contention of the respondent that the Government, through its letter dated 01.02.2018, directed the loss making unions like the respondent Milk Union to implement the 7th Pay commission if it is absolutely necessary, is untenable. This was not pleaded in the counter statement before the Labour Court and no document was also marked. The VII Pay Commission was implement in respect of all employees of the respondent Milk Union and when that be so, the respondent cannot say that the same cannot be extended to the appellants.

(vi) Learned counsel would further state that without prejudice to the aforesaid submission, it is respectfully submitted that the order of reinstatement was ordered way back on 01.01.2004 and admittedly, the management had filed writ appeal and it went up to the Supreme Court. For the period from 01.01.2004 to 14.11.2014, being the alleged offer of employment, the appellants are entitled to wages, which they can never deny because they have been engaged in vexatious litigation. Therefore, the learned counsel prays to modify the order of the Labour Court from 01.01.2004 to the date of alleged reinstatement to each of the appellants and for the persons who are dead, up to the date of their death. He would further state that in any event, the employees cannot go penniless after litigation for no fault of them and hence, the same may be considered by this Court.

4. (i) Per contra, the learned senior counsel appearing for the respondent would state that pursuant to the dismissal order by the Hon'ble Apex Court in SLP.No.8346 of 2007, the Management vide letter dated 14.11.2014 called upon the appellants/petitioners for appointment as daily wages as per the order of the Hon'ble High Court. However, the workers refused to accept the employment contending that they should be appointed

only as permanent workmen in the Management Union. This was not accepted by the Management as it was against the order of passed in W.P.No.2304 of 1996 dated 12.03.2004. The contempt petition filed by the appellants was also dismissed as withdrawn by observing that *"in case the petitioners claim any substantive rights of regular employment they will take recourse to separate independent legal remedy."* Pursuant to this, the petitioners did not seek any permanency by adopting any separate legal proceedings. Thereafter, they filed C.P.No.28 of 2019 before the Labour Court to compute the monetary value of the benefits due to each of them from the Respondent Milk Producers Union for the period between 1.1.2004 to 31.03.2021 or till the death of the concerned workmen based on the provision of Section 33(c)(2) read with section 33(c)(5) of the I.D.Act. The Labour Court, on an erroneous appreciation of facts exceeding its jurisdiction and passed the award directing the respondent Milk Producers Union to pay Rs.32,55,882/- to each of the petitioners 1 to 8, within 2 months and Rs.11,71,815/- to 11th petitioner, Rs.25,75,543/- to 12th petitioner, Rs.97,885/- to 9th petitioner and Rs.2,95,995/- to 10th petitioner, within 2 months. Hence, the Management filed W.P.No.654 of 2023 before this Court and this Court, set aside the order in C.P.No.28/2019 passed by the Labour Court, Hosur.

(ii) Learned senior counsel would further state that the main contention of the Management is that the workers were daily waged employees. Thus, when the termination order was passed and I.D. was filed, the Labour Court passed a common award on 30.12.1994 only awarding a compensation of Rs.4,000/- per worker. The appellants have now taken a new stand that they have worked for 480 days and have to be deemed to have been in regular employment. The Contempt Petition was dismissed as withdrawn. The order of the Hon'ble Division Bench in the contempt petition dated 12.04.2016 is that the employees have to take separate independent legal remedy for claiming any substantive right of regular employment. The employees did not choose to go before the Authority under the Conferment of Permanent Status Act.

(iii) Learned senior counsel would further submit that the appellants were not on regular employment and cannot be compared with those of the permanent regular workmen. The status of the workmen has been settled by the Hon'ble High Court. If at all they choose to seek permanency then they should have to approach the appropriate forum like Authority under Conferment of Permanent Status Act, but they miserably failed to do so. The Labour Court, in the order in C.P.No.28 of 2019, has completely exceeded its jurisdiction and proceeded to find out whether the workmen is entitled to seek for permanency inspite of the objection by the Management.

