



W.A.(MD)No.1744 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

W.A.(MD)No.1744 of 2021

S.Ganapathy

... Appellant / Respondent

Vs.

1.The Management,

A-1258, Madurai District Central Cooperative
Bank Staff's Cooperative Credit Society Ltd.,
MDCC Bank Building,
187, North Veli Street,
Madurai – 1.

.. 1st Respondent / Writ Petitioner

2.The Presiding Officer,

Labour Court,
District Court Complex,
Melur Road, Madurai - 20.

... 2nd Respondent / 2nd Respondent

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to set aside the order dated 10.03.2021 passed in W.P.(MD)No.12004 of 2011 on the file of this Court and allow this writ appeal.



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For Appellant : Mr.T.Ravichandran

For Respondents : Mr.P.Subbaraj for R1

JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

Heard both sides.

2.The appellant / S.Ganapathy joined A-1258, Madurai District Central Cooperative Bank Staff's Cooperative Credit Society Limited as Call Boy in the year 1971. He became an Attender on 16.02.1979. The post of Attender belongs to sub-staff category which is equivalent to that of basic servant in government service. The retirement age for a basic government servant is 60 years. As per clause 12 of the by-laws governing the employees of the cooperative society, in the matter of age of retirement from the service of society, the rules applicable to government servants will be followed.

3.In this case, Ganapathy should have been retired only on his reaching the age of 60 years. But treating 58 years as the age of



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retirement, he was relieved from service on 31.05.2006. Aggrieved by the same, Ganapathy raised an industrial dispute and moved the Labour Court by filing I.D.No.162 of 2007. The Labour Court, Madurai passed award dated 20.04.2011 holding that Ganapathy should have been retired only on 31.05.2008 and that therefore, he should be paid backwages for the period from 31.05.2006 to 31.05.2008. Questioning the same, the management of society filed W.P.(MD)No.12004 of 2011. The writ petition was disposed of on 10.03.2021 in the following terms:-

“10. The facts in the present case are not in dispute. Admittedly, the first respondent/workman was initially appointed as a Call Boy in the Petitioner Society on 02.12.1971 and thereafter, he was promoted as Attender on 16.02.1979. The petitioner Society has passed an order allowing the first respondent to retire from service on attaining the age of 58 years, on 31.05.2008. According to the first respondent, he is entitled to work upto the age of 60 years, as per the Special By-law of the Madurai District Central Co-operative Bank. Therefore, the first respondent/workman raised an industrial dispute before the Labour Court. Further, in order to prove the age of retirement, the first respondent marked Ex.W.1 to Ex.W.10 before the Labour Court. A perusal of Ex.W.1, reveals that the Insurance was taken by the petitioner Society and the last date of maturity of the policy is 25.03.2008. It is the stand of the petitioner that the Special By-Law provides the age of retirement



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of last grade servants in the petitioner Society as 60 years. However, it is to be pointed out that the Special By-law, which is referred to by the workman relates to the Cooperative Bank and is in no way connected with the petitioner/society. In the absence of any special by-law relating to the petitioner society, then it is clear that the basic servants service rules comes into play in relation to the service condition of the petitioner.

11. It is not in dispute that insofar as the retirement age is concerned, the Rule applicable to the Government employees shall be applicable to the petitioner Society. As per the Fundamental Rule 56, the retirement age of the basic servants is 60 years. In the present case, it is not in dispute that the workman was in basic servants and would be squarely covered by the basic servants service rules. Such being the case, the finding of the Labour Court that the workman is entitled to be continued in service till the age of 60 years is perfectly sustainable and does not suffer the vice of illegality.

12. However, the fact remains that the first respondent was allowed to retire from service on 31.05.2006. When the first respondent has not physically attended duty, the order of the Labour Court, awarding the backwages to the first respondent is impermissible. The first respondent/workman has not physically attended work between 31.05.2006 and 31.05.2008 and, therefore, applying the principle of 'No work No pay', the petitioner is not entitled for back-wages, but only entitled for



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service benefits and, accordingly, the order of the Labour Court granting backwages cannot be sustained.

13. Accordingly, this writ petition is disposed of with a direction to the petitioner to work out the terminal benefits of the workman as if he had been in service till the age of 60 years and superannuated on 31.5.08, and pay the terminal benefits to the workman within a period of twelve weeks from the date of receipt of a copy of this order, but it is made clear that the workman would not be entitled to backwages from 31.5.06 to 31.5.08. No costs. Consequently, connected miscellaneous petitions are closed.”

Aggrieved by the denial of backwages, the workman filed this writ appeal.

4.After hearing the learned counsel on either side and perusing the materials on record, we are more than satisfied that Ganapathy should have been retired only on 31.05.2008. Even the learned Single Judge agreed with the said finding arrived at by the Labour Court. The only question that calls for consideration is whether by applying the principle of “no work no pay”, the appellant could have been denied the backwages for the last two years.



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5.In the decision reported in **(2013) 10 SCC 324 (Deepali Gundu**

Surwase v. Kranthi Junior Adhyapak Mahavidyalaya (D.Ed), it was held as follows:-

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter’s source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead



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and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments. ”

6.We are clearly of the view that the aforesaid ratio will apply to the case on hand. The learned Single Judge erred in applying the principle of “no work, no pay”. In this view of the matter, the order impugned in this writ appeal is modified. We hold that the appellant will be entitled to backwages for the period from 31.05.2006 to 31.05.2008.

7.This writ appeal is allowed accordingly. No costs.

(G.R.S. J.) & (R.P. J.,)
29.11.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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