

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15 .11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1804 of 2018
and
CMP No.14554 of 2018

The Management,
Sivagangai District Central Co-operative Bank Limited,
Rep. By its Joint Registrar / Special Officer,
Gandhi Veedhi, Sivaganga District. ... Appellant/Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Madurai.

2. N.Duraipandi
3. C.Muniyandi
4. S.Kalailingam
5. R.Pandi
6. C.Marichamy
7. M.Muruganadham
8. A.Mariappan
9. R.Vijayakumar
10. M.Karthigaisamy
11. A.S.Ramanathan
12. P.Udayamari
13. T.R.Valliammai
14. K.Thillaivasan
15. R.Sethu

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 17.06.2011 made in W.P. No.3778 of 2003.

W.P.No.3778/2003 : Petition under Article 226 of the
constitution of India praying this court to call for the records
in C.P.No.159/98 on the file of the Labour Court, Madurai, the
first respondent herein and quash the order passed therein dated
20/11/2001.

For Appellant : Mr.C.K.Chandrasekar
for Mr.L.P.Shanmugasundaram

For Respondents : M/s.S.Arunachalam Associates
(for R2 to R15)
R1-Tribunal

J U D G E M E N T

(Order of the Court was delivered by SUBRAMONIUM PRASAD, J)

The respondents 2 to 15 are employed with the Sivagangai District Central Cooperative Bank Limited. A Memorandum of settlement was arrived at on 22.08.1997 between the workmen, working in various Central Cooperative Banks and the Co-operative Societies, under Section 12(3) of the Industrial Disputes Act, regarding the wages and conditions of service of the employees working in the District Central Cooperative Banks.

2. The salient terms of settlement are as under.

"3. REDESIGNATION:

It is mutually agreed that the post of Secretary and Assistant Secretary will henceforth be called as General Manager and Assistants General Manager respectively.

4. CATERISATION:

a) The categories of Senior Assistants and Junior Assistants are to be merged into one Category and shall be redesignated as Assistants. While so merging the above 2 categories, the employees who are now working as Junior Assistants shall be placed below the Senior Assistants in seniority.

b) The Category of Typists / Steno-Typists who may have drawn so far the pay scale applicable to the post of Junior Assistants will be given the pay scale of Assistant.

c) The pay of the above mentioned categories will be fixed with reference to the fitment table given in Statement No.V will be merged into one category and designated as sub staff. The Pay of the sub staff will be fixed with reference to the fitment table given in the statement VI the Seniority of the Sub-staff will be as such that Grade II Sub-staff will be fixed below the Grade-I Sub -staff.

6. FITMENT IN THE NEW SCALE OF PAY:

The fitment in the new scale of pay shall be as provided for in the Statements III, IV and V as prescribed by the G.O. and guidelines of the Registrar of Co-operative Societies in respect of the

same, by which the Pay of an employee shall be fixed at the appropriate stage as referred to in the fitment table enclosed. However where the Basic Pay and Dearness Allowance of an employee constituting together as on 30.06.1994 is not reflecting an increase of 10% benefit, then the gap shall be filled in by payment of Personal Pay to the individual concerned which will, however, be absorbed in future increments.

After fitment as above, if the Junior draws more pay than the Senior in the same cadre, then the increment of the Senior shall be stopped up to that of the Junior so that the anomaly in the pay scales between Junior and Senior is rectified.

31. TO WHOM APPLICABLE

The provisions of the settlement will be made applicable to all the employees of the Bank who are on the rolls of employment as on 30.6.1994 and thereafter.

3. The relevant portion of Annexure V, applicable for this case, reads as under.

PRESENT				PROPOSED	ASSISTANT
Junior Stage	Assistant Basic pay	Senior Stage	Assistant Basic Pay	Stage	Basic Pay
1.	2.	3.	4.	5.	6.
1 & 2	365 & 595			1	1030
....					
6	725	1	720	5	1270

4. After the settlement was arrived at, disputes arose between the workmen and the appellant bank, regarding payment of Dearness Allowance. A claim petition was filed before the Labour Court, Madurai, under Section 33C(2) of the Industrial Disputes Act, seeking direction to the appellant bank to pay each of the petitioners the amount sought for by them, in the petition.

5. The workmen contended that they were in the pay scale of 720-40-920-50-1170-60-1350-70-1770 and were drawing a basic pay of Rs.720/-. It is the case that, the basic pay after the settlement ought to have been fixed at Rs.1270/- as per the table in Annexure V, but their basic pay was fixed at Rs.1030/-,

which is contrary to the settlement entered into. Thus, according to the workmen, as per the settlement, they would be entitled to a basic of Rs.1270/- and corresponding Dearness Allowance from 01.07.1994. The workmen contended that instead of fixing their pay at Rs.1270/- appellant cooperative bank has fitted their salary at Rs.1030/- and calculated the Dearness Allowance on the basic pay of Rs.1030/- instead of Rs.1270/-.

