

WP.(MD)No.13868 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.09.2025

CORAM :

THE HON`BLE MR.JUSTICE B.PUGALENDHI

WP.(MD)No.13868 of 2019

Y-92, Manavalakurichy Primary Agricultural
Co-operative Credit Society
Rep.by its President

... Petitioner

Vs.

C.Sathiyanesan

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records of the Labour Court at Tirunelveli in award passed in ID.No.15 of 2016 dated 10.07.2018 and quash the same.

For Petitioner : M/s.J.Ashwini,
for Mr.K.Esakki

For Respondent : Mr.E.Jein Mathew



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ORDER

Manavalakurichy Primary Agricultural Co-operative Credit Society has filed this writ petition as against the award passed by the Labour Court, Tirunelveli in ID.No.15 of 2016 dated 10.07.2018.

2.The said industrial dispute was raised by the respondent herein under Section 2(A)(2) of the Industrial Disputes Act, 1947[hereinafter referred as 'the Act'] that he has been retrenched from service without following the conditions precedent to retrenchment as provided under Section 25(F) of the Act.

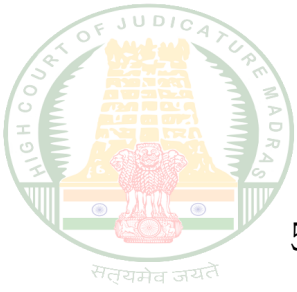
3.The case of the respondent is that he was appointed as sales helper on 04.01.2010 and thereafter, by way of a resolution dated 10.03.2014, he was also transferred to Chinnavilai fair price shop. The Society has also passed a resolution dated 12.07.2014 to regularize the service of the respondent. However, the Deputy



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Registrar of Cooperative Societies did not grant permission to regularize the respondent and he was terminated from the service without following the conditions precedent to retrenchment as provided under Section 25(F) of the Act.

4.The respondent has already raised the industrial dispute before the Labour Court, Tirunelveli in ID.No.15 of 2016 and the same was allowed by the Labour Court by its order dated 10.07.2018 directing the petitioner/Society to reinstate the respondent with continuity of service and to pay Rs.200/- per day to the petitioner from 10.03.2014 till the date of his reinstatement. The petitioner/Society has filed a writ petitions in WP.(MD)Nos. 9212 and 9246 of 2017 and this Court by its order dated 26.03.2018 set aside the award passed by the Labour Court and remitted the matter back for fresh consideration. Thereafter, the Labour Court has passed the present award dated 10.07.2018 and the same was challenged in this writ petition.



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5.This writ petition has been filed in the year 2019 and it has been taken up for final disposal on 01.09.2025. On that day, at request of the respondent, it has been adjourned to 08.09.2025. On 08.09.2025, again it was adjourned to 15.09.2025.

6.Today, when the matter is taken up for hearing M/s.J.Ashwini, learned counsel representing on behalf of the learned counsel for the petitioner submits that the Co-operative Society will not come under the purview of Industrial Disputes Act, 1947. The learned counsel further submits that the salesman post is a sanctioned post and all the sanctioned posts can be filled up only through recruitment Board as per Section 74 of the Co-operative Societies Act and by following the procedure as provided under Rule 149(2) of the Tamil Nadu Co-operative Societies Rules.

7.The learned counsel appearing for the respondent by referring to the judgment of the Division Bench of this Court in



P.Eswaramoorthy and others Vs. R.J.B.Leoraj and others reported

in (2008) 5 MLJ 238 (Mad) submits that the relationship between

Co-operative Societies and Industrial Dispute Act has already

been decided by the Hon'ble Supreme Court in various cases.

Therefore, both remedies are available to the Workman. He

further submits that Section 2(s) of the Act defines the term of

“Workman”, which is extracted hereunder:-

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an



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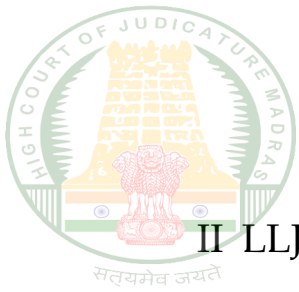
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officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding 3[tен thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

8.By referring Section 2(oo) of the Act, the learned counsel for the respondent submits that retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. He has also referred Section 25F of the Act which provides conditions precedent to retrenchment of workman. According to him, the conditions prescribed in the Section 25F of the Act has not been complied with and therefore, the Labour Court is right in passing award in favour of the respondent. In support of his contention, he has also relied upon the judgment of the Division Bench of this Court reported in 1996



II LLJ 216 MAD, The President, Srirangam Co-operative Urban
Bank Ltd. Vs. The Presiding Officer, Labour Court and Ors.

9.This Court has considered the submissions made on either side and perused the available records.

