
(2010) 12 MAD CK 0062
In the Madras High Court
Case No : Writ Appeal No. 689 of 2009

V. Ravanan

APPELLANT

Vs

The Special Commissioner for Milk Production and Dairy
Development and The Managing Director, South Arcot District
Co-operative Milk Producers Union Ltd.

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 25(1)
Industrial Disputes Act, 1947 — Section 18(1)

Citation : (2010) 12 MAD CK 0062

Hon'ble Judges : Elipe Dharma Rao, J;D. Hariparanthaman, J

Bench : Division Bench

**Advocate : R. Natarajan and S. Girija, for the Appellant; Muthumani Doraisamy,
for R2, for the Respondent**

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—The writ appeal is directed against the order dated 09.06.2007 made in W.P. No. 16302 of 1999, wherein the

challenge made by the Appellant to the order of the first Respondent dated 15.07.1999, rejecting his request for regularisation of his services in the category of Junior Assistant with effect from 30.08.1987, was negated.

2. The brief facts of the case are as follows:

(a) The Appellant joined as a casual labourer in the South Arcot District Co-operative Milk Producers Union Limited, Vazhudhareddy on

19.01.1986 with a qualification of B. Com Degree in Co-operation as optional subject. According to him, he is fully qualified to be appointed as a

Junior Assistant and he was also given clerical work from the beginning such as audit work and work in the Accounts Wing. The Appellant was

also appointed to look after Data Entry operations in Computers and he had been looking after only clerical work like preparation of bills etc.

During his entire service, he was paid a wage of Rs. 22/- in the beginning and Rs. 26/- subsequently as that of Junior Assistant Casual Labourers.

(b) While so, the South Arcot District Co-operative Milk Producers Employees Association filed a petition before the Inspector of Factories,

Cuddalore, for making 26 casual workers, including the Appellant permanent as per the Tamil Nadu Conferment of Permanent Status Act, 1981.

After consideration of the facts and circumstances and on verification of records, the Inspector of Factories passed an order dated 02.12.1991

directing the second Respondent to grant permanent status to the aforesaid workmen from the date of their completion of 480 days of service.

(c) According to the Appellant, as far as his case is concerned, though the Inspector of Factories directed the second Respondent to make him

permanent from 30.08.1987 in the category of Junior Assistant, he has not implemented the same and hence, the Workers Union filed a writ

petition in W.P. No. 5947 of 1992 and the High Court, as per the order dated 20.04.1993 in W.M.P. No. 8510 of 1992, directed the

Respondents to implement the order of the competent authority dated 02.12.1991 and to extend the consequential benefits to the workmen

comprised in the order within a period of twelve weeks from the date of receipt of that order. In pursuance of the said order, according to the

Appellant, he has to be made permanent from 30.08.1987 and he was entitled for the balance payment of Rs. 55,616/- as Junior Assistant.

However, as against the said order dated 20.04.1993 passed by a learned single Judge of this Court, the Management filed a writ appeal in W.A.

No. 770 of 1993 and pending consideration, the Management entered into a settlement with the Employees Association u/s 18(1) of the Industrial

Disputes Act read with Rule 25(1) of the Industrial Dispute Rules on 23.09.1994, as per which, it was agreed that the Appellant should be made

permanent with effect from 12.09.1989 as Factory Assistant in the scale of pay of Rs. 18/- with allowances and from 01.09.1992, he be given the

scale of pay of Factory Assistant and on the basis of the said 18(1) Settlement, the writ appeal filed by the Management was dismissed as

infructuous by this Court on 09.09.1997 and while dismissing the writ appeal as infructuous, liberty was granted to the workmen to challenge the

settlement or to work out their remedy in accordance with law.

