



WEB COPY



W.P.No.4426 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.4426 of 2019
and
W.M.P.No.1987 of 2019

The Management
Thirumangaichery Primary Agriculture
Cooperative Bank,
Represented by its President
Thirumangaichery,
Thiruvidadaimaruthur Taluk,
Thanjavur District – 609 807.

...Petitioner

Vs.

S.Gurusamy

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records relating to the award dated 21.12.2017 made in I.D.No.69 of 1999 on the file of the Presiding Officer, Labour Court, Cuddalore.

For petitioner : Mr.L.P.Shanmugasundaram

For respondent : Mr.V.Suryanarayanan

ORDER

This writ petition is filed seeking for a relief to quash the award dated 21.12.2017 made in I.D.No.69 of 1999 on the file of the Presiding Officer, Labour Court, Cuddalore.



2. It is submitted by the learned counsel for the petitioner that the directions were given by the Labour Court, Cuddalore in the impugned order that the respondent has to be reinstated with continuity of service and backwages are without any valid reasons.

3. On the other hand, the learned counsel for the respondent workman submitted that the orders passed by the Labour Court are well reasoned and that the Labour Court has rightly set aside the orders of dismissal and that the directions given to the petitioner management for reinstatement of the respondent workman are proper.

4. Heard both sides and perused the materials available on record.

5. It is alleged by the petitioner management that the respondent workman has committed mis-appropriation in respect of sale of mangoes, to the tune of Rs.3939.12/-. It is observed by the Labour Court that after going through the record there are no merits to hold as to how many mangoes are sold and how much balance of amount to be remitted and other connected aspects. The Labour Court has found that no evidence was placed before the enquiry officer to conclude that the respondent workman



has committed default. Further, the amount calculated as deficit is only Rs.3939.15 for which the punishment imposed on the respondent workman i.e., dismissal from service is highly disproportionate. By considering all these issues, the Labour Court has rightly set aside the orders of dismissal and a direction was given by way of impugned orders to reinstate the petitioner with backwages and continuity of service.

6. It is submitted by the learned counsel for the petitioner management that the respondent workman has attained the age of superannuation on 02.04.2019. According to the written submission filed by the respondent workman, he has joined the services on 29.08.1979 and was suspended from service on alleged misconduct on 11.04.1994 and retired from service on attaining the age of superannuation on 02.04.2019. Since the respondent workman has retired from service now a direction insofar as reinstatement of respondent workman becomes infructuous. In respect of continuity of service is concerned, the learned counsel for the petitioner submitted that the petitioner management will give continuity of service insofar as backwages are concerned if the impugned orders are implemented, the petitioner management has to pay the full backwages for almost 24 years. It is a well settled principle that merely because of the



workman is ordered to be reinstated back wages cannot be paid by default.

Payment of backwages depends on certain circumstances. There is no record to show that the respondent workman has not been working for 25 years, it cannot be said that the workman was not working these many years.

7. In view of the above, this Court is of the opinion that the impugned orders passed by the Labour Court are not *per se* perverse. However, as already observed, insofar as his payment of backwages is concerned considering the circumstances and since the respondent workman was drawing a salary to an amount of Rs.2,734.75/- including dearness allowances and other allowances, if at all, full back wages are ordered the petitioner is bound to pay more than Rs.7,87,608/- (2,734.75*12*24). As already observed, the respondent workman could not have been unemployed for 24 years and further there is also policy of 'No Work No Pay' the above said amount cannot be granted. In view of all the above therefore, this Court is inclined to grant 25% of backwages with continuity of service from 01.12.1997 to the date of superannuation with continuity of service.



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8. Accordingly, this writ petition is disposed of with the above directions. Connected W.M.P is closed. No costs.

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Index : Yes/No
Internet : Yes/No
Citation : Yes/No

Dr.D.NAGARJUN,J



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