10.The main ground taken by the petitioner is that the Co-operative Society would not fall under the category of an industry. However, in similar circumstances, the Division Bench of this Court in P.Eswaramoorthy and others Vs. R.J.B.Leoraj and others reported in (2008) 5 MLJ 238 (Mad) has held as under:-

"24. In the light of the above legal journey through various decisions of this Court as well as of the Supreme Court, the following propositions will emerge:-

(a)...

(b) Section 153 of 1983 Act is a departure from Section 97 of the 1961 Act and it is wider in nature. Power has been specifically conferred on the revisional authority under Section 153 to call for and examine the record of any proceeding under the Act or the Rules or the



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bye-laws of any officer subordinate to the Registrar or of the Board of Director or any officer of a registered society or of the competent authority constituted under Section 75 (3) of the 1983 Act. Therefore, the employees of a Cooperative Society can approach the Registrar or any competent authority under Section 153 to revise any order passed by the Cooperative Society relating to disciplinary action taken against him or denial of promotion or wrong fixation of seniority, etc.

(c) There is no implied ouster of the jurisdiction of the power of the Labour Court / Industrial Tribunal to deal with similar matters if disputes are raised before them by workmen or employees covered by those provisions. Both remedies are available.

11. In yet another decision, the Division Bench of this Court in *The President, Srirangam Co-operative Urban Bank Ltd. Vs. The Presiding Officer, Labour Court and Ors* reported in 1996 II LLJ 216 MAD has held as under:-

9. A Division Bench of Madhya Pradesh High Court in Rajesh Kumar and Ors. v. State of M.P. (1994-II-LLJ-320) has considered the case of termination of services



of a workman on the ground that the appointment was invalid. The contention raised in that case, similar to the one raised before us, was that as the appointment itself was invalid, the services of workman could be terminated without complying with the provisions of Section 25F of the Act. It was held that an invalid appointment was not one of the exceptions found in Section 2(oo) of the Act; that any retrenchment not falling under in any one of the exceptions mentioned in Section 2(oo) of the Act would amount to retrenchment and for such termination conditions prescribed in Section 25F of the Act were to be complied with, therefore the order of termination was held to be illegal and the workman was directed to be continued in the employment with all the benefits.

10.A learned single Judge of the Patna High Court in Mithilesh Kumar Singh v. State of Bihar and Ors. (1995-I-LLJ-973) has considered the case of termination of the services of a workman on the ground that he was appointed illegally. The learned single Judge has held that, "the idea of illegal and invalid appointments is quite foreign to the scheme of the I.D.Act. The termination of employment of a workman on the ground that his initial appointment was not legal and valid itself qualifies as



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retrenchment within the meaning of Section 2(oo) as termination for illegal and invalid appointment has not been made an exception to the definition of retrenchment."

11. Thus it is clear from the aforesaid decisions and more specially the two decisions of the Supreme Court referred to above that the nature of employment, viz whether legally made or not or an irregular appointment or an appointment by a person not competent to appoint, would not be a ground to refuse to follow the provisions contained in Section 25F of the Act. However, learned counsel for the appellant has placed reliance on a judgment of the Kerala High Court in Eranalloor Service Co-operative Bank Ltd. v. Labour Court and Ors. (1986-II-LLJ-492). That was a case wherein the workman while working as commission agent was appointed as salesman on a temporary basis, subject to the approval of the Registrar of the Co-operative Societies. At that time when he was appointed as salesman, he did not have the requisite qualification prescribed under the Rules. His request for appointment as salesman was turned down by the Registrar of Co-operative Societies, therefore, the bank resolved to terminate his services and accordingly terminated the services. The learned single Judge held that



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the fact that the appointment was contrary to the rules the award passed by the Labour Court directing reinstatement on applying Section 25F of the Act was not warranted as Section 25F of the Act did not apply to such a case. The relevant portion of the judgment of the learned single Judge is as follows: (at Page 495) "In order to appreciate this line of approach to the issue it is necessary to consider the scope of Sections 25F and 2(oo) of the I.D.Act. Section 2(oo) suggests that the person who claims the benefit of Section 25F must be one, validly appointed in the service of the employer. The service must be capable of being continued until any of the events envisaged under Clauses (a), (b) and (c) of Section 2(oo) happens. In short the person who claims the benefit of Section 25F shall establish that he is in the service of the employer having been appointed validly. It should be remembered that it is the contract of service that is terminated. A service cannot be terminated unless it is capable of being continued. The Supreme Court has held so in the Workmen of the Bangalore Woolen, Cotton, and Silk Mills Co. Ltd. v. The Management of the Bangalore Woolen Cotton and Silk Mills Co. Ltd. (1962-I-LLJ-213).

