

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.10.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

WP.No.44417/2002

&

WMP.No.65097/2002

The Management of Chemplast
Sanmar Limited, Plant II
Raman Nagar Post
Mettur Dam 636 403.

... Petitioner

Versus

1.The Presiding Officer
Labour Court, Salem.

2.A.M.Devasahayam

3.M.Muniyappan

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the 1st respondent in CP.Nos.35 and 36 of 1999 and quash its order dated 28.08.2002.

For Petitioner : Mr.S.Haroon-Al.Rasheed for
M/s.T.S.Gopalan & Co

R1 : Labour Court

For RR 2 & 3 : Mr.K.V.Shanmuganathan

ORDER

The prayer sought for in this writ petition is for a writ of certiorari to quash the order passed by the 1st respondent / Labour Court in CP.Nos.35 & 36/1999 vide order dated 28.08.2002.

2 The short facts which are required to be noticed for the disposal of this writ petition, are as follows:-

[a] The respondents 2 and 3 herein/workmen, joined the petitioner/Company some time in the year 1966 as workmen and since then, they became permanent employees/workmen of the petitioner/Company. They had been working as such for nearly 32 years and the 2nd respondent retired during November 1997 and the 3rd respondent retired during September 1997.

[b] On 26.12.1992, there had been a Settlement under section 12[3] of the Industrial Disputes Act, 1947 [hereinafter referred to as "12[3] Settlement"]. According to the said Settlement, the permanent employees of the petitioner/Company would be entitled to get bonus of 56% as Ex-gratia for a period of six years, i.e., from 01.04.1991 to 31.03.1997.

[c] The said 12[3] Settlement relates to the period from 01.04.1991 to 31.03.1997 and it expired on 31.03.1997 and the petitioner/Company had not come forward to sign another 12[3] Settlement for the subsequent period.

[d] Therefore, it seems that there had been some labour unrest in the petitioner/Company during 1997-1998 and ultimately, on 21.03.1998, the petitioner/Company and the Employees' Union had entered into the second 12[3] Settlement under which, the employees would be entitled for 46% of Ex-Gratia bonus for a period of five years, i.e., from 01.04.1997 to 31.03.2002.

[e] As per Clause [5] of the second 12[3] Settlement, those permanent workmen/probationers in the rolls of the Company and in the employment of the Company as on the date of the signing of the Settlement, will alone be entitled to get the benefit of Ex-Gratia Bonus for the period of five years commencing from 01.04.1997 to 31.03.2002.

[f] Since the respondents 2 and 3/workmen retired from service on attaining the age of superannuation during the months of November and September respectively and that the second 12[3] Settlement was entered only on 21.03.1998, by virtue of Clause [5] of the said Settlement, the petitioner/Company excluded the respondents 2 and 3 from the purview of the Settlement, thereby the 46% bonus agreed by the petitioner/Company from 01.04.1997, had not been paid to the respondents 2 and 3.

[g] Only in that context, both the respondents 2 and 3 herein/workmen had approached the Labour Court/1st respondent herein by filing Claim Petitions No.35 and 36 of 1999 some time in January 1999, where the petitioner/Company had filed a counter statement, inter alia, stating that as per the terms of the second 12[3] Settlement dated 21.03.1998, these respondents who were the claim petitioners therein, were not entitled to claim any Ex-Gratia Bonus as the same would not be applicable to them.

[h] The 1st respondent / Labour Court, after having considered the claim and counter claim made in this regard, had passed the impugned order/Award dated 28.08.2002, whereby, the 1st respondent / Labour Court had allowed the claim petitions filed by the workmen/respondents 2 and 3 herein with a direction that the Ex-Gratia bonus of 46% shall be paid to these respondents with an interest at the rate of 6% per annum.

[i] Aggrieved over the said order passed by the 1st respondent / Labour Court, dated 28.08.2002, the petitioner/Company has filed the present writ petition with the aforesaid prayer.