(iv) Learned senior counsel would further state that the Labour Court was inconsistent and self-contradictory in its order. At one stage, while stating that the order of High Court in W.P.No.2304 of 1996 dated 12.03.2004 is very clear stating that they should be reinstated in the cadre of Mazdoor with effect from 1.1.2004, it proceeded to treat them on par with the regular employees, computing the pay as that of a permanent workman with basic pay and all other allowances like DA, HRA, MA, OCA etc. and also the revision as per the latest Pay Commission, which are clearly outside the scope of the petition under section 33(C)(2) of the ID Act. There was no pre-existing right for workers to be considered as permanent workmen.

(v) Learned senior counsel would further state that inspite of being given appointment on 14.11.2014 to join as casual workers after the dismissal of the SLP, they refused to join duty contending that they should only be given appointment as permanent employees. Hence, they are not entitled for any salary whatsoever as they deliberately did not join duty on their own volition. In the order passed in W.P.No.654 of 2023, the Writ Court has gone into all the issues in a very detailed manner and found that the Labour Court went beyond the scope of provisions of Section 33(C)(2) and in particular, when the orders in W.P.No.2304 of 1996 and in Contempt Petition No.2803 of 2015 were clearly in favour of the management. The workers are entitled to be appointed only as daily wages and if at all the appellants claim any substantive right for regular employment, they will have to take recourse to separate independent legal remedy. Therefore, he would state that the writ appeal is devoid of merits and is opposed to legal principles and the same is liable to be dismissed in liminie.

5. Heard, the learned counsel for the appellants, the learned Senior Counsel appearing for the respondent and perused the materials available on record.

6. Admittedly, the appellants were appointed in the year 1984 as Milk

Salesmen by the respondent at Hosur Milk Sales Unit in Krishnagiri District through Employment Exchange. They worked for more than five years continuously and Provident Fund deduction was also made from their wages. Suddenly, their services were terminated orally without any reason from 16.08.1989. No charge memo was issued and no enquiry was held. Therefore, the appellants raised Industrial Dispute individually before the Labour Court, Vellore. The Tribunal passed a common award granting compensation of Rs.4000/- to each appellant and dismissed their claim for reinstatement. Aggrieved over the same, the appellants filed a writ petition in W.P.No.2304 of 1996 before this Court.

7. It is to be noted that this Court vide order dated 12.03.2004, passed an order of reinstatement, wherein it was observed that, apart from the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, it is a settled proposition that the provisions of the Industrial Disputes Act will apply to temporary employees also and that, in the event of non-compliance of Section 25F of the Act, the Labour Court has no option except to direct reinstatement. Therefore, the

Hon'ble Judge, considering the entire material on record set aside the award of the Labour Court, Vellore and directed reinstatement with continuity of service, without any arrears of salary from the date of termination till 1.1.2004. The relevant portion of the order dated 12.03.2004 is extracted hereunder:

> *"As regards the contention that at present, the Union is engaging employees only through agents and hence, the petitioners cannot be employed, I am inclined to hold that such a stand of the management cannot be accepted. Having appointed them earlier directly, it is not proper to deny them their rights and seek for employment of other persons through agents. It is not disputed that the petitioners had been engaged for not less than 4 or 5 years and therefore, in terms of the provisions of the Tamil Nadu Conferment of Permanent Status Act, the petitioners are entitled to be reinstated in service as a matter of right. Even apart from the provisions of the Tamil Nadu Industrial establishment (Conferment of Permanent Status to Workmen) Act, 1981, it is a settled proposition that the provisions of the Industrial Disputes Act will apply to temporary employees also and that in the event of non-compliance of Section 25F of the act, the Labour Court has no option except to direct*