Having understood the law, thus, we will consider the scope of the expression capable of being continued in



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service in Section 2(oo). "Capable of being continued" suggests that the employee should have entered the service under a valid contract of service which cannot be terminated without complying with the provisions of Section 25F. The Workman in order to avail of the benefits of Section 25F should therefore establish that he has the right to continue in service and that the said service has been terminated without complying with the provisions of Section 25F.

It is in this backdrop the scope of the dictum of the Supreme Court in Santhosh Gupta 's case has to be considered. In the said decision the Supreme Court has referred to an earlier decision, in State Bank of India v. N. Sundara Money (1976-I-LLJ-478) where the Supreme Court while considering the scope of Section 2(oo) has indicated that the order of termination which would attract the provisions of the I.D.Act is the result of the exercise of violation by the employer. This is what the Supreme Court has said:

"True, the section speaks of retrenchment by the employer and it is urged that some act of violation by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service by



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efflux of time cannot be sufficient."

When I refer to this passage I shall not be understood to have said that the Supreme Court has finally spoken on this aspect. Whatever that be, it can be seen from San-tosh Gupta's case that the Supreme Court had no occasion to consider the case of a workman whose appointment indisputably was void ab-initio. The content of the relevant provisions of the I.D. Act positively indicate that the workman who is entitled to the benefits of the said enactment, must be one who came into the service under a valid order of appointment . His service must be capable of being continued unless any of the events contemplated under Clauses (a) to (c) of Section 2(oo) exists.

The facts available on record would show that the order appointing the petitioner as salesman was ab-initio void and if that be so it cannot be said that the second respondent is a workman entitled to the benefits of Section 25F of the I.D.Act. The award directing reinstatement of the second respondent into service with backwages therefore is not sus-tainable in law. Ext. P6 therefore is liable to be quashed. I accordingly quash Ext. P 6"

The learned single Judge has tried to distinguish the decision of the Supreme Court in San-tosh Gupta's case which in our view is not correct, therefore we find it



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difficult to agree with the view expressed in Eranalloor Co-operative, Society's case (supra) which is quite opposed to the ratio of the decisions in Santosh Gupta 's case (supra) and Punjab Land Development Bank's case (supra).

12.Thus for the reasons stated above, ail the three points raised for determination are to be answered against the appellant. Consequently, the writ appeal has to be dismissed . However it is noticed that the petitioner had prayed for quashing the award and further directing the 2nd respondent to reinstate him as clerk with continuity of service, backwages and all other attendant benefits. The learned single Judge, on quashing the award, has allowed the writ petition as prayed for. We are of the view that it is necessary to modify the order of the learned single judge in so far as the said order grants the reliefs.

13.It is not in dispute that the writ petitioner was working on daily wage basis and he was being paid a sum of Rs. 13/- per day, excludings, Sundays, at the time when his services were terminated. In such a case when the termination has been made in violation of Section 25F of the Act, the direction for reinstatement should be only to



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the effect that the workman should be reinstated in the same position and the same nature of employment which he was enjoying on the date of termination. The order passed by the learned single Judge does not make that point clear, therefore we modify the order of the learned single Judge insofar as it directs reinstatement of the writ petitioner with continuity of service, backwages and all other attendant benefits in the following terms:

The 2nd respondent workman be reinstated as daily wage workman at the rate of Rs. 13/-per day. However, we make it clear that if on the date of reinstatement there is an increase in the daily wages, he would be entitled to such increase. As far as the arrears of wages from the date of termination till March 31, 1996 is concerned it has been calculated at the rate of Rs. 13/- per day, excluding Sundays, by the appellant bank, amounting to Rs. 54, 275/-. Shri K. Chandru learned counsel appearing for the 2nd respondent workman submits that the workman accepts the said amount as arrears of wages subject to any statutory benefits, if available to the daily wage workmen and subject to payment of daily wages as may be obtaining on the date of reinstatement. Learned counsel for the appellant bank also submits that the bank has no objection for payment of Rs. 54, 275/- as arrears of wages from the



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date of termination till the end of March, 1996. We place these submissions on record and on the basis of those submissions, we issue further directions in addition to the one issued above:

(1)The 2nd respondent workman shall report to duty on May 15, 1996. On the date of reporting to duty the appellant bank shall pay the arrears of wages upto March 31, 1996 amounting to Rs. 54,275/- plus the wages for the month of April 1996 on or before the end of May, 1996.

(2)The 2nd respondent workman is entitled to wages that are payable to a daily wage worker as obtaining on the date he reports to duty.

(3)The 2nd respondent will be entitled to other statutory benefits, if any, available to a daily wage worker.

12.In view of the above decisions of Division Bench of this Court, this Court is not inclined to entertain this ground raised by the petitioner. Accordingly, this writ petition is dismissed. No costs.

15.09.2025



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NCC : Yes/No

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To

The Labour Court,
Tirunelveli.



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B.PUGALENDHI,J

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