

(2016) 12 MAD CK 0074
In the Madras High Court
Case No : W.A.No.62 of 2010

Management, H.H.261, Vinnamangalam Primary Agricultural	APPELLANT
Vs	
Presiding Officer, Additional Labour Court, Vellore	RESPONDENT

Date of Decision : 14-12-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2017) 1 CLR 1074

Hon'ble Judges : Mr. S. Manikumar and Mr. M. Govindaraj, JJ.

Bench : Division Bench

Advocate : Mr. M.S. Palaniswamy, Advocate, for the Appellant; Mr. E. Srinivasan, Advocate, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

S. Manikumar, J.—Challenge in this appeal is to an order made in W.P.No.24691 of 2009 dated 02.12.2009, by which, the writ Court directed the Management, H.H.261, Vinnamangalam Primary Agricultural Co-operative Credit Society Limited, represented by its Special Officer, the appellant herein to implement the order of the Labour Court, Vellore in C.P.No.188 of 2006 dated 03.08.2009.

2. Facts leading to the writ petition are that vide order dated 13.02.1999, Management/appellant has dismissed the 2nd respondent. He filed I.D.No.277 of 1999 before the Labour Court, Vellore. After contest, the labour Court, by award dated 04.08.2015, set aside the order of dismissal and directed reinstatement of 2nd respondent with back wages.

3. Management/H.H.261, Vinnamangalam Primary Agricultural Cooperative Credit Society Limited, represented by its Special Officer, filed W.P.No.36992 of 2006. On 29.09.2006, writ Court directed wages under Section 17-B of the Industrial Disputes Act be paid. Later on vide order dated 04.09.2007, writ Court directed the last drawn wages to be paid under Section 17-B of the Industrial

Disputes Act. The appellant did not pay the last drawn wages. Hence, the 2nd respondent filed C.P.No.188 of 2006. The appellant, disputed the calculation and computation of last drawn wages. However, the Labour Court vide order dated 03.08.2009, in C.P.No.188 of 2006, directed the appellant/management to pay a sum of Rs.2,51,675/-.

4. Being aggrieved, management/appellant filed W.P.No.24691 of 2009. Though before the writ Court, Mr.M.S.Palaniswamy, learned counsel for the petitioner has contended that 2nd respondent was not entitled to the wages claimed at the rate of Rs.2,634/- and whereas the last drawn monthly wages even according to petitioner was only Rs.1,150/-, the writ court, rejected the said contentions and taking note of a judgment of the Hon'ble Apex Court in Dena Bank v. Kirti Kumar J.Patel, reported in AIR 1998 SC 571 : 1998 (1) LLJ I, wherein it has been held that the employer is bound to pay such payments under Section 17-B, pending disposal of the writ petition, held that the appellant/management is bound to pay the amount as per the order in M.P.No.1 of 2006 in W.P.No.36992 of 2006.

5. Being aggrieved by the aforesaid order, instant writ appeal has been filed by the Management/H.H.261, Vinnamangalam Primary Agricultural Co-operative Credit Society Limited, represented by its Special Officer and once again reiterating the dispute over the computation of the last drawn wages, Mr.M.S.Palaniswamy, learned counsel for the appellant made submissions.

6. When the matter came up on 07.12.2016, it was represented that 2nd respondent has filed C.P.No.112 of 2012, claiming the back wages before the Labour Court and we wanted to ascertain as to how the calculation and computation of back wages have been made.

7. Reverting Mr. E. Srinivasan, learned counsel for the 2nd respondent submitted that C.P.No.112 of 2012 has been filed under Section 33-C(2) of the Industrial Disputes Act, claiming back wages from 1st September 2006 to August 2012 at the rate of Rs.5,352/- monthly wages paid to an Attender and thereafter, on the revised wages computed at Rs.13,26,289/-. He further submitted that the calculation memo filed in C.P.No.112 of 2012, was not disputed by the management/appellant. After adjudication, C.P.No.112 of 2012, was allowed. Taking note of the amount already deposited, a sum of Rs.4,76,355/-, was determined by the Labour Court, Vellore to be paid to the 2nd respondent within a period of eight weeks from the date of order failing which, 6% interest was levied. Mr. E. Srinivasan, learned counsel for the 2nd respondent further submitted that amount ordered by the Labour Court in C.P.No.112 of 2012 dated 12.11.2014 has been paid.

8. Learned counsel for the 2nd respondent also added that the writ petition filed against the order made in I.D.No.277 of 1999 dated 04.08.2005 has been dismissed retaining the directions of the Labour Court for reinstatement. But, back wages was reduced to 40% from the date of dismissal till reinstatement.

9. 17-B wages as directed by this Court in M.P.No.1 of 2006 in W.P.No.36992 of

2006 dated 29.09.2006, has not been paid and therefore, 2nd respondent has filed C.P.No.188 of 2006, which has been allowed on 03.08.2009. For non payment of back wages, 2nd respondent has filed C.P.No.112 of 2012 from 1st September 2006 to August 2012 at the rate of Rs.5,352/- and on the subsequent revised increased wages.

10. As stated supra, W.P.No.36992 of 2006 filed against the award in I.D.No.277 of 1999 dated 04.08.2005 of the Labour Court directing reinstatement and back wages has been partly allowed, with modification of 40% only. 2nd respondent has made the claim for back wages from September 2006 to August 2012. Taking note of the subsequent events, it can be concluded that 2nd respondent is entitled to back wages to be calculated at the rate of 40% from the date of dismissal ie. 13.02.1999 up to 31.08.2006, including wages periodically revised, and all permissible allowances to the post from which, he was dismissed.

11. In the light of the above, this Court is of the view that there is no need to advert to the dispute as to what should be the last drawn wages that ought to have been paid to 2nd respondent pending disposal of W.P.No.36992 of 2006.

12. Though, Mr. M.S. Palaniswamy, learned counsel for the appellant/management, submitted that the 2nd respondent may be directed to compute the back wages and to take recourse by filing another C.P., considering the fact that from 1999 onwards, the 2nd respondent has been litigating for reinstatement and that he has already filed two C.Ps., one claiming 17-b wages, as ordered by this Court and the other for back wages from December 2006 to August 2012, it would not be in the interest of justice to drive the 2nd respondent to once again file another C.P.

13. In the light of the disposal of W.P.No.36692 of 2006, it is suffice to hold that the 2nd respondent is entitled to 40% of the wages from 13.02.1999 to 31.08.2006, less the amount, if any paid already with the revised increase and all other allowances permissible to the post, in which he was dismissed. We direct the appellant/Management, to pay the same within four weeks from the date of receipt of a copy of this order, failing which it is made clear that management/appellant would be liable to pay interest at the rate of 7.5% per annum. The 2nd Respondent is litigating from 1999 onwards. Therefore, appellant/Management is directed to pay the amount, to avoid further action under the Contempt of Courts Act, besides interest ordered.