

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26.02.2016

Date of Reserving the Order	Date of Pronouncing the Order
24.02.2016	26.02.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.Nos.24943 & 37616 of 2015

W.P.No.24943 of 2015

Mrs.S.Subbulakshmi ... Petitioner

Vs

1.State of Tamil Nadu,
Rep., by the Secretary to Govt.,
Department of Co-operative Societies,
Fort St.,George,
Madras - 9.

2.The Registrar of Co-operative Societies,
Madras - 600 005.

3.The General Manager,
Park Town,
Co-operative Wholesale Stores Ltd.,
Davidson Street, Madras - 600 001.

4.The Principal Labour Court,
Chennai - 600 104

... Respondents

W.P.No.37616 of 2015

1.The Secretary to Govt.,
Department of Co-operative Societies,
Fort St.,George,
Madras - 9.

2.The Registrar of Co-operative Societies,
Madras - 600 005.

3.The General Manager,
Park Town,
Co-operative Wholesale Stores Ltd.,
Davidson Street, Madras - 600 001.

... Petitioners

vs.

1. Mrs.S.Subbulakshmi

2.The Principal Labour Court,
Chennai.

... Respondents

Prayer in W.P.No.24943 of 2015 :- Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records in C.P.No.380 of 2013 and the order dated 13.01.2015, passed by the Principal Labour Court, Chennai and quash the order dated 13.01.2015, in C.P.No.380 of 2013, so far as it relates to awarding interest at 12% p.a., on the sum of Rs.2,56,242/- only from the date of C.P.No.380 of 2013, instead of from 20.01.1995 (the date of death of petitioner's husband) and consequently direct the respondents to pay the said sum of Rs.2,56,242/- as awarded by the Labour Court, with interest at 12% p.a., from 20.01.1995, on the said sum of Rs.2,56,242/- with other 'service' benefits, including employment to the deceased family member, according to his/her qualification, forthwith.

Prayer in W.P.No.37616 of 2015 :- Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for records relating to the passing of the order in C.P.No.380 of 2013, dated 13.01.2015, on the file of the Principal Labour Court, Chennai.

For petitioner.. Mr.K.Shanmugam for
M/s.Shanmugha Associates for
petitioner in
W.P.No.24943 of 2015 and
R1 in W.P.No.37616 of 2015

For Respondents.. Mr.L.P.Shanmughasundaram
Spl. G.P for R1 to 3 in
W.P.No.24943 of 2015 &
Petitioner in W.P.No.37616 of 2015

COMMON ORDER

Both the Writ Petitions challenge the order passed by the Principal Labour Court, Chennai in Claim Petition No.380 of 2013, filed by Tmt.S.Subbulakshmi wife of late V.R.Sundaramurthy. The Management of the third respondent Society has challenged the order in its entirety in W.P.No.37616 of 2015. The applicant Tmt.S.Subbulakshmi has challenged the said order only to the extent, it has denied interest for the amount payable from the date of demise of her husband and restricted it to the date of filing of the claim petition.

2. In these Writ Petitions, the petitioner in W.P.No.24943 of 2015, shall be referred to as the Claimant and the petitioners in W.P.No.37616 of 2015, shall be referred to as the Management.

3. The claimant's husband was a permanent employee of the Management and died in harness on 20.05.1995. Three months prior to his demise, he was placed under suspension. However, before even the disciplinary proceedings could be initiated, he passed away. The claimant therefore approached the Management for settlement of dues such as Gratuity, Provident Fund, Group Insurance and other terminal benefits payable to her on account of demise of her husband. The Claimant would state for nearly 15 months, no action was taken and on 23.04.1996, a proceeding was issued authorising payment of Rs.19,391.90/- out of the Group Insurance amount of Rs.60,000/- by deducting a sum of Rs.40,743.60ps. Challenging the same, the petitioner filed a Writ petition before this Court in W.P.No.10059 of 1997, and the matter was pending before this Court for nearly three years and by order dated 11.07.2000, the said Writ Petition was disposed of, giving liberty to the claimant to approach the Labour Court under Section 33C(2) of the Industrial Disputes Act (ID Act). The petitioner/claimant filed a petition before the Labour Court and the Labour Court computed the amount payable to the petitioner/claimant at Rs.2,56,242/-. The said amount was directed to be paid together with interest at 12% from the date of the petition i.e., 12.08.2013 instead from the date of demise of the petitioner/claimant's husband i.e., 20.01.1995. Therefore, the claimant seeks for interest for the entire period from the date of demise of her husband.

