

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2008

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

AND

THE HONOURABLE MRS.JUSTICE P.P.S.JANARTHANA RAJA

W.A.NO.123 of 2004

& WAMP No.187 of 2004

The Management of Thiruvannamalai  
Milk Producer's Co-operative Society,  
No.79, Iyyankulam Street,  
Thiruvannamalai.

... Appellant

Vs.

1.The Presiding Officer,  
The Labour Court,  
Vellore.  
2.S.Ravi  
3.G.Ramamoorthy

... Respondents

For Appellants : Mr.R.Viduthalai,  
Senior Counsel for M/s. Aiyar & Dolia.

For respondents : No appearance

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 16.10.2003 passed by the Writ Court in W.P.No.8101 of 1998 presented under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the first respondent relating to the impugned common award of the first respondent dated 9.10.97 passed in I.D.No.577/93 and 578/1993 and quash the same.

JUDGMENT

(Judgment of the Court was made by K.RAVIRAJA PANDIAN,J.)

The above writ appeal is filed against the order dated 16.10.2003 made in W.P.No.,8101 of 1998. The writ petition has been filed by the appellant herein seeking for the relief of issuance of Writ of Certiorari to call for the records on the file of the Presiding Officer, Labour Court, Vellore made in I.D.Nos.577 and 578 of 1993 and quash the same.

2. The writ Court non suited the appellant for the relief of setting aside the award passed by the Labour Court in respect of

reinstatement of respondents 2 and 3, however, in respect of the relief of back wages, upon hearing the argument as to the gainful employment of respondents No.2 and 3, put forth by the appellant, modified the same by directing the appellant to deposit a sum of Rs.50,000/- to the credit of I.D.Nos.577 and 578 of 1993 on the file of the Labour Court, Vellore, towards back wages to respondents 2 and 3 each, out of which, respondents 2 and 3 were remitted to withdraw Rs.20,000/- each and the balance Rs.30,000/- each was directed to be reinvested in a Fixed Deposit in a Nationalised Bank, Tiruvannamalai. Further Respondents 2 and 3- workmen were directed to make the claim petition with regard to the back wages before the Labour Court and the Labour Court was directed to decide the same within six months from the date of receipt of a copy of this order. The correctness of the said order is now canvassed before this Court in this appeal.

3. Mr.Viduthalai, learned Senior Counsel appearing for the appellant has very strenuously argued that when the dispute as to the gainful employment of the workmen has not been decided in the award under challenge, that ought to have been allowed to be decided by the Labour Court in an independent dispute. Only if a finding on the said issue is recorded by the Labour Court, then only the claim petition can be made under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). When such adjudication has not been made by the Labour Court, which aspect has been accepted by the writ Court, the Writ Court would not have granted the direction as stated above. When the entitlement of the workmen for back wages is crystallised, then alone the Claim petition under Section 33-C(2) of the Act can be entertained by the Labour Court and in the absence of any adjudication in that aspect of the matter, the direction given by the writ Court has to be set aside. In order to bring home his contention, he relied on the judgments of the Supreme Court in the case of D.KRISHNAN AND ANOTHER VS. SPECIAL OFFICER, VELLORE CO-OPERATIVE SUGAR MILL AND ANOTHER reported in (2008) 7 Supreme Court Cases 22, and GENERAL MANAGER, HARYANA ROADWAYS VS. RUDHAN SINGH reported in (2005) 5 Supreme Court Cases 591.

4. Though in this appeal, notices have been duly served on the respondents 2 and 3, they neither appeared in person nor engaged a counsel to defend the case. Their names were also printed in the cause list.

5. We heard the argument of the learned Senior Counsel for the appellant and perused the material on record.

6. The undisputed facts are that respondents 2 and 3 joined the management of Thiruvannamalai Milk Producer's Co-operative Society as Clerk and Work Supervisor for a salary of Rs.688/- per month in the year 1985. On 27.01.1989, they were suspended from service pending enquiry. On 24.02.1989, charges were framed against them and a domestic enquiry was conducted on 15.03.1989. On the basis of the Enquiry Officer's finding dated 28.07.1989, a second show cause notice dated 21.08.1989 has been issued enclosing

Enquiry Officer's report. The respondents 2 and 3 submitted their reply to the show cause notice on 29.08.1989. After considering the explanation offered by the respondents 2 and 3, on 27.09.1989, the order of removal from service has been passed by the appellant Society. The correctness of the said order has been canvassed by the respondents 2 and 3 by filing an appeal under the Tamil Nadu Co-operative Societies Act before the Deputy Registrar (Dairy), who ordered reinstatement of the respondents 2 and 3 by setting aside the order of removal dated 27.09.1989 and directed the appellants to proceed with enquiry further in accordance with law. Pursuant to the order of the Deputy Registrar dated 05.10.1989, respondents 2 and 3 were re-instated in service on 08.10.1999. A fresh enquiry was conducted by calling for explanation from the respondents. On the basis of the enquiry the appellant has passed an order of termination on 02.07.1990. As against that order of termination, disputes have been raised by the respondents 2 and 3 before the Labour Court as the conciliation failed, in I.D.No.577 and 578 of 1993.

7. The Labour Court, having considered the claim on the basis of the pleadings of the parties had ultimately come to the conclusion that the order of removal of the respondents 2 and 3 from service is not in accordance with law. After arriving at such conclusion, the Labour Court set aside the order of termination and as a necessary corollary, respondents 2 and 3 were directed to be reinstated with back wages and continuity of service. Before the writ Court, the appellant challenged the same by raising a ground that the appellant understood that the second respondent was gainfully employed in Nirmal Enterprises from 1993 and the third respondent was running rival business in the milk vending. This ground taken by the appellant has been considered by the writ Court while disposing the writ petition, which is clear from paragraph 12 of the order of the Writ Court, wherein it is stated that the counsel appearing for the appellant-Management has seriously contended that respondents 2 and 3 were gainfully employed during the course of the proceedings pending before the Labour Court as well as before the High Court. The respondents 2 and 3 failed to substantiate the said claim.

