

W.P.(MD).No.177 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON :04.08.2025

ORDER PRONOUNCED ON : 06.08.2025

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.177 of 2021
and WMP(MD).No.141 of 2021**

The Management
O522, Kovilpatti Agricultural Producers
Co-operative Marketing Society Ltd.,
No.962, Sattur Road
Kovilpatti 628 501
Tuticorin District

....Petitioner

Vs

G.Balasubramanian

....Respondent

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the award of the Labour Court, Tirunelveli dated 09.06.2020 in I.D.No.75 of 2018 and quash the same.

For Petitioner : Mr.V.O.S.Kalaiselvan

For Respondent : M/s.M.Nandhini Priyadharshini



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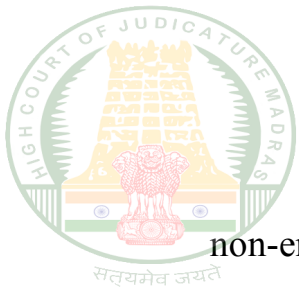
ORDER

The present writ petition has been filed by a Co-operative Society challenging the order passed by the Labour Court, Tirunelveli in I.D.No.75 of 2018.

(A)Factual Matrix:

2.The respondent herein was working as a lorry cleaner in the petitioner society. Due to loss, the lorry was sold on 03.09.2003. The respondent herein was paid compensation and he was retrenched from service. The respondent had raised an industrial dispute before the Conciliation Officer and it ended in failure. The request for reference was rejected by the Government in G.O.No.816 Labour and Employment (D1) Department dated 26.11.2006. This order had reached finality.

3.The respondent herein had filed an appeal before the authority under Tamil Nadu Shops and Establishments Act and the same was allowed on 16.04.2018. The writ petition and a writ appeal filed by the management were dismissed. The respondent herein was provided with an alternative employment as Gin fitter on 29.05.2015. The respondent has attained superannuation on 30.06.2015 and he was permitted to retire. The respondent had raised an industrial dispute under 2-A(2) of the Industrial Disputes Act before the Labour Court in I.D.No.75 of 2018 contending that the order of



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non-employment dated 30.06.2015 is illegal and he should be reinstated in service with backwages and continuity of service.

4. According to the workman, the post of lorry cleaner is equivalent to the post of watchman. The retirement age of watchman is 60 years. The post of Gin fitter is a higher post and therefore, he objected to his reinstatement as Gin fitter and therefore, he should not have been issued with the order of retirement on 30.06.2015 and he should be superannuated only at the age of 60.

5. The petitioner management has filed a counter contending that the Co-operative Society is governed by the Bylaws and as per the Special Bylaws, the retirement age of all the employees is as per the Government Rules. The petitioner was appointed as a Gin fitter and he has not challenged the same. Therefore, the retirement age is 58 and in such circumstances, the order permitting retirement cannot be challenged.

6. The Labour Court allowed the industrial dispute and set aside the relieving order primarily on the ground that the post of lorry cleaner and watchman are equivalent post. After the order of High Court in the writ petition, the petitioner should have been appointed as a watchman. However, he was wrongly appointed as a Gin fitter. Therefore, he should have been continued in his employment till 60 years being a basic cadre employee. The workmen was not having any technical qualification to be appointed as Gin



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Fitter and therefore, the appointment order of the respondent as Gin fitter would not alter the service condition of the workman. Challenging the said order, the present writ petition has been filed by the management.

(B) Submissions of the learned counsel appearing on either side:

7.The learned counsel for the management submitted that the petitioner has never challenged his appointment as Gin fitter. Whatsoever may be the nature of designation, the age of retirement is 58 years. In such circumstances, the Labour Court was not right in ordering reinstatement with backwages for a period of two years with attendant benefits.

8.Per contra, the learned counsel appearing for the workman submitted that the workman was initially appointed as a lorry driver. Once the lorry is sold, the workman is entitled to be appointed in an equivalent post namely the post of watchman. Without any technical qualification whatsoever, the workman was issued with an order of appointment as a Gin Fitter. Therefore, reappointment of the workman should only be construed to be that of watchman. The post of watchman being a basic cadre service, the age of retirement is 60 years. In such circumstances, the Labour Court was right in ordering reinstatement of two year with attendant benefits.

9.Heard both sides and perused the material records.



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(C).Discussion

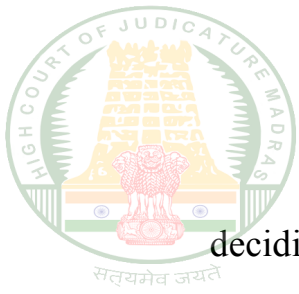
WEB COPY 10.It is not in dispute that the workman was appointed as a lorry cleaner and due to the sale of lorry by the management and he was retrenched from service. The workman was reappointed under Ex.W8 dated 29.05.2015. A perusal of reappointment order clearly indicates that the workman has been reappointed as a Gin Fitter.

11.The age of retirement is governed by the Special Bylaw of the petitioner Society. Clause 10(2) of the Special Bylaw is extracted as follows:

“10(2).While computing the age of entry level posts, the age as on 1st January of the year of appointment shall be adopted:

1.In the matter of age for retirement from the services of the society, the rules in force, applicable to the Tamil Nadu Government servants shall be followed:”

12.This bylaw has been approved by the Registrar of Co-operative Society by an order dated 02.11.2011. Therefore, there cannot be any dispute that this bylaw is binding upon the workman. Whatever may be the post, whether a watchman or a gin fitter, the age of retirement is 58 years, as per Government Rules, they were prevailing on 30.06.2015 (When the workman attained superannuation). In such circumstances, this Court is of the considered view that the contention whether the post of lorry cleaner is equivalent to the post of watchman or not is irrelevant for the purposes of



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deciding the writ petition. Whatever may be the post, the age of retirement is

58 years.

13.The petitioner having attained superannuation on completion of 58 years, cannot contend that he was illegally dismissed from service. The Labour Court does not have any jurisdiction to entertain an application under 2A(2) of the Industrial Disputes Act in cases arising out of superannuation.

14.The learned counsel had relied upon a judgment of the learned Single Judge of this Court in *W.P.No.26139 of 2010 (M.Chennu Vs.The Registrar of Co-operative Societies, Chennai and others)* dated 24.02.2011 to contend that the age of basic cadre service is 60 and not 58 years. A perusal of the said order reveals that in the said case, the bylaws were not approved by the Registrar and therefore, this Court was inclined to follow the fundamental rules applicable to the Government servants. However, in the present case, the Special Bylaws of the Society which declared that the age of retirement is 58 years, for all the employees, has already been approved by the Registrar in the year 2011 itself. In such circumstances, the said judgment is not applicable to the facts of the present case.

(D) Conclusion:

15.In view of the above said deliberations, the award of the Labour Court is not sustainable in the eye of law and the same is set aside and the



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writ petition stands allowed. No costs. Consequently, connected
miscellaneous petition is closed.

06.08.2025.

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

1.The Labour Court
Tirunelveli

2.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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