3 Mr.S.Haroon-Al-Rasheed, learned counsel for the petitioner would submit that, as per the second 12[3] Settlement dated 21.03.1998, these employees, i.e., respondents 2 and 3 herein, had been specifically excluded from getting the benefits of Ex-Gratia Bonus, since they had retired from service during the year 1997 itself, before entering into the second 12[3] Settlement.

4 In this context, the learned counsel has placed reliance upon Clause [5] of the second 12[3] Settlement, which reads thus:-

"[5] This Settlement shall be applicable only to permanent workmen/probationers in the rolls of the company and in the employment of the Company as on the date of signing the Settlement and also to those recruited in the permanent category including probationers during the period from 01.04.1997 to 31.03.2002.

For the removal of doubts, if any, it is made clear that the payments payable under this Settlement shall be payable only for a period of 5 years commencing from 01.04.1997 to 31.03.2002 and shall not be a continuing obligation after 31.03.2002 and all obligations on the part of the Management shall cease on 31.03.2002."

5 By relying upon the above said clause, the learned counsel would submit that this Ex-Gratia Bonus allowed by the petitioner/Company, is not based on any statutory obligation on the part of the petitioner/Company. In order to show the gesture for the permanent employees who were working at the petitioner/Company, the Management had come forward to enter into the Settlement and that is the reason why the specific clause making only the permanent workmen and probationers in the rolls of the Company and in the employment of the Company as on the date of signing the Settlement, had been given the benefit. Thereby, those who are temporary employees and those who were not in the rolls and not in the employment as on the date of signing of the Settlement, were not entitled to claim the benefit as they have been specifically excluded and this term was conceded and accepted by the Labour Union on behalf of the workers in the 12[3] Settlement.

6 Therefore, the learned counsel for the petitioner/Company would submit that this aspect has not been considered by the Labour Court in proper perspective and it had proceeded as if that the respondents 2 and 3 herein are

entitled to get the Ex-Gratia Bonus covered under the 12[3] Settlement, without taking into account that admittedly, these two respondents retired from service some time in November and September, 1997, i.e., well before the second 12[3] Settlement dated 21.03.1998.

7 In this context, the learned counsel has further submitted that, in similar circumstances, against the very same petitioner/Company, a set of employees had already approached the Labour Court, seeking for the benefit of Ex-Gratia bonus even though they have not been covered under the earlier Settlement and the said plea raised by the Employees' Union since had been rejected by the Labour Court, they approached this Court by filing WP.No.13692/2003 [The Workmen represented by Secretary, Chemplast Employees Union Vs. The Presiding Officer, Industrial Tribunal, Chennai and another] reported in 2017 Labour Law Reporter 846. When the said writ petition was heard, the learned Single Judge of this Court, vide order dated 13.02.2017, has held that, those 122 employees of the petitioner/Union in that case, were not entitled to claim the benefit of Ex-Gratia Bonus under the 12 [3] settlement in view of the exclusion made in the Settlement itself which was accepted and agreed upon by the majority Labour Union, which, in fact, entered into the 12[3] Settlement with the Management of the petitioner/Company.

8 The learned counsel for the petitioner, in this context, has relied upon the following findings given by the learned Judge in the said judgment cited above:-

"16 In the case at hand, the petitioner Union is undoubtedly the majority Union and had entered into the 12[3] Settlement on 26.12.1992, wherein, they have specifically agreed that the terms of the settlement will apply only for those who were permanent workmen as on 26.12.1992. Section 18[3][d] of the Act cannot be interpreted to mean that the terms of settlement should be extended to those who were specifically excluded by the Settlement. In other words, as on 26.12.1992, these 122 workmen were not permanent workmen. They were only temporary workmen. The 12[3] Settlement dated 26.12.1992, clearly states that only the permanent workmen will be entitled to 56.5% payment, as they were already enjoying it. By no stretch of imagination, the same can be extended to 122 workmen, who were not permanent workmen as on 26.12.1992 and who became permanent only subsequently."