6. The Management on the other hand would contend that guidelines have been issued by the Registrar of Co-operative societies on 09.04.1997 and according to the guidelines, the pay of the Senior Assistants and Junior Assistants and sub staff Grade-II appointed during the period from 01.07.1994 to 20.01.1997, has to be fixed in the minimum of the revised scale of pay of Assistant and sub staff respectively on the date of their appointment and the loss, if any, in the emoluments has to be fixed as personal pay without Dearness Allowance and the same has to be continued till the incumbent moves to higher post or till the completion of the period of settlement, whichever is earlier.

7. Therefore, according to the Management, by reading the settlement and the guidelines issued by the Registrar of Cooperative Societies together, the workmen's salary have to be fixed at the minimum of the revised scale of pay of Assistant, which is Rs.1030/- and the balance Rs.240/-, has to be treated as personal pay without Dearness Allowance.

8. It was also contended that the workmen, who had filed the Claim Petition before the Labour Court had joined the bank as Assistants on 06.02.1995, whereas the settlement dated 28.02.1997 came into retrospective effect on 01.07.1994 and the settlement is applicable only to those who were in service as on 01.07.1994 and not applicable to the respondents 2 to 15.

9. The tribunal by its order dated 20.11.2001, allowed the application. According to the tribunal, Clause 31 of the Memorandum of Settlement, would take into the ambit of those persons who are employed in the cooperative banks even after 30.06.1994. The Labour Court also further held that the respondents to 5 were drawing the basic of Rs.720/- and if that is so, fitment of basic pay according to Clause 6 and Annexure V, should be 1270/- and not Rs.1030/-. The tribunal held that the management was not correct in fixing the basic pay at Rs.1030/- and respondents 2 to 5 would be entitled to claim the difference amount of Rs.240/- and the proportionate Dearness Allowance to be calculated on Rs.240/-, for a period of five years.

10. The appellant challenged the order of the Labour Court by filing W.P.No.3778 of 2003. The learned Single Judge

dismissed the writ petition holding that the reading of the settlement would show that the salary should be fixed at Rs.1270/- and not at Rs.1030/-. The learned Single Judge also found that the Special Officer of the Bank by a communication dated 26.06.2004, had informed the Registrar that similar fitment formula was allowed in the Ramanthapuram District Central Cooperative Bank, pursuant to 12(3) settlement in respect of one Paramasivam, who was Senior Assistant and therefore, the officer recommended implementation of the order of the Labour Court even in respect of the respondents herein. The writ petition was dismissed. The appellant has challenged the order of the learned Single Judge.

11. Mr.C.K.Chandrasekaran, learned counsel appearing for the Management contended that clause 6 of the settlement clearly states that the fitment and the new scale of pay was provided for in the Statements III, IV and V as prescribed by the Government Order and the guidelines of the Registrar of Co-operative Societies, in respect of the same, by which the Pay of an employee shall be fixed at the appropriate stage as referred to in the fitment table enclosed. He also relied upon the letter dated 09.04.1997 sent by the Registrar of Co-operative Societies to the Cooperative Bank dated 10.04.1997. The entire letter reads as hereunder.

From Thiru. T.S.SRIDHAR, I.A.S., Registrar of Cooperative Societies, N.V.Natarajan Maligai, 170, Periyar EVR High Road, Kilpauk, Chennai - 10 P.B.No.1091	To The Managing Director, Pasumpon Muthuramalingam Thevar Dist. Central Cooperative Bank, Sivaganga.
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Rc.No.37266/97 CRS. 1 dated 9.4.97

Panguni 27, Dhandhu, Tiruvalluvaranadu 2028

Sir,

Sub: - Central Cooperative Banks - Fixation of
pay of the employees of
Central Cooperative Banks in the revised
scale of pay with
effect from 1.7.94 as per the
recommendations of the
streamlining committee - Fixation of pay of
the employees

appointed after 1.7.94 clarification issued.

Ref:- Your letter No.3685/96-97/E1 dated
28.2.97

With reference to your letter cited, it is

informed that the pay of the senior assistant / junior assistant and sub staff Grade II appointed during the period from 1.7.94 to 20.1.97 has to be fixed in the minimum of the revised scale of pay of Assistants and sub staff respectively on the date of their appointment and the loss, if any, in the emoluments has to be fixed as personal pay without dearness allowance and the same has to be continued till the incumbent moves to higher post or till the completion of the period of settlement whichever is earlier.

2. The jewels appraisers appointed in the year 1995 and drawing their pay in the pre-revised scale of pay applicable to the post of Junior Assistant, shall be given the scale of pay, now provided to the Assistant and their pay shall be fixed in the minimum of the revised scale of pay with effect from the date of their appointment."

