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W.P.Nos.25940 of 2023, etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.25940, 25949, 25952, 25954, 25968, 25970, 25971, 25969,
25947 & 25948 of 2023 and WMP.Nos.11628, 11662, 11099, 11088,
11653, 11077, 11070, 11067, 11646, 11627, 11635, 11664, 11101,
11090, 11654, 11078, 11073, 11068, 11647 & 11637 of 2024

WP.No.25940 of 2023

T.Magendiran

... Petitioner

Vs.

1. Government of Tamilnadu,
Rep. By Secretary,
Personnel and Administrative Reforms Department,
Fort St.George,
Chennai 600 009
 2. The Director of Handlooms,
Kuralagam,
Chennai 600 005
 3. The Managing Director/Assistant Director,,
The Tamilnadu Cooperative Textile Processing Mills Limited,
No.428, Bhavani Main Road,
Erode 638 004
- ... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India
praying to issue a writ of certiorarified mandamus after calling for the



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concerned records from the third respondent relating to the order dated 11.03.2023 bearing No.A/O/1806/2021 and the order of the third respondent dated 09.09.2023 bearing No.A/O/950 / 2023, quash the order of the third respondent dated 11.03.2023 bearing No.A/O/1806/2021 insofar as denying the wages from 01.07.2022 to 12.03.2023 and the order of the third respondent dated 02.09.2023 bearing No.A/O/949/2023 and consequently direct the consequently direct the respondents to pay wages to the petitioner for the period from 01.07.2022 to 12.03.2023 with all attendant benefits, continuity of service etc., within the time frame stipulated by this Court.

(Prayer amended as per order dated 04.07.2024 made in WMP.No.11626 of 2024 in WP.No.25940 of 2023)

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.S.Arumugam,
Government Advocate

COMMON ORDER

All the writ petitions have been filed challenging the order dated 11.03.2023 of the third respondent thereby permitted the employees of the third respondent to work till their attainment of 60 years of age, but they were denied salary for the non working period.



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2. All the writ petitioners had joined in the service of the third respondent as Labourer. Subsequently, they were promoted to various posts such as Operator, Machine Man, Helper and Watchman. While being so, during the period of Covid 19, the first respondent issued order in GO.Ms.No.51 dated 07.05.2020 thereby increased the age of superannuation of the Government servant from 58 years to 59 years. Subsequently by the order in GO.Ms.No.29 dated 25.02.2021, it was ordered to increase the age of superannuation from 59 to 60 years. The said orders are applicable to teaching and non teaching staffs working in aided education institutions and employees of all constitutional (statutory bodies), public sector undertakings including all State Corporations, Local Bodies, Boards, Commissions and Societies. Accordingly, the employees of the third respondent such as Managers, Supervisors, Clerical staff working within the office premises of the third respondent factory were allowed to work till their attainment of 60 years.

2.1 However, for the employees who were engaged in manufacturing activities, no specific orders were passed to increase their



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retirement age from 58 to 60 years. All the petitioners were about to retire on attaining the age of 58 years. Therefore, some of the employees approached this Court and this Court granted *status quo* for some of the employees and some of the employees' writ petitions were dismissed. The persons who obtained interim order were allowed to continue in their respective services. While pending the writ petitions, therefore the employees those who did not file any writ petition, were also permitted to work after some period of time. Therefore, the petitioners initially sought for wages for the period they were not permitted to work for. While pending the writ petitions, the third respondent passed order dated 11.03.2023 thereby extended all the workers' age to 60 years as their retirement age. However, the salary and other benefits were not granted for non working period. Therefore, by way of amendment, the petitioners challenged the order dated 11.03.2023 insofar as denying salary for the non working period.

3. *Mr.Balan Haridas*, the learned counsel appearing for the petitioners submitted that some of the employees were permitted to work



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and some of the employees were not provided any work, which is discriminatory. In support of this contention, he also relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others* reported in (1969) **2 SCC 598**, in which the Hon'ble Supreme Court of India held that the object of the act is to have uniform standing orders providing for the matters enumerated in the Schedule to the Act, that it was not intended that there should be different conditions of service for those who are employed before and those employed before after the standing orders come into force they bind all those presently in the employment of the concerned establishment as well those who are appointed thereafter.

3.1 He further submitted that admittedly the petitioners were not allowed for duty and only because of the interim order granted for some of the employees, the petitioners were permitted to work under the third respondent. Therefore, their non employment was not on the fault of them. Though the Government Orders passed by the first respondent are very clear that they apply to the societies, the third respondent did not



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permit the petitioners to continue their service after completion of their 58 years of age.

4. *Mr.S.Arumugam*, the learned Government Advocate appearing for the respondents submitted that the third respondent mill is classified as Registered Cooperative Society under the Tamilnadu Cooperative Societies Act. Its functions are classified as Industrial Unit and the services of the workers are governed by the Industrial Standing Orders. The provisions of Rule 56 of Tamilnadu Fundamental Rules will not be applicable to the workers of the third respondent mill. Their service conditions are governed with certified Standing Orders of the third respondent and the wages and other benefits of the workmen like the petitioners, have been determined by both management and the trade Unions, by settlements either under Section 18(1) or 12(3) of the Industrial Disputes Act, 1947.

5. However, the above contention cannot be countenanced since while pending these writ petitions, the third respondent itself



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permitted the workers to work till their completion of 60 years of age.

The Government orders passed by the first respondent are extended to the workers of the third respondent. Insofar as the wages sought for by the petitioners for non working period is concerned, the learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Salim Ali Centre for Ornithology & Natural History, Coimbatore and another Vs. Dr.Mathew K.Sebastian*** reported in ***2022 SCC Online SC 451***, in which the Hon'ble Supreme Court held that the employee cannot be denied the backwages for no fault of his. Therefore, the principle of 'no work no pay' shall not be applicable in such a situation. He also relied upon the judgment in the case of ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others*** reported in ***(2013) 10 SCC 324***, wherein it is held as follows:

38.1 In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2 The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating



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authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.



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38.6 *In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* reported in (1979) 2 SCC 80.*



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6. Thus it is clear that the employees should not be suffered for not on their fault without any salary. Peculiar circumstances arose due to Covid-19 and the first respondent passed orders thereby extended the age of retirement from 58 to 60 years. Unfortunately, the third respondent though extended the orders to its staffs, failed to extend the same to the workers. However, while pending these writ petitions, the third respondent extended the age for workers till 60 years as their retirement age. Therefore, the petitioners cannot be said that they themselves restrained from work and the principle of 'no work no pay' is applicable.

7. In view of the above, the impugned order dated 11.03.2023 passed by the third respondent insofar as denial of salary for non working period is set aside and all the writ petitions are allowed. However, considering the circumstances in which the third respondent did not extend the retirement age of the petitioners, it is observed that the petitioners are entitled for 50% of the salary for their non working period. Accordingly, the third respondent is directed to disburse the said 50% of the salary to the petitioners for their non working period within a



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period of six weeks from the date of receipt of copy of the order. It is made clear that their services from 58 to 60 years of age have to be considered for all service and attendant benefits. Now the petitioners attained the age of superannuation. Therefore, the third respondent is directed to settle the terminal benefits and the arrears of salary for the non working period within a period of six weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

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- 2.The Director of Handlooms,
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