9 Therefore, the learned counsel would submit that applying the principle laid down in the said judgment [cited [supra](https://hcservices.ecourts.gov.in/hcservices/)], where exactly the same issue had been decided and the

only difference is that the said issue pertain to the earlier Settlement dated 26.12.1992 and the present issue in this writ petition is in respect of the subsequent Settlement dated 21.03.1998, the learned counsel would submit that the respondents 2 and 3 herein/workmen are not entitled to seek for any benefit since they have been excluded specifically under Clause 5 of the present Settlement as extracted above and therefore, the impugned order passed by the Labour Court is liable to be interfered with.

10 Per contra, Mr.K.V.Shanmuganathan, learned counsel appearing for the respondents 2 and 3 / workmen submitted that it is not in dispute that respondents 2 and 3 were permanent workmen of the petitioner/Company and they had been working from the year 1966 onwards and after having rendered 32 years of service, have retired from service during the year 1997 on superannuation and prior to their superannuation, they enjoyed the benefits of Ex-Gratia bonus of 56.5% for the period from 1991 to 1997 covered under the first 12[3] Settlement dated 26.12.1992. Merely because the petitioner/Company had not come forward to extend the benefit by entering into the 12[3] Settlement and in the meanwhile, if the respondents 2 and 3 retired from service and subsequently, if 12[3] Settlement entered into between the Employees' Union and the petitioner/Company, the benefit accrued on the respondents cannot be denied as the said workmen had worked all those years and after having extracted work from them, the benefit of Ex-Gratia Bonus, which are being given to all permanent employees like the respondents 2 and 3, cannot be denied to these workmen/respondents 2 and 3 herein.

11 The learned counsel for the respondents 2 and 3 would further submit that, this aspect has been considered by the Labour Court and in fact, has accepted the plea raised by the respondents 2 and 3 herein / Workmen before the Labour Court that they are permanent employees and therefore, they are entitled to get Ex-Gratia Bonus covered under the 12[3] Settlement and accordingly, order was passed directing the Management of the petitioner/Company to pay the Ex-Gratia Bonus with interest. Hence, the learned counsel for the respondents 2 and 3 would submit that the impugned order does not require any interference from this Court.

12 I have considered the rival submissions made by the learned counsel appearing for the parties and also perused the materials placed before this Court.

13 As has been rightly pointed out by the learned counsel appearing for the respondents 2 and 3 herein/workmen, respondents 2 and 3 are permanent employees of the petitioner/Company. This has not been disputed by the petitioner/Company as the respondents 2 and 3 joined in the petitioner/Company some time in the year 1966 and from then onwards, they had been continuously working at the

petitioner/Company for nearly 32 years and on superannuation, the 2nd respondent retired during November 1997 and so also the 3rd respondent during September 1997.

14 In fact, the Management of the petitioner/Company entered into a 12[3] Settlement with the Employees Union on 26.12.1992 which is otherwise called as "the first 12[3] Settlement", under which, 56.5% Ex-Gratia Bonus were allowed for the period from

01.04.1991 to 31.03.1997. There also, a similar clause had been inserted saying that the said Settlement benefits would be made available only to those who are permanent employees of the petitioner/Company and they must have been in the rolls of the company as permanent employees.

15 Pursuant to the said Settlement, the respondents 2 and 3 herein/workmen had received the Ex-Gratia Bonus of 56.5% for the period from 1991 to 1997, i.e., upto 31.03.1997. However, for the period starting from 01.04.1997, since there had been no 12[3] Settlement at that time, as the earlier Settlement expired by 31.03.1997, it seems that there had been demand from the employees to enter into a similar settlement.