4. The Management has challenged the order contending that the Labour Court computed the amount payable to the claimant without any supporting material and it exceeded its jurisdiction. Further, it is submitted that the order of the Labour Court failed to consider Exhibit P-1, dated 23.04.1996, in which, the amount mentioned by the Management has been accepted by the claimant and no objection has been raised. Further, it is submitted that the claim petition filed after a lapse of 18 years is grossly belated and the Labour Court erroneously entertained the Petition and computed the amount payable. On the above grounds, the Management seeks for setting aside the order.

5. I have heard the Mr.K.Shanmugam, learned counsel for the claimant and Mr.L.P.Shanmughasundaram learned Special Government Pleader appearing for the Management.

6. The first issue to be considered is as to whether the computation done by the Labour Court in C.P.No.380 of 2013, is

just and proper; and whether there is any perversity in the order passed by the Labour Court.

7. The undisputed fact is that the claimant's husband was a permanent employee of the Management and he passed away, while he was in service on 20.01.1995. At the relevant point of time, he was placed under suspension on the allegation of shortage of stock. On account of demise of the claimant's husband, the disciplinary proceedings did not proceed further, no charge memo was issued and the proceedings stood abated. Thus, in the absence of any order terminating the services of the claimant's husband, it is deemed that he was in service and entitled for the benefits flowing there from. The Labour Court pointed out that the Management did not place any record to show that the charges were framed against the claimant's husband. Thus, the finding of the Labour Court that there was no disciplinary proceeding initiated against the claimant's husband is fully justified. Further, the Labour Court also took note of the admission of RW-1, admitting that the allegations/charges against the Claimant's husband has abated, on account of his demise.

8. Thus, after taking note of the deposition of the respondent witness RW-1, and the salary particulars, the Labour Court has recorded a factual finding that the claimant's husband had worked for nine years and nine months i.e., from 19.04.1985 to 20.01.1995 and his last drawn salary was Rs.1498/- and after analysing the entire facts, computed the Gratuity and since her husband died while in service, the death compensation payable was also added and the total amount payable was computed as Rs.2,26,252/-. The claimant had prayed for interest at the rate of 25% from the date of her husband's demise. However, the Labour Court came to the conclusion that there is no acknowledgement for effecting delivery of Exhibits P3 to P9, which are copies of the letters written by the claimant to the Management and has not taken any steps except for filing second Writ Petition during 2013 after a lapse of several years. Therefore, the Labour Court restricted the interest at the rate of 12% from the date of the petition and not the date of demise of the claimant's husband.

9. The factual findings rendered by the Labour Court are based on evidence available on record and in the absence of any perversity, this Court is not inclined to re-examine the entire facts, as if, exercising appellate jurisdiction over the award of the Tribunal. The Labour Court did not grant any interest from the date of demise on the ground that there was no proof to show that the representation was made and all that the claimant did was to file the second Writ Petition during the year 2013.

10. As noticed above, the claimant's husband died on

20.01.1995, and the claimant appears to be an uneducated lady after moving the authorities by going to the office, she having not been able to obtain any relief from them, had filed the Writ Petition during 1997 in W.P.No.10059 of 1997, wherein she sought for a Writ of Mandamus, to pay and settle all outstanding monetary benefits payable to her as per law on account of demise of her husband late Sundaramurthy and such payment to be made together with interest at 18%. The said Writ Petition was pending before this Court for about three years and the same was disposed of by order dated 07.07.2000, by directing the claimant to give representation to the Management and the Management was directed to consider the same as to the correctness of the deductions effected by them and liberty was granted to the claimant to challenge the same, if she is not satisfied.

