



W.A.(MD).No.1022 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.02.2024

CORAM

**THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

W.A(MD)No.1022 of 2015

S. Meenakshi Sundaram,
C/o. Madurai Motor Transport General,
Workers' Union,
146 Puttu Thope Road,
R.M. Complex,
Madurai.

... Appellant

vs.

1. The Management,
Ramanathapuram District Central,
Cooperative Bank Limited,
Ramanathapuram.

2. The Presiding Officer,
Labour Court,
Madurai.

... Respondents

PRAYER: Writ Appeal is filed under Clause XV of Letters Patent, against the order passed by this Court dated 06.03.2013 in W.P. No.6172 of 2008.



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For Appellants : Mr.C.Mahadevan

For R1 : Mr.D.Shanmugaraja Sethupathi

J U D G M E N T

(Judgment of the Court was delivered by **V.BHAVANI SUBBAROYAN, J.**)

This writ appeal has been filed against the order of the learned single Judge passed in W.P.(MD).No.6172 of 2008, dated 06.03.2013, wherein the Management has sought for issuance of a Writ of Certiorari to call for the records relating to the award passed in I.D.No.174 of 2001 dated 21.04.2008, by the Labour Court, Madurai and to quash the same.

2. According to the appellant, he had produced the records before the writ Court to show that he has been employed by the first respondent Management. The learned single Judge erred in observing that the appellant had not produced any document to show that he was in employment with the respondent Management, without considering the fact that all the records are in the custody of the Management. The



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learned single Judge erred in observing that the Labour Court had not drawn adverse inference against the respondent Management, without considering the fact that the Labour Court on a perusal of the documents and evidence had come to the conclusion that the appellant was employed under the respondent Management and hence, granted an award of reinstatement. The learned single Judge ought to have seen that the documents filed by the appellant clearly shows that the appellant was employed with the respondent Management. Hence, the impugned order is liable to be set aside.

3. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the materials available on record.

4. On going through the order passed in the writ petition, it is seen that the challenge was made by the Management, Ramanathapuram District Central Co-operative Bank Limited, Vandikkara Street, Ramanathapuram to the award of the Labour Court in I.D.No.174 of



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2001, dated 21.04.2008. The workman had filed the claim petition before the Labour Court stating that he was engaged by the Management as a Driver between June 1995 to April 1998 on daily wage of Rs.30/- and without any written orders, his services were dispensed with and therefore, he claimed reinstatement along with continuity of service and backwages. The Management stated that the recruitment of an employee has to be done as per the by-laws of the Society and in terms of Rule 149 of the Tamil Nadu Co-operative Societies Rules 1988, no appointment by direct recruitment to any post shall be made except through Employment Exchange in the manner and form prescribed and inviting application by advertising in the Tamil Dailies approved by the Government. Further, it was stated that the requirement is mandatory under Rule 149(2) of the Co-operative Societies Act, 1988. Further, he never employed as a Driver between June 1995 and March 1998 continuously and he took away certain documents from the Bank. After considering the oral and documentary evidence, the Labour Court has passed an award on 21.04.2008, directing the Management to reinstate the workman without backwages.



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5. Challenging the award passed by the Labour Court, Madurai in I.D.No.174 of 2001, dated 21.04.2008, the Management has filed the writ petition before this Court stating that the first respondent workman has not at all completed 240 days in a year. It is well settled preposition of law that the burden of establishing the factum of his continuous work for 240 days in a year rests with the workman, who is claiming to be reinstated on the ground of violation of 25(f) of the Industrial Disputes Act. Further, the first respondent workman has not even pleaded either in the claim petition or in his evidence before the Court that he has continuously been working 240 days in a year. The learned single Judge of this Court allowed the writ petition by holding that the award has been passed on a wrong appreciation of the documents placed before the Court and the first respondent having failed to establish that he worked continuously for 240 days and hence, the award of reinstatement with continuity of service is wholly unsustainable. Challenging the same, the present writ appeal has been filed by the workman.



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6. According to the Management, in terms of the by-laws as well as the statutory rules, the recruitment could be done only by calling for names from the Employment Exchange and also issuing advertisement for the posts and the workman shall be entitled to seek for regular appointment in the Bank as and when notification is issued, if he is found qualified and eligible to be considered on merits and in accordance with law with the by-laws and the recruitment rules. On perusal of the records, it is seen that the I.D.No.174 of 2001 was filed in the year 2001 and now the workman is aged about 52 years and he will not be considered for recruitment. When the appellant/workman is not in a position to show that he was continuously working for 240 days in a year and no materials produced before the labour Court as well as the writ Court, we do not find any merit in this writ appeal.

7. In the result, this Writ Appeal is dismissed. No costs.

[V.B.S.,J.] & [K.K.R.K.,J.]
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Cooperative Bank Limited,
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and
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