



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

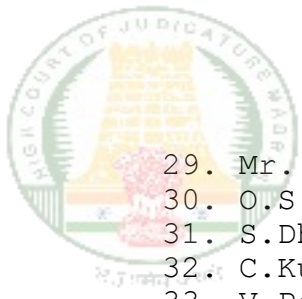
Writ Petition No.29878 of 2010
& M.P.No.1 of 2010

The Management of Coimbatore
District Central Cooperative Bank Ltd.,
No.80 State Bank Road,
Coimbatore 641 018

... Petitioner

Vs.

1. Joint Commissioner of Labour,
O/o. Deputy Commissioner of Labour,
Dr. Balasundaram Road,
Coimbatore - 18
2. The Assistant Commissioner of Labour /
Authority Under Payment of Gratuity Act, 1972,
O/o. Deputy Commissioner of Labour,
Dr. Balasundaram Road, Coimbatore - 18
3. Mrs. C.S.Saradha
4. E.Radhakrishnan
5. P.Shanmugam
6. Mrs. K.Saraswathi
7. Mrs. Balamani
8. Mrs. S.Gugapriya
9. Mrs. S.Sudhahari
10. V.K.Kesavan
11. N.Ragavendran
12. K.G.Balasubramaniam
13. R.Kuppusamy
14. K.P.Ramasamy
15. R.Swaminathan
16. S.Srinivasan
17. G.Jayalakshmi
18. V.Shanthi
19. G.Bhasker
20. G.Senthil
21. S.Sumathi
22. K.N.Pattappan
23. N.Umanathsingh
24. Mrs. Saraswathi
25. Velumani
26. Rajeswari
27. V.K.Subbannan
28. Mrs. V.Saraswathi



29. Mr. V.Krishnasamy
30. O.S.Arumugam
31. S.Dhandapani
32. C.Kumarappan
33. V.Ponnusamy
34. M.Ilandiraiyan
35. K.Mayilsamy
36. K.R.Muthusamy
37. S.Gopal
38. A.Moses
39. D.Santhanakrishnan
40. S.Thiyagarajan
41. A.Govindasamy
42. P.Kumararajan
43. P.Rathinam
44. P.Vasudevan
45. P.Saravanan
46. P.Rengarajan
47. R.Gowtham
48. P.Muthukrishnan
49. P.Kannan
50. A.Sarojini
51. V.Ramanujam
52. G.Leelavathi
53. N.Soundharam
54. S.Kauveri
55. S.Karpagam
56. N.Agilandeswari
57. N.Santhanalakshmi
58. N.Saravanachandhiran
59. Mrs. V.Nagarathinam
60. Mrs. V.Sathiyavathi
61. R.Rangaswamy
62. S.Karuppusamy
63. S.Ramakkal
64. Mrs. Nanjammal @ Chinnakal
65. Mr. P.Sivasubramanian
66. T.Palanisamy
67. K.Ganapathy
68. P.Eswaramoorthy
69. Mrs. L.Maragatham
70. L.Velmurugan
71. L.Sakthivel
72. L.Sundhravel
73. L.Subalakshmi
74. L.Senthilvel
75. P.Muthusamy
76. R.Sivanantham
77. R.Rathinam
78. M.Ramalingam

... Respondents



Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the entire records pertaining to the common order of the firstrespondent, dated 19.11.2010 in AGA Nos.1 to 50 of 2010, consequent to the order of the second respondent's order, dated 15.04.2002 in G.A.Nos.1 to 34, 36 to 50 of 2002 and 297 of 2001 and to quash the same.

For Petitioner : Mr.S.Saravanan
For R-3 to R-34,
R-36, R-38 to R-78 : Mr.C.Murugesan
For R-37 : Died.
For R-1 & R-2 : Mr. K.K.Ramesh.

O R D E R

The Government of Tamil Nadu appointed a Streamlining committee to go into the terms and conditions of the workmen employed in Cooperative Bank in the State of Tamil Nadu. The Committee has submitted its report on 24.07.1995.

2.1. Government of Tamil Nadu issued G.O.No.161 on 05.09.1996, accepting 26 days will be reckoned as a month not only for arriving at pay but also for calculation of length of service for calculation of gratuity. Based on that, the management entered into 12(3) settlement with the recognized union. On the basis of this settlement, the employees claimed balance of gratuity invoking the provisions of Section 4(5) of Payment of Gratuity Act, 1972.