(d) It is the case of the Appellant that he ought to have been made permanent in the post of Junior Assistant as he is possessing the required

qualification of B. Com (Co-operation) and in fact doing the job of Junior Assistant from the date of his appointment as a casual labourer. But the

Management issued a notice to the Appellant informing him that as per the settlement, his service was confirmed from 12.09.1989 as a Factory

Assistant and his pay was fixed at Rs. 18/-per day with other allowances from 12.09.1989 and in the time scale of pay of Rs. 750/-with other

allowances. Therefore, in view of the thirst for regularisation as Junior Assistant with effect from 30.08.1987 after completion of 480 days of

service and on the ground that his pay must be fixed at Rs. 975/-from that date, the Appellant objected to the notice dated 14.04.1994 issued by

the Management by stating that the settlement dated 23.09.1994 entered into between the Employees Association and the Management u/s 18(1)

of the Industrial Disputes Act should not be binding on him, as it infringed his right for permanency and fixation of pay.

(e) Thereafter, the Appellant submitted a detailed representation to the Management with the aforesaid claim. The Management, as per letter dated

29.10.1993, informed that the Appellant's services stand confirmed initially in the scale of Rs. 18/-plus allowances or in the appropriate time scale

for those casual employees possessing the requisite qualification and rendering service in that particular post with effect from 01.05.1993.

Aggrieved by the same, the Appellant filed W.P. No. 167 of 1999 seeking a direction to the first Respondent to pass appropriate order in his

appeal dated 28.10.1998 and a learned single Judge of this Court, by order dated 22.02.1999 directed the first Respondent to pass orders on the

representation dated 28.10.1998 within twelve weeks from the date of receipt of copy of that order. As no action was taken in the matter, the

Appellant issued a Lawyer's notice on 02.07.1999 and thereafter, the first Respondent disposed of the appeal filed by the Appellant dated

28.10.1998, by rejecting his request for regularisation as Junior Assistant instead of Factory Assistant, as per order dated 15.07.1999. Aggrieved

over the same, the Appellant filed W.P. No. 16302 of 1999 to quash the order dated 15.07.1999 and to direct the first Respondent to confirm his

services as Junior Assistant with effect from 30.08.1987.

3. The learned single Judge, after going through the entire materials placed on record, observed that there are no merits in the case and

accordingly, dismissed the writ petition with an observation that the first Respondent can consider the claim of the Appellant for next promotion, if

he is otherwise eligible, since there is power available with the first Respondent to grant exemption considering the relevant service put by him in

the said category. Aggrieved by the same, the present writ appeal is filed.

4. It is contended by the learned Counsel for the Appellant that as per the Circular dated 22.11.1982, the qualification for appointment as Junior

Assistant is a Degree in B. Com with Co-operative training certificate and though the Appellant is possessing the qualification of B. Com (Co-

operation), as he is not possessing the requisite qualification of Co-operative training certificate as on the date of appointment on 19.01.1986, his

service was regularised as a Factory Assistant as per the Settlement entered into u/s 18(1) on 12.09.1989. The Appellant also relied on the

Circular dated 22.11.1982 which exempts holding Co-operative training for the B. Com Degree holders with Co-operation as optional subject, as

that of the Appellant and the said Circular has become a Rule from 1988, i.e., Rule 149 of the Co-operative Rules, 1988.

5. Apart from the above contention for regularisation as Junior Assistant on the basis of the above Circular-cum-Rule, it is further contended that

the Appellant has appeared for the post of Assistant by Direct Recruitment along with ten others, who are having only B. Com Degree and not

Co-operative training certificate and he was placed in the waiting list. It is also contended that eight other persons, who were having only B. Com

Degree, were also appointed as Junior Assistants without training certificate through direct recruitment during December, 1985.

