



W.A(MD) No.997 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 27.08.2024

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A(MD) No.997 of 2018

T.Valarmathi

...Appellant

Vs.

1.The Registrar,
The Co-operative Societies,
Chennai-10.

2.The Deputy Registrar of Co-operative Societies,
Tiruchendur.

3.The Joint Registrar of Co-operative Societies,
Thoothukudi Division,
Thoothukudi District.

4.The Special Officer,
Vellanvillai Primary Agriculture
Co-operative Debt Societies,
Vellanvillai.

... Respondents

PRAYER: Writ Appeal filed under clause 15 of Letters Patent Act to set aside orders passed in W.P. No.8505 of 2010 dated 31.07.2014.

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For Petitioner : Mr. K.R.Laxman

For Respondents : Mr.M.Senthil Ayyanar– for R1 to 3

Government Advocate

Mr.G. Prabhu Rajadurai -For R4

JUDGMENT

The present Writ Appeal has been filed questioning the order of the learned Single Judge in W.P(MD) No.8505 of 2010 dated 31.07.2014, by which order, the writ petition filed by the appellant had been allowed and though benefits were granted, benefit of backwages was not granted by the learned Single Judge.

2. The brief facts of the case are as follows: The appellant/writ petitioner was working as a saleswomen in the ration shop at Vellanvillai Village, Tiruchendur Taluk, Thoothukudi District and that ration shop was run by the fourth respondent, Vellanvillai Primary Agriculture Co-operative Debt Societies, Vellanvillai Village, Tiruchendur Taluk, Thoothukudi District. On 12.07.2004 a lorry bearing Reg.No. TN 74 C 4959 was found proceeding towards Nambiavinai Village from Nagercoil and when intercepted it was found that it was



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carrying 250 bags of rice meant for public distribution through ration shop. The driver and cleaner of the lorry on enquiry stated that the 250 bags of rice were taken from the shop in which the petitioner was working as incharge. Disciplinary proceedings were initiated against the petitioner herein. After following due procedure, the Tribunal held that the charges had been proved and a report was submitted. The fourth respondent then passed an order dismissing the appellant from service. A revision was filed to the third respondent/ The Joint Registrar of Co-operative Society, Thoothukudi Division, Thoothukudi District by order dated 07.09. 2009 dismissed the revision confirming the dismissal of the appellant from service.

3. Questioning that particular order of dismissal the Writ petition has been filed. The learned Single Judge while examining reasons for dismissal had come to the following conclusion.

“ 8.The driver of the lorry Mr.S.Thiraviam was examined as P.W.6 before the Tribunal. He was expected to say, that the rice bags were taken from the shop of the petitioner. But he disowned his earlier statement given to the Police, instead, he deposed that the rice bags were taken from the rice mill of one Rajendran of



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Aruppukottai. He has even denied the suggestion that the rice bags were taken from the shop of the petitioner. Thus, absolutely there is no evidence to show that the rice bags were taken from the shop of the petitioner. Apart from that, P.W.3, the Secretary of the Society, during cross-examination, has also stated that as per the records, there was no deficit in the stock in the shop of the petitioner. Thus, in my considered opinion, the finding of the Tribunal and the subsequent order of dismissal are holding without any basis and they are liable to be interfered with.

9.Now, turning to the back wages, in my considered opinion, since it is not on evidence that the petitioner was not employed elsewhere during the interregnum period, the petitioner is not entitled for back wages.

10.In the result, the writ petition is allowed and the impugned order is set aside. The petitioner is directed to be reinstated in service with continuity of service, but without back wages. Her past salary shall be notionally calculated for the purpose of future salary, on par with other monetary benefits. Consequently, the connected miscellaneous petition is closed. No costs”.



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4. It is informed that subsequently, the appellant has retired from service on 31.05.2019 and on that date she was paid the terminal benefits. She had also received the terminal benefits. The only ground for filing writ appeal is non grant of backwages by the learned Single Judge. It is contended that since the petitioner has been reinstated into service by specific findings by the learned Judge that the charges had not been proved and that there was no deficit in the stock in the shop of the petitioner, the petitioner should be automatically held to be entitled for backwages. It is contended on behalf of the appellant that the appellant could never prove a negative aspect that she was not in service during the interregnum period. It is contended that the onus of proving that fact would be only on the respondents.

5. The Writ appeal had been filed with delay and a counter affidavit had been filed on behalf of the respondents 2 and 3 in the said application seeking to condone the delay. In the counter affidavit, it had been very specifically stated that the appellant had fabricated documents such as measurement books and prepared false documents like Chittas and had swindled 11.557 metric ton of rice meant for public distribution



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under “Sampoorna Gramiya Employment Scheme”. Quite unfortunately, the respondents have not filed any writ appeal questioning the direction given by the learned Single Judge to reinstate the appellant. Therefore once again taking into consideration the narrow scope of the writ appeal we cannot enter into a discussion whether the order of the learned Single Judge to reinstate the appellant was correct or not.

6. The learned Single Judge, on the basis of the available records had given a direction for reinstatement and that direction had also been complied with by the respondents and the appellant had been reinstated into service. The only issue therefore that arises for consideration is grant or otherwise of backwages. The learned Single Judge had given a specific finding that that there was no deficit in the stock in the shop and this finding has been rendered on the basis of the statement made by P.W.3, during enquiry. The said witness/ Secretary of the Society during cross examination had stated that as per records there was no deficiency in the stock in the shop. It was that fact which had played upon in the mind of the learned Single Judge to reinstate the appellant back into service. The issue of backwages normally should



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follow unless it is specifically found that the petitioner had actually been working elsewhere. That is an issue of fact. The appellant will naturally not come forward to provide any details whether the appellant was working gainfully or not. The respondent alone had the onus to establish that particular fact. In the counter filed in the application filed to condone the delay in filing the writ appeal once again the respondents have travelled into the entire facts of the case and not on the issue whether the appellant was gainfully employed or not.

7. We are therefore constrained to hold that the backwages cannot be denied to the appellant herein, since there is no evidence to show that the appellant had been gainfully employed elsewhere during interregnum the period when suffered the order of dismissal from service.

8. It is also informed that the terminal benefits were paid but for an, the entire block of nearly five years the appellant suffer the order of dismissal. That period was not taken into consideration while considering the total period of service rendered by the appellant. It was



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also not taken into consideration notionally. We are therefore of the opinion that 50% backwages should be granted to the appellant. A fervent plea had been made on behalf of the respondents by producing the financial status of the fourth respondent society and it is stated that in the audited report for the financial year 2023-2024, it has been disclosed that the fourth respondent had suffered a cumulative loss of nearly Rs. 2.43 Crores. But unfortunately we are dealing with the period 2009-2014 which was the period when the appellant suffered the order of dismissal from service.

9. We are also presented with a statement of the monthly wages on that particular date which was Rs.5,750/-. We took upon ourselves the burden of making a rough calculation of what the wages would be for five years without granting any increment, taking that base amount alone into consideration. That amount would come around to Rs. 3,44,000/- and 50% of the same would come to Rs.1,72,000/-



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10. Hence, we would issue a direction to the fourth respondent to pay backwages of Rs.1,72,000/- within four months and if required, they could pay the said amount in two equal installments.

11. With the above direction, the Writ Appeal stands disposed of. No costs.

(C.V.K.,J.) (J.S.N.P.,J.)
27.08.2024

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To

- 1.The Registrar,
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- 2.The Deputy Registrar of Co-operative Societies,
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