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W.A.No.1563 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.06.2024

Delivered on: 12.08.2024

CORAM :

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MR. JUSTICE P.DHANABAL

W.A.No.1563 of 2021

P.Manikannan

...Appellant/1st respondent

Vs

1.The Management

CLSPL 164, Pombur Primary Agricultural

Cooperative Bank

Rep. By its President

Pombur, Villupuram District

2.The Presiding Officer

Labour Court, Cuddalore

.... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 6.11.2019 in W.P.No.10450 of 2017.

For Appellant : Mr.K.M.Ramesh, Senior counsel
for Mr.V.Subramani

For Respondents : Mr.L.P.Shanmugasundaram for R1
R2-Court.

JUDGMENT



W.A.No.1563 of 2021

Per J.NISHA BANU, J.

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This Writ Appeal is filed by the appellant/employee as against the order of the learned Single Judge dated 6.11.2019 passed in W.P.No.10450 of 2017, whereby, the Award of the Labour court holding retrenchment was bad in law and directed to reinstate the employee with continuity of service and backwages, was quashed.

2. The learned counsel for the appellant would submit that the learned Judge did not take into consideration the fact that the employer has not complied with the mandatory precondition of Section 25-F of the I.D.Act, 1947 and the said non-compliance would render the order of termination on the ground of retrenchment void ab initio. Therefore, the Labour court has correctly decided that the employee is entitled for reinstatement along with backwages and continuity of service. The learned counsel further submitted that the reliance made on by the learned Single Judge in Justin's case and Umadevi case is unwarranted in the present facts of the case.

3. The learned counsel for the appellant-employee would also contend that the learned Single Judge ought to have dismissed the writ petition filed by the employer on the ground of delay as the impugned award was passed on



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04.01.2013 and the writ petition was filed by the employer on 19.04.2017 and

the reasons stated for delay in W.P., was hardly acceptable. The learned counsel submitted that when the Labour court found that termination is illegal and improper, relief of reinstatement and backwages with continuity of service is followed and that cannot be faulted. The learned counsel relied on the following decisions to support his contentions:-

- (1) (2011) 6 SCC 884-Devinder Singh Vs. Municipal Council, Sanaur.
- (2) (2014) 11 SCC 85 – Bhuvanesh Kumar Dwivedi Vs. Hindalco Industries Limited.

4. Per contra, the learned counsel for the 1st respondent-employer would submit that the appellant-employee was engaged temporarily as Salesman and the same is not within the sanctioned approved strength. Therefore, the learned Single Judge has held that in such cases where the engagements were made on temporary basis in order to meet out certain exigencies or to comply certain projects or scheme either by the Government or by the organisation, such engagements cannot be validated. Therefore, the learned counsel for the 1st respondent sought to confirm the order passed by the learned Single Judge.

5. Heard both sides and perused the records.



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6. It is the specific case of the appellant that he was appointed as a Salesman for daily wages on 05.02.1998 and he was retrenched for the reasons viz., the respondent society was running at a loss; he was not appointed through Employment Exchange; he was in excess of cadre strength. The above reasons given by the 1st respondent was not substantiated by any evidence.

7. Secondly the appellant claimed that he was appointed by the Executive Committee and the appointment was in accordance with the circular issued by the Registrar of the Cooperative Societies. Since the respondent Society has not explained under what circumstances the Registrar issued the circular providing for the appointment of salesman by the Executive Committee, the Labour court pointed out that the retrenchment is bad in law.

8. The Labour court further pointed out that even if the employee accepted the compensation amount, he can still question the validity of the retrenchment; furthermore there is violation of Section 25-H of the Industrial Disputes Act. Holding so, the retrenchment of the employee was set aside and the respondent-society was directed to reinstate the employee with continuity of service and backwages.

9. The learned Single Judge, without appreciating the above aspects, held



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that irregular or illegal appointments cannot be validated to the retrenchment made. In our considered view the action of the 1st respondent Society without any justification amounts to mala fide and unfair labour practice in such a situation, the Labour court has given correct finding that invalid order of retrenchment cannot be validated in the light of judgment of Honourable Supreme in the cases *Umarani (2004) 7 SCC 112* and *Justin's case 2004 (4) CTC 385*. In the light of the aforesaid reasonings, the interference by the learned Judge with the Award of the Labour Court, cannot be sustained.

10. In view of the above, the Writ Appeal is allowed. The order of the learned Single Judge dated 06.11.2019 passed in W.P.No.10450 of 2017 is set aside and the Award of the Labour Court is restored. The first respondent shall reinstate the appellant within a period of eight weeks from the date of receipt of a copy of this judgment. No costs.

Internet: Yes/No
nvsri

(J.N.B.J.) (P.D.B.J)
12.08.2024

J.NISHA BANU ,J.

**and
P.DHANABAL,J.**



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To

- 1.The Management
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