16 In the meanwhile, there had been some Labour unrest in the company as there was strike some time in the year 1997 and it went up to February 1998. Thereafter, after the intervention of Mediators and also the Conciliation Officers from the Labour Department, finally, the petitioner/Company as well as the Employees' Union had come forward to enter into a yet another 12[3] Settlement and ultimately, the said Settlement was entered into between them only on 21.03.1998.

17 No doubt, Clause 5 is form part of the second 12[3] Settlement, which says that only the permanent workmen/probationers in the rolls of the Company and in the employment of the Company as on the date of signing of the Settlement and also to those recruited in the permanent category including the probationers during the period between 01.04.1997 and 31.03.2002, would be entitled to get the benefits.

18 It is to be noted that, though the Settlement was entered into only on 21.03.1998, the period covered under the said Settlement is from 01.04.1997, i.e., retrospectively. The intention of covering the said period from 01.04.1997 was to give the benefits to all those who were eligible and entitled to get it as permanent employee or probationer as on roll. That means, even though it is mentioned as "the date of signing of the Settlement" since the benefit period starts from 01.04.1997, that benefit should be extended to all those permanent employees who were on the rolls as on 01.04.1997.

19 Otherwise, if the benefit the Ex-Gratia Bonus is extended to all permanent workmen of the petitioner/Company and the settlement had reached belatedly ; however the benefits are provided retrospectively, those benefits shall not be denied to some of the employees, who because of their superannuation, retired from service in the meanwhile. The benefit of Ex-Gratia bonus for permanent employees is a fine gesture shown by the petitioner/Company to all those employees who rendered services to the company.

20 In the case on hand, it is not in dispute that the respondents 2 and 3 are permanent employees of the petitioner/Company as they had been working from the year 1966 onwards. No doubt, on superannuation, they had retired from service some time during September and November, 1997 and at that time, there was a gap between the first 12[3] Settlement and the second 12[3] Settlement. However, the second 12[3] Settlement dated 21.03.1998 covered the period from 01.04.1997 also. That means there had been no gap as the first 12[3] Settlement covered the period upto 31.03.1997 and the second 12[3] Settlement covered the period starting from 01.04.1997. Therefore, it shows the clear intention of both the Management of the petitioner/Company and the Employees' Union that the permanent employees who had been entitled for getting Ex-Gratia Bonus and who had received the same till 31.03.1997, shall be entitled to continue to receive the same from 01.04.1997 also. In that context, if clause 5 of the second 12[3] Settlement is interpreted, it shall give the meaning only to the effect that those who are eligible and entitled to get Ex-Gratia bonus as on 01.04.1997 by way of permanent employees, shall be given such benefit irrespective of the fact whether they retired from service on superannuation before the date of the second 12[3] Settlement dated 21.03.1998.

21 In respect of the citation in the matter of Workmen represented by the Secretary, Chemplast Employees Union Vs. The Presiding Officer, Labour Court, Chennai and another reported in 2017 LLR 846 is concerned, no doubt, it was the case between the employees of the very same petitioner/Company, of course, in respect of the earlier Settlement dated 26.12.1992, where 122 employees/workers for whom the Employees' Union approached the Labour Court and subsequently, filed writ petition were admittedly temporary employees. Only in that context, the learned Judge has given his reasonings and since the employees were not permanent employees and the terms of Settlement specifically stated that only permanent employees alone would be entitled to get the benefits by excluding the temporary employees, the said employees cannot be included and therefore, they are not entitled to get the benefit arising out of the Settlement dated 26.12.1992. This is what exactly decided in the said decision by the learned Judge in paragraph 16 of the above cited judgment, as has been extracted above.

22 However, in the present case, it is an admitted fact that the respondents 2 and 3 are permanent employees and therefore, the decision of the said case cannot be made applicable to the present case. Therefore, the said decision would no way advance a cause of the Management of the petitioner/Company in this writ petition.

23 These aspects have been properly considered by the Labour Court/1st respondent herein in the impugned order and accordingly, the 1st respondent / Labour Court has given a direction to the petitioner/Company to pay the Ex-Gratia bonus of 46% by calculating the same from 01.04.1997 till the date of superannuation for the respondents 2 and 3 herein/workmen and accordingly, it was directed to be paid with an interest at the rate of 6% per annum.