*reinstatement.*

*...18. With the result, I am inclined to allow the Writ Petition directing the second respondent to reinstate all the petitioners in service with effect from 1.1.2004 with all continuity of service. However, it is made clear that the petitioners will not be entitled to any arrears of salary form the date of the termination till 1.1.2004. The Writ Petition is ordered subject to the above terms. No costs."*

8. It is seen that though the above order was passed, the respondent did not reinstate the appellants. The respondent filed an appeal in W.A.No.799 of 2005 and the Division Bench, after taking note of the fact that similarly placed persons have been continued in service, dismissed the writ appeal. Aggrieved over the dismissal of writ appeal, the respondent management filed SLP(C) No.8369 of 2007. The said SLP was also dismissed on 08.07.2012. Subsequently, the respondent management sent a letter dated 24.10.2014 to the appellant not for reinstatement, but asking the employees to come to their office. Subsequently, the appellants have filed Contempt Petition in Cont.P.No.2803 of 2015. However, the appellants withdrew the contempt petition with liberty to approach the appropriate

forum to claim any substantive right of regular employment.

9. Thereafter, the appellants filed C.P.No.28 of 2019 under section 33(C)(2) read with section 33(C)(5) of the Industrial Disputes Act, 1947, and after elaborately considering all the aspects, the Labour Court, vide order 13.07.2022, allowed the claim petition filed by the appellants. The Labour Court further computed the monetary value of the wages payable to the appellants by comparing themselves with one Matheswaran who was appointed along with the appellants, which is evident from Ex.P3 at Sl.No.16. Though notice was also sent to the management for production of the service register of Matheswaran, they failed to produce the same and thus, adverse inference was drawn against the respondent management.

10. Further, as the respondent management did not file any evidence to the contrary, the Labour Court computed the following amount for the appellants.

*i) K.Aslam (1st appellant), Rangasamy (2nd appellant), Ameer Basha (3rd appellant), A.Mathiyan (4th appellant) P.Sreenivasan (5th appellant) M.Narasimhan (6th appellant) -*

*Rs.32,55,882 (1.1.2004 to 21.03.2021)*

*ii) R.Naveen Kumar, S/o B.Ramakrishnan (deceased) (9th appellant) – Rs.11,71,815/- (1.1.2004 to 28.02.2014)*

*iii) Padmavathi, W/o M.Mohan (deceased) (10th appellant) – Rs.25,75,543/- (1.1.2004 to 5.5.2019)*

*iv) Shameem W/o Mohammed Sheriff (deceased) (7th appellant) – Rs.97,885 (1.1.2004 to 19.07.2005)*

*v) Suguna w/o Muniraj (deceased)(8th appellant) -Rs.2,95,900) (1.1.2004 to 20.11.2007).*

11. Challenging the said order, the respondent management filed a writ petition in W.P.No.654 of 2023. The writ court allowed the writ petition holding that the appellants did not report for work pursuant to the letter (Ex.P13) dated 24.10.2014. It was the findings of the Writ Court that the Labour Court went on the presumption that the appellants are entitled to wages by comparing with a regular employee and further, held that the employees will have to blame themselves as they did not rejoin. Finding so, the Writ Court set aside the entire order of the Labour Court passed in C.P.No.28 of 2019. Against which, the appellants have preferred the present appeal.

12. It is relevant to point out that an Application filed under Section 33(C)(2) is based on an award of the Labour Court for computing the money due, as the management/employer did not reinstate the appellants in service in terms of the award. The award passed by the Labour Court has become final. The learned Judge in the writ petition (W.P.No.2304 of 1996) had already held that the appellants are entitled to be reinstated in terms of section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. Since there is a deemed permanency, they cannot be offered casual employment nearly after 10 years of passing the award. When the writ petition challenging the Labour Court award is allowed, the award gets substituted by the order of this Court and therefore, the respondent management is bound to reinstate the appellants as permanent employees, as the award contemplates continuity of service and wages from 1.1.2004 onwards. Thus, the Labour Court has rightly considered the issue under Section 33(C)(2) of the said Act and relying on the order passed in W.P.No.2304 of 1996 dated 12.03.2004 held that the application for computation of benefits of the award is maintainable. The

calculation arrived at by the Labour Court was also based on the salary particulars of one Matheswaran, a similarly placed person like that of the appellants herein, produced by the appellants as the respondent management did not produce the service register even after notice. The Labour Court has rightly drew an adverse inference and computed the amount.