3. The Secretary to Government, by a letter 8571/CC1/98-10, Cooperation, Food and Consumer dated 20.11.2001, cancelling the following clause found in G.O.Ms.No.161 dated 05.09.1996, which reads as under:

" The Committee recommends that for the purpose of calculation of gratuity, 26 days will be reckoned as a month not only for arriving at pay but also for calculation of length of service."

4. Based on the communication, the petitioner issued notice under Section 9A of the Industrial Disputes Act to all its employees intimating that gratuity will not be paid reckoning the length of service as 26 days and that the period will be reckoned only in terms of the provisions of linked gratuity insurance scheme as well as Payment of Gratuity Act. It was also informed that Clause 30 of the settlement expired on 30.06.1999 itself. Even though letter was sent, the Government Order was



not amended. Whether the cancellation of clause in the settlement by a letter is valid or not, is the issue.

5. Respondents 3 to 6, 10 to 16, 22, 23, 27 to 42, 50 to 52, 61 to 63, 66 to 68, 74 to 78 were the employees of the petitioner Bank and Respondents 7 to 9, 17 to 21, 24 to 26, 43 to 49 53 to 60, 64, 65, 69 to 74 were the legal heirs of the deceased employees and all the respondents had filed 50 gratuity applications seeking gratuity before the second respondent under the Payment of Gratuity Act, 1972, in G.A.Nos.1 to 34 of 2002, 36 to 50/2002 and 297 of 2001. By the order dated 15.04.2002, the authority under the Payment of Gratuity Act and it was allowed. Appeal was filed by the management on the ground that the settlement based on which the workmen were relying upon, had ceased to be operative and hence the order of the controlling authority is liable to be set aside. The appellate authority gave a finding that the settlement did not automatically ceased to be operative on the expiry of two months from the date of notice even if notice of the intention to terminate the settlement is given by either party and that the settlement is valid until the settlement is replaced by a valid contract or yet another settlement or by any award between the parties.

6. Challenging the order of the appellate authority, the petitioner-Management, has filed the writ petition on the contending that this order by the appellate authority has been passed without jurisdiction, by misconstruing various provisions of law and all material documents.

Heard both sides.

7. It is the contention of the learned counsel appearing for the petitioner-Management that the petitioner-Bank is a cooperative body under the State Government and the same is controlled through the Registrar of Cooperative Societies and therefore, the petitioner cannot by itself grant the benefits without the concurrence of the above bodies; the petition is bad for non-joinder of Registrar of Cooperative Societies; appellate authority has not taken into account the non-applicability of Section 18 (1) settlement to the claimants / employees, who were not the workman.

8. The learned counsel for the petitioner further submitted that if 26 days is taken for calculating the length of service in a month, then the total number of months in a year will be 14 which is against the principles of natural justice; the calculation of gratuity as per the payment of Gratuity Act is $15/26$ of a month multiplied by the length of service by last drawn salary; hence the claim made by the workmen is unjust and against law. The learned counsel further submitted that the workmen have not submitted the applications under Rule 7 of the



Payment of the Gratuity Rules, 1972, in the prescribed manner.

9. The learned counsel appearing for the workmen / respondents submitted that the orders passed by the original and appellate authorities are perfectly justified and does not warrant any interference by this Court.

10. This Court has gone through the orders passed by the original authority as well as the appellate authority.

11. It is not known, what made the petitioner herein to file this writ petitioner even after the well considered and reasoned order passed by the appellate authority. Each and every contentions raised by the petitioner herein have been answered by the appellate authority on the factual aspect as well as on the legal aspect.

12. Answering the contentions of the petitioner again would only going to be a repetition of the order passed by the appellate authority. However, a few important questions of law raised alone are answered, as it is the duty of the Court to give reasons for the judgement.

13. Before answering the contentions, it is necessary to quote Section 4 (5) of the Payment of Gratuity Act, which reads as under:-

"Nothing in this Section shall affect the right of an employee to receive better terms of gratuity under any award or agreements or contract with the employer."

14. This Court is of the opinion that the contentions raised by the learned Counsel for the petitioner are bereft of merit, inasmuch as the issue raised has been concluded by various judgments.