24 Though 12% interest was sought for by the employees, only 6% interest has been allowed by the Labour Court. Therefore, this Court is of the view that the said rate of interest is very nominal and minimum which cannot be reduced and therefore, this Court is of the view that the impugned order of the Labour Court/1st respondent does not require any interference from this Court as this Court does not find any infirmity in any aspect of the said order.

25 In the result, the writ petition fails and accordingly, the same is dismissed. No costs. Resultantly, the Management of the petitioner/Company is hereby directed to pay the Ex-Gratia bonus for each of the respondents 2 and 3 , for which they are entitled to from 01.04.1997 till the respective dates of their superannuation with an interest at the rate of 6% per annum, within a period of two months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

AP

To

1.The Management of Chemplast
Sanmar Limited, Plant II
Raman Nagar Post
Mettur Dam 636 403.

<https://hcservices.ecourts.gov.in/hcservices/>

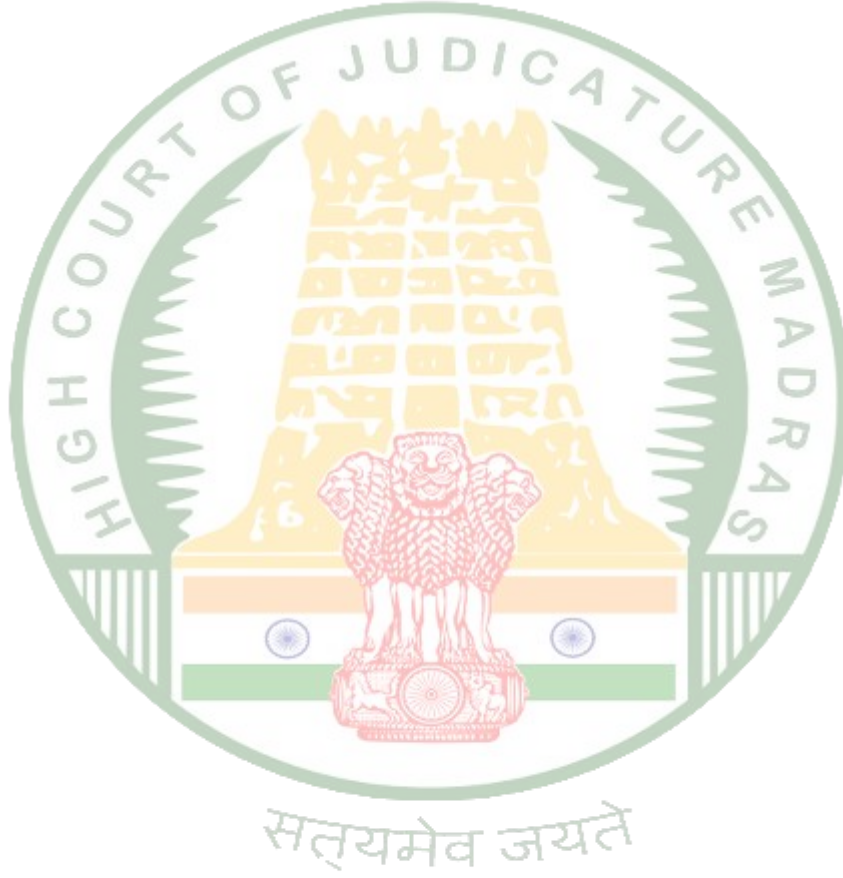
2.The Presiding Officer
Labour Court, Salem.

+1cc to M/s.T.S.Gopalan & Co, Advocate SR.No.70355

+1cc to Mr.K.V.Shanmuganathan, Advocate SR.No.70063

WP.No.44417/2002

SSI (CO)
GMY (06/02/2020)



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