13. Further, the Division Bench of this Court in a decision reported in *2012 SCC Online Mad 2941 (R.Lakshmi v. Tamilnadu Electricity Board vs. Tamilnadu Electricity Board)* has categorically held that there is no need for the employee to get a declaration under the Statute. Once it is established that he had completed 480 days, he is deemed to have been confirmed as a permanent employee.

14. Further, the Hon'ble Supreme Court in a decision reported in *(1995) 1 SCC 235 ( Municipal Corporation of Delhi v. Ganesh Razak)* has held that in an application under Section 33(C)(2), incidental questions can be gone into. The relevant portion in the said judgment reads as follows:

*"12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement therefore some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.*

Therefore, the submission of the learned counsel for the respondent that computing the pay of the appellants on par with the regular employees, is outside the scope of the petition under section 33(C)(2) of the ID Act, cannot be countenanced.

15. Further, in the judgement reported in *(2021) 14 SC 781 (Nandkishore Shravan Ahirrao v. Kosan Industries (P) Ltd.,)* it has been held that once there is an award of reinstatement, continuity of service follows, even if the award does not say so. The relevant portion of the said judgement is extracted hereunder:

> *"6. Ex facie, the Labour Court having awarded reinstatement to the appellant, continuity of service would follow as a matter of law. The award of the Labour Court dated 27-2-2008 does not specifically deny continuity of service. Hence, the observation of the High court to the effect that the Labour Court had denied continuity of service is erroneous and would accordingly stand corrected in terms of what has been observed herein above. The appellant would be entitled to continuity of service."*

Therefore, when continuity of service is given in an award, the employee has to be reinstated as a regular employee and not as a casual employee.

Therefore, there is no perversity in findings of the Labour Court, as observed by the Writ Court.

16. Insofar as the contention of the respondent management that the contempt petition was withdraw to institute separate legal proceeding to establish a substantive right of the appellants but they have not done so is concerned, the said contention is contrary to the principles of labour jurisprudence. The Hon'ble Supreme Court in Civil Appeal No.6511 of 2024 dated 17.05.2024 has negatived the contention that the employee will have to raise another dispute to challenge his non-employment when he has already got an order under the Conferment Act. It is clearly held that "*when an issue stands already decided and such decision does not suffer from any vice of authority or jurisdiction then putting those who enjoy an order through the rigor of once more of having to re-establish their case would be unjustified.*"

In the present case, the Labour Court, while deciding non-employment has relied upon Conferment Act and ordered for continuity of service. Therefore, the appellants need not go into another litigation to get the monetary value.

17. Further, the Labour Court had analysed the entire issued threadbare, i.e., regarding maintainability, merits of the claim namely entitlement of monetary benefits and had arrived at cogent finding and reasoning and allowed the claim petition. Therefore, we find that the order passed by the Writ Court has to be set aside.

18. In view of the above discussion, the Writ Appeal stands allowed. The order passed in W.P.No. 654 of 2023 dated 28.11.2023 is hereby set aside and the respondent management is directed to pay the amount as computed in C.P.No. 28 of 2019 dated 13.07.2022 to the appellants within a period of two months from the date of receipt of a copy of this judgment. No costs.

(J.N,.B.,J.) (P.D.B.,J.)
22.10.2024

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sts/vsi

**J.NISHA BANU,J.**

sts/vsi

**Pre-delivery Order**

**made in**

**W.A. No. 397 of 2024**

22.10.2024