6. We have gone through the entire materials placed on record. Initially the Inspector of Factories passed an order dated 02.12.1991, after

satisfying himself and after going through the records, directing the second Respondent to grant permanent status to those who have completed

480 days of service as required under the Tamil Nadu Conferment of Permanent Status Act, 1981, and complaining non compliance of the said

order, the Employees Union has approached the High Court and the High Court

granted a direction to implement the order of the Inspector of
Factories, against which the Management has filed a writ appeal and during the
pendency of the writ appeal, it is stated that a settlement has been
entered into between the Union and the Management u/s 18(1) of the Industrial
Disputes Act, and as per terms and conditions of the settlement,
fourteen casual workers, who are engaged between 1985 and 1987, were to be
confirmed as Factory Assistants with effect from 12.09.1989 in
the scale of Rs. 18/-plus allowances and in the time scale of Rs. 750-940 plus
allowances with effect from 01.09.1992. In view of the said
settlement, the writ appeal was dismissed as infructuous, granting liberty to the
workmen, who were affected by the terms and conditions of the
settlement, to assail the correctness of the settlement. As the Appellant
approached this Court seeking a direction to consider the appeal filed by
him, as per order dated 22.02.1999, this Court directed the Respondents to
consider the appeal filed by him. On rejection of the appeal by the
Management for regularisation of his services as Junior Assistant, even though
the Appellant is possessing the qualification of B. Com Degree with
Co-operation as optional subject, on the sole ground that he is not having co-
operative training, the Appellant has initiated the present writ
proceedings, relying on the circular dated 22.11.1982, which has subsequently
embodied as a Rule in the year 1988, i.e., Rule 149 of the Co-
operative Rules, 1988. He has also cited the subsequent appointment of eight
persons as Junior Assistants and ten persons as Assistants, who are
having the qualification of B. Com Degree with Co-operation but without training
certificate and thus alleging discrimination.

7. Before dealing with other aspects of the case, it must be mentioned that in
view of the fact that the terms and conditions of the 18(1) Settlement
are detrimental to the interest of the Appellant and further in view of the liberty
granted to such employees by this Court in the earlier round of
litigation, in W.A. No. 770 of 1993, the present writ proceedings initiated by the
Appellant are very well maintainable.

8. The contention raised by the Respondents that the settlement arrived at
between the Management and the Association is binding on the
Appellant and his services could not be regularised as Junior Assistant, as he is
not having the qualification of both B. Com (Co-operation) and

Co-operative training cannot be accepted for the reason that as per the order passed by the Inspector of Factories dated 02.12.1991, the

Appellant is eligible for the grant of permanent status as he has completed 480 days as on the date of his appointment. Secondly, as per the

Circular dated 22.11.1982, which has subsequently become Rule-149 of the Co-operative Rules 1988, the qualification for the post of Junior

Assistant is only B. Com with Co-operation as optional subject and co-operative training is not required. In fact, the qualification of Co-operative

training got deleted as per the Rule which came into force from 1988. Further, the qualification of co-operative training was, by virtue of the

Circular dated 22.11.1982, deleted. Thirdly, when similarly qualified persons, who were having Degree of B. Com with optional subject of Co-

operation and not having the training certificates, were considered and appointed as Junior Assistant and Assistant through direct recruitment

ignoring the case of the Appellant amounts to discrimination and treating equals unequally. Further, the assertion of the Appellant in his affidavit that

though he was appointed as a casual labourer and subsequently regularised as Factory Assistant, he was entrusted with the clerical work like

preparation of bills etc., was not denied by the Respondents in their counter affidavit. The rich experience gained by him in all these years of

service can also be considered as Co-operative training.

9. Therefore, in view of the aforesaid facts and circumstances of the case, we have no hesitation to hold that the Appellant is entitled for

regularisation as Junior Assistant from 30.08.1987. Therefore, we are unable to agree with the reasons given by the learned single Judge in

dismissing the writ petition.

10. In view of the discussion made above, both the order impugned in the writ petition and the order passed by the learned single Judge are set

aside. The writ appeal is allowed granting the consequential relief of directing the Respondents to regularise the services of the Appellant as Junior

Assistant with effect from 30.08.1987.

11. We also place on record our appreciation for the restless efforts made by the Appellant to fight against the Management for a genuine cause of

getting the post of Junior Assistant, to which, he is entitled to.

12. The Respondents are directed to implement this order and to pay the

differential amount of wages to the Appellant within a period of six weeks from the date of receipt of a copy of this order. No costs.