15. In Sri Digvijay Woollen Mills Ltd. v. Shri Mahendra Prataprai Buch 1980 (41) F.L.R. 153, the Supreme Court approved the calculation of the gratuity on the basis of 26 days a month holding that-

"Ordinarily, a month is understood to mean 30 days, but the manner of calculating gratuity payable under the Act to the employees who work for 26 days a month should be taken as what they got for 26 working days and their fifteen days' wages worked out accordingly and not by just taking half of their wages for a month of 30 days or fixing their daily wages by dividing their monthly wages by 30. In other words,



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for the purpose of computing the amount of gratuity in respect of a monthly rated employee, his monthly wages should be taken as what he got for 26 working days, his daily wages should be ascertained on that basis and his fifteen days' wages worked out accordingly and not by just taking half of his wages for a month of 30 days or fixing his daily wages by dividing his monthly wages by 30. Treating monthly wages as wages for 26 working days is not anything unique or unknown.

16. Similar view was again held in Jeewanlal (1929) Ltd. etc. etc. v. The Appellate Authority (S.C.) and Ors. MANU/SC/0276/1984. wherein the Supreme Court held, as under:

"The question is whether the words "fifteen days' wages" occurring in Sub-section (2) of Section 4 of the Payment of Gratuity Act, 1972 in the case of monthly-rated employees, can only mean half a month's wages, i.e., wages which they would have earned in a consecutive period of 15 days or in 13 working days and therefore, in calculating the amount of gratuity payable to such employees, the rate of wages earned by them has to be multiplied by "thirteen" there being 26 working days in a month and not by "fifteen."

For the purpose of computation of "fifteen days' wages" of a monthly rated employee under Sub-section (2) of Section 4 of the Act, the monthly wages last drawn by him should be treated as wages for 26 working days and his daily rate of wages should be ascertained on that basis and not by taking the wages for a month of 30 days or fixing his daily wages by dividing his monthly wages by 30."

17. In Delhi Cloth & General Mills Co. Ltd. v. Workmen and Ors. etc. MANU/SC/0271/1968, the Supreme Court held-

"The expression "average of the basic wages" can only mean the wage earned by a workman during a month divided by the number of days for which he has worked and multiplied by 26 in order to arrive at the monthly wage for the computation of gratuity payable. Counsel for the employers agree to this interpretation."



18. Based on these judgments, the learned counsel for the workmen would submit that the order passed by both the authorities are supported by the decisions of the Honourable Supreme Court and therefore those orders have to be upheld. This contention is perfectly justified and this Court uphold the reasoning given by the appellate authority.

19. It is also pointed out that the settlement can be replaced only by another settlement or award and it cannot be altered by a letter issued by the Government Officer. This issue is answered by the decision of the Supreme Court reported in Life Insurance Corporation of India Vs D.J.Bahadur AIR 1980 SC 2181, wherein it was held as follows,

"Even if a notice of its intention to terminate the settlement was given by either party, the settlement did not automatically cease to be operative on the expiry of two months from the date of the notice. The legal position is that the terms of a settlement continue to govern the relations between the parties after the notice of termination and the expiry of two months" thereafter, until the settlement is replaced by a valid contract or award between the parties.

20. In South Indian Bank Ltd Vs A.R.Chacko AIR 1964 SC 1522.

" The provision in s.19(6) as regards the period for which the award shall continue to be binding is not in any way affected by s. 4 of the Industrial Disputes (Banking Companies) Decision Act. The different provisions made by the legislature in s. 19 (3) and s. 19(6) illustrate the distinction between an award being in operation and an award being binding on the parties. Section 19(6) makes clear that after the period of operation of an award has expired, the award does not cease to be effective."

21. These decisions make it clear that the award entered into between the parties cannot be altered by the executive by writing a letter and it can be altered only another settlement or award.



22. In view of the aforesaid reasons, this Court is of the opinion that no ground exists for interference in the impugned order. The writ petition fails and is dismissed. In the circumstances of the case, there shall be no order as to cost. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

srk

To

1. The Presiding Officer, Labour Court, George Town, Chennai.
2. Joint Commissioner of Labour,
O/o. Deputy Commissioner of Labour,
Dr. Balasundaram Road,
Coimbatore - 18
3. The Assistant Commissioner of Labour /
Authority Under Payment of Gratuity Act, 1972,
O/o. Deputy Commissioner of Labour,
Dr. Balasundaram Road, Coimbatore - 18

+lcc to Government Pleader sr.73471
+lcc to Mr.S.Saravanan, Advocate sr.no.72662

W.P.No.29878 of 2010

kji(co)
nr 05/03/2019