8. Having thus recorded a finding about non-establishment of the claim regarding back wages, the writ court thought it fit to let the issue be decided by the Labour Court under Section 33-C(2) of the Industrial Disputes Act, and such a direction was issued. In the meantime, in order to balance equity between the appellant and the respondents, a sum of Rs.50,000/- was directed to be deposited to the credit of Industrial Disputes.

9. In this appeal, the one and only contention raised is that the relegation of the parties to the Labour Court to resolve the issue as to the entitlement of back wages is not correct, since the issue was not decided by the Labour Court in its award. We are not able to countenance the contention of the appellant for the following reasons:

Before the Labour Court, the respondents 2 and 3 raised the dispute about their termination/non-employment by filing claim statement. In their claim statement, they sought for an award of setting aside the termination order with back wages and continuity of service. The appellant filed counter. In the counter, there is no whisper about the gainful employment of the respondents 2 and 3 after the order of termination. On the basis of the pleadings of the parties, the Labour Court raised a point for consideration as to whether the respondents 2 and 3 are entitled to the relief sought for and ultimately granted the relief as sought for. Only in the affidavit filed in support of the writ petition, a ground has been raised to the effect that the appellant understood that the respondents are gainfully engaged. When the respondents sought for the relief of back wages before the Labour Court and granted, which has not been disputed by the appellant before the Labour Court, the appellant now cannot be allowed to contend that issue has not been adjudicated as any claim not disputed deemed to have been accepted by the appellant.

11. In the judgment relied on by the appellant in the case of D.KRISHNAN AND ANOTHER VS. SPECIAL OFFICER, VELLORE CO-OPERATIVE SUGAR MILL AND ANOTHER reported in (2008) 7 Supreme Court cases 22, the Supreme Court has considered the scope and ambit of Section 33-C(1) and 33-C(2) of the Act and differentiated the same with reference to the point in which they are made applicable. The contention that the Labour Court has not decided the issue cannot be accepted and as such the issue has not been raised by the appellant before the Labour court. As already stated, the half hearted ground taken by the Management only in the writ proceedings has been answered by the writ Court and for that reason, the respondents 2 and 3 were relegated to file an application under Section 33-C(2) of the Act before the Labour Court, which cannot be regarded as outside the purview of the power of the writ Court.

12. For the foregoing reasons, we do not find any illegality or irregularity in the order passed by the Writ Court, while the point now raised has not been raised before the Labour Court or before the Writ Court. The writ appeal is therefore dismissed. No costs. Consequently, the connected W.A.M.P. is also dismissed.

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Sub Asst. Registrar.

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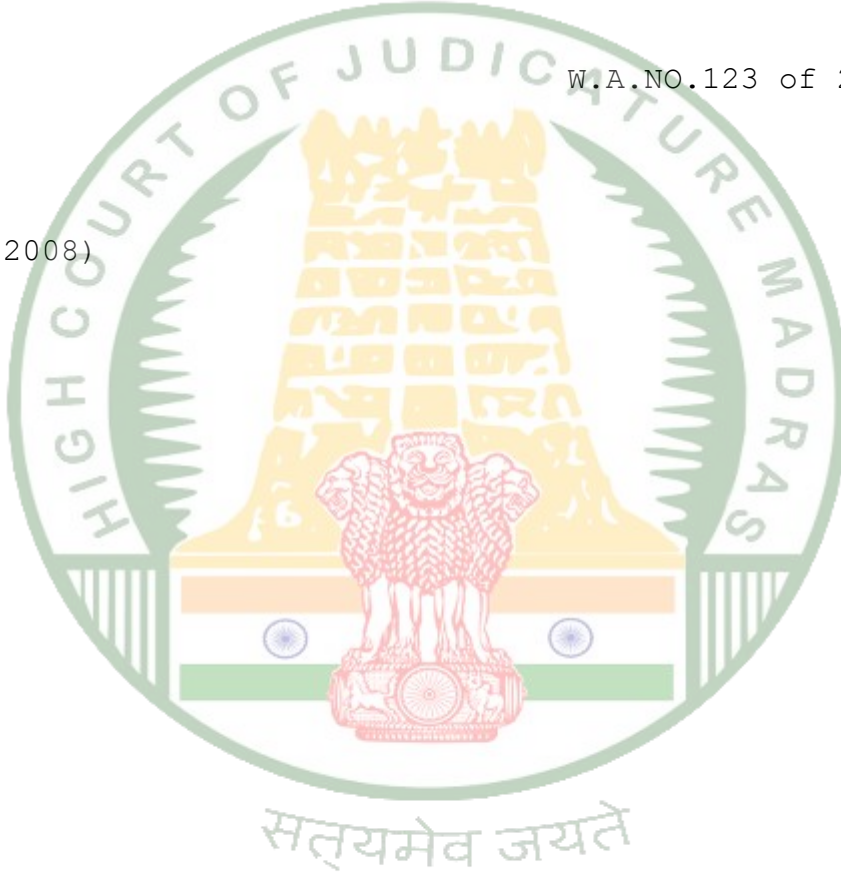
Copy to:

The Presiding Officer,  
The Labour Court,  
Vellore.

+ 1 CC To M/s. Aiyar & Dolia, Advocate SR NO.49175

W.A.NO.123 of 2004

MRD (CO)  
SRA (18/09/2008)



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