



WEB COPY

WP No. 3990 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-03-2025

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THE HONOURABLE MR JUSTICE M.DHANDAPANI

WP No. 3990 of 2018

1. The Managing Director,
S.Dhanasuraj, M/s.The Puducherry
state Weavers Cooperative Society Ltd.,
No.P.57, Industrial Estate,
Thattanchavady, Puducherry-605 009.

Petitioner(s)

Vs

1. The Presiding Officer,
Industrial Tribunal cum Labour Court,
Puducherry.

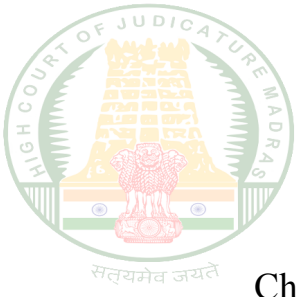
2.The President / Secretary,1
Socialist Workers Union, No.161,
Thambu Chetty Street, Ii Floor,
Chennai-600 001.

Respondent(s)

This petition has been filed under Article 226 of Constitution of India, to issue a writ of Certiorari Calling for the records of the first respondent in I.D.(T) No.10 of 2014 on 29.11.2017 and quash the same.

For Petitioner(s): M/S.R.SREEDHAR

For Respondent(s): MR. JAIKUMAR FOR
M/S.T.FENN WALTER ASSO
FOR R2 R1-LABOUR COURT

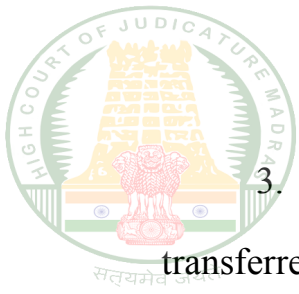


ORDER

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Challenging the order of the Labour Court directing the petitioner to give continuity of service, seniority, promotion, revision of wages and payment of deducted wages etc. to the workman, the present writ petition has been filed.

2. Short facts:- The workman, Selvaraj, was initially appointed on a temporary basis in the petitioner society in 1988 and his services were regularized in 1991. Selvaraj and 16 others expressed their desire to join another society named Puducherry Cooperative Textile Processing society, (TEXPRO) on 28.03.2003. The petitioner society had an agreement with TEXPRO. The workman worked in TEXPRO till 22.05.2005. For some reason, the workman wanted to leave TEXPRO and return to the petitioner society. Accordingly, he made a request to the petitioner society. The petitioner was offered an appointment on 19.05.2005 on certain terms and conditions. The workman got promoted as godown assistant on 22.11.2010. However, his juniors, who stayed with the petitioner society, were promoted ahead of him. Hence, the workman, through the workers Union raised an industrial dispute which was referred to the Government. Since no consensus were arrived at between the parties, the matter was referred to the learned Tribunal. The learned Tribunal, framed the issued as to whether the workman will be entitled for continuity of service, seniority, promotion, revision of wages and payment of deducted wages etc.



3. Before the Labour Court, the workman contended that he was transferred to TEXPRO without his consent and he has sent several letters to the petitioner to re-transfer him. However, sometime he made a request to the petitioner society to take him back. The petitioner society has given a choice to the workman to re-enter into service on certain terms and conditions viz., his appointment would be afresh and he cannot claim continuity of service. The petitioner accepted the terms and conditions and entered into service. He was appointed on 19.05.2005 as helper. However, when he was promoted as Godown Assistant on 22.11.2010. He found that many of the juniors were promoted and posted in cadre above him. Aggrieved by the same, he approached the Management and workmen Union and sought for re-fixation of his seniority based on his original appointment. Since the management did not agree to the said request, the matter was referred to the Government. The workman therefore had contended that his seniority should be re-fixed and he should be given promotion on par with his batch mates.

4. The petitioner society contended that the transfer was made only after the 12(3) settlement entered on 18.02.2003. The workman was sent to TEXPRO with effect from 01.04.2003. He was re-inducted into the petitioner society only on certain terms and conditions, which the workman had agreed to. The management contended that it was not permissible for the workman to turn around and contended that he is not bound by the said terms and conditions and seek for re-fixation of his seniority on par with his batch mates and seek



enhanced salary.

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5. On the side of the workman, one witness was examined and 23 documents were marked. On the side of the Management, one witness was examined and 25 documents were marked. The learned Labour Court after analysis of oral and documentary evidence, found that the management was at fault for undertaking the workman as a fresh candidate.

6. According to the Tribunal, the evidence of RW1, examined on the side of the management, was clear that 17 employees who were shifted to TEXPRO would be taken back with the same seniority and continuity of service. It is also seen from the evidence of RW1 that the employees have not signed in the 12(3) settlement and no employee has participated in the negotiation and no resolution has been passed at the worker's union. RW1 has also admitted that the management has not issued any notice to get consent or opinion from the employees regarding shifting of employees to TEXPRO and no worker has given any letter accepting or consenting the same. RW1 has also admitted that 17 employees have only been deputed to the newly formed TEXPRO.

7. The provident fund number remained the same to the workman even in TEXPRO which would go to show that TEXPRO was also managed only by the petitioner society.



8. It is not the case of the management that they have given any notice prior to the shifting of 17 employees to the newly formed TEXPRO society.

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9. No document was put-forth by the management that while the workman was relieved from petitioner society he was given gratuity and other benefits for the period of 15 years of service. Likewise, no document is produced before the Labour Court that EPF and GPF were transferred to TEXPRO where 17 employees have been shifted. Hence the Labour Court allowed the industrial dispute raised by the workman.

10. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

11. A perusal of the reasons given by the Tribunal is cogent and convincing. The Tribunal has analyzed the evidence and submissions submitted by both sides and elaborating manner and came to conclusion that the employee is entitled to the relief sought for. The evidence of RW1 is crystal clear. Indeed, this Court is convinced that the management has hoodwinked the employees by promising that they will be re-inducted into service in the parent organization viz., the petitioner society. The fact that even in EPF and GPF remained only with the petitioner society, even when the workman and 16 others were working in Texpro, would show that the petitioner Society has not relieved them on duties or transfer them wholly to Texpro. Because of the illegal act of the



petitioner Society, 15 years of service cannot be just like that thrown away. As rightly noted by the Labour Court, the employees were not taken into confidence while reaching the 12(3) settlement. No employees are participated in the negotiation and no resolution has been passed of the workers union. The Labour Court was completely justified and arrived at a finding that the petitioner is entitled to the relief sought for.

12. For the reasons stated above, the writ petition fails and the same is dismissed. No costs.

25-03-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



To

The Presiding Officer,
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M.DHANDAPANI J.

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