11. The specific case of the claimant is that thereafter she has been driven from pillar to post and not favoured with any response or reply and after exhausting all the avenues, she filed the Writ Petition in W.P.No.21485 of 2013, to consider and pass orders on her representation, dated 21.12.2012, by taking note of the earlier representation and the earlier order passed by this Court in W.P.No.10059 of 1997.

12. The Writ Court after taking into consideration the factual matrix and the objections raised by the Management stating that the Writ Petition was not maintainable, gave liberty to the claimant to approach the Labour Court for computation of the benefits payable. When such liberty was granted to the claimant, the Management did not oppose the liberty. Therefore, before the Labour Court, they cannot raise the question that the claimant has approached the Labour Court belatedly.

13. In my view, there appears to be no inordinate delay on the part of the claimant. In terms of the directions issued in the first Writ Petition on 11.07.2000, the Management was directed to consider the claimant's representation, wherein she was permitted to seek clarification. It is not the case of the Management that they have given her clarification or sent her any communication. Further, no document to the said effect was exhibited before the Labour Court by the Management. Therefore, we can safely presume that the Management did not obey the order passed by this Court dated 11.07.2000. In such circumstances, the Management cannot plead that the claim made by the claimant before the Labour Court was belated. Hence, for all the above reasons, the quantum of amount computed by the Labour Court cannot be faulted.

14. This leaves us with the only question as to what would be the date, from which the claimant would be entitled for interest and at what rate. The Labour Court has awarded 12% interest from the date of petition which appears to have been filed during August 2013. The claimant's husband died on 20.01.1995 and from the given facts and circumstances, it cannot be stated that the claimant was guilty of delay and latches rather the Management did not take effective steps to settle the lawful dues. Therefore, this Court is inclined to accept the case of the claimant for grant of interest from the date of demise of the claimant's husband. However, this Court is inclined to grant interest at the rate of 8% for the said period.

15. In the result, W.P.No.37616 of 2015 is dismissed and W.P.No.24943 of 2015 is partly allowed and the order passed by the Labour Court in C.P.No.380 of 2013, is modified to the extent by ordering that the claimant is entitled for interest at the rate of 8% from the date of demise of her husband on 20.01.1995, till August 2013, when the Claim Petition was filed before the Labour Court and from the date of such petition, interest at the rate of 12%, till the date of payment as directed in the impugned order. No costs. Consequently, connected Miscellaneous Petitions are closed.

PBN

26.02.2016

This petitions are coming under the caption for "Being Mentioned" on this day of Friday the Fourth day of March 2016 in pursuance of the order of this court dt. 26.2.2016 and made herein in the presence of the aforesaid Advocates this court made the following order;

T.S.SIVAGNANAM, J.

This matter has been placed on board under the caption "For Being Mentioned".

2. It is submitted by the learned counsel for the petitioner/workman that some time limit may be fixed by this Court for compliance of the direction contained in paragraph 15 of the order, dated 26.02.2016.

3. Learned counsel for the respondent/management submitted that a reasonable time may be granted.

4. In the light of the above, the direction issued in paragraph 15 of the order, dated 26.02.2016, shall be complied with by the respondent/management, within a period of ten weeks from the date of receipt of a copy of this order.

dixit

04-03-2016

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Govt.,
State of Tamil Nadu,
Department of Co-operative Societies,
Fort St., George, Madras - 9.
- 2.The Registrar of Co-operative Societies,
Madras - 600 005.
- 3.The General Manager,
Park Town,
Co-operative Wholesale Stores Ltd.,
Davidson Street, Madras - 600 001.
- 4.The Principal Labour Court,
Chennai - 600 104

+ 1 cc to M/s. Shanmugha Associates, Advocate SR.12412
+ 1 cc to L.P. Shanmugasundaram, Advocate Sr.12727

W.P.Nos.24943 & 37616 of 2015

KJI (CO)

Eu 23.3.16

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