12. The settlement has been arrived at on 28.02.1997. The letter on which the appellant relies is dated 09.04.1997, this letter was not there when the settlement was arrived at. This letter therefore, cannot be taken into account while interpreting clause 6 of the settlement. The argument of the appellant that as per the letter / guidelines dated 09.04.1997, the pay of the Junior Assistant has to be fixed in the minimum of the revised scale of pay of Assistant in the date of the appointment and the loss if any has to be fixed as personal pay allowance without dearness allowance cannot be accepted. This letter / guidelines which has been given by the Registrar after the settlement, is of no relevance, while deciding the case under Section 33C(2) of the Industrial Disputes Act.

13. The Hon'ble Supreme Court in Municipal Corporation of Delhi Vs. Ganesh Razak and Others, reported in 1995 (1) SCC 235, have observed as hereunder.

"8. Reference may be made first to the Constitution Bench decision in Central Bank of India Ltd. v. PS. Rajagopalan [(1963) IILLJ89SC] on which Shri Rao placed heavy reliance. That was a case in which the question of maintainability of proceedings under Section 33-C(2) of the Act was considered in a claim made by the workmen on the basis of the Sastry Award. The employer disputed the claim of the workmen on several grounds including the applicability of Section 33-C(2) of the Act. It was urged that since the applications involved a question of interpretation of the Sastry Award, they were outside the purview of Section 33-C(2) because interpretation of awards or settlements has been expressly provided for by Section 36-A. This objection was rejected. This Court pointed Out the difference in

the scope of Section 36-A and Section 33- C(2) indicating that the distinction lies in the fact that Section 36-A is not concerned with the implementation or execution of the award whereas that is the sole purpose of Section 33-C(2); and whereas Section 33-C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, Section 36-A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and tile employer and the appropriate Government 'Is satisfied that the dispute deserves to be resolved by reference under Section 36-A. In this context, this Court also indicated that the power of the Labour Court in a proceeding under Section 33- C(2) being akin to that of the Executing Court, the Labour Court is competent to interpret the award or settlement on which a workman bases his claim under Section 33-C (2), like the power of the Executing Court to interpret the decree for the purpose of execution. Relevant extract from that decision is as under: (SCR pp. 154-155)

"Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the Executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the Executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33-C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests."

This decision itself indicates that the power of the Labour Court under Section 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the Executing Court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim

if there be no prior adjudication or recognition of the same by the employer. This decision negatives instead of supporting the submission of learned counsel for the respondents.

9. Another decision on the point is Bombay Gas Co. Ltd. v. Gopal Bhiva [1964 (3) SCR 700] wherein also Gajendragadkar, J., (as he then was) speaking for the Bench, referring to the above Constitution Bench decision, stated that the proceedings contemplated by Section 33-C(2) are analogous to execution proceedings and the Labour Court, like the Executing Court in the execution proceedings governed by the Code of Civil Procedure, would be competent to interpret the award on which the claim is based. It is obvious that the power of the Executing Court is only to implement the adjudication already made by a decree and not to adjudicate a disputed claim which requires adjudication for its enforcement in the form of decree. The Executing Court, after the decree has been passed, is however competent to interpret the decree for the purpose of its implementation. This position was settled by the above Constitution Bench decision and has been the consistent view of this Court ever since then."

14. A perusal of the above judgment would show that the Labour Court while dealing with an application under Section 33C (2) of the Industrial Disputes Act, actually works as an Executing Court and it has to only enforce the settlement which is in the form of a decree. The learned counsel cannot be heard to say that the letter dated 09.04.1997 should be read into the terms of settlement. The term of settlement does not give any indication that the pay of the Senior Assistant / Junior Assistant and sub staff Grade - II, has to be fixed in the minimum of the revised scale of pay of Assistant and sub staff respectively, on date of their appointment and loss, if any, in the emoluments has to be fixed as personal pay without Dearness Allowance. There is nothing in the settlement which would indicate the intention of the parties, at the time of entering into settlement was as stated in the letter of the Registrar of the Cooperative societies. The said letter is completely irrelevant, as said earlier, to decide the position of the fixation of pay scale. Annexure V, which is the relevant annexure for determining the pay scale would show that the basic pay of the Assistant was Rs.720/- and the revised pay is Rs.1270/-. The revised pay should be taken as Rs.1270/- and the Dearness Allowance has to be calculated only on the basis of the revised pay i.e. Rs.1270/-.

15. Orders of the Labour Court and of the Single Judge, therefore, do not require any interference and more particularly, because, the Special Officer of the Bank by his communication dated 26.06.2004 had informed the Registrar that similar fitment formula was allowed in the Ramanathapuram District Central Cooperative Bank, pursuant to 12(3) settlement in respect of one Paramasivam, who was Senior Assistant and therefore, the order of the labour Court must be implemented. Writ appeal is therefore, dismissed. No order as to Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

ars/pkn

To

The Presiding Officer,
Labour Court, Madurai.

+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.78150

+1cc to M/s.Arunachalam, Advocate SR.No.78138

W.A.No.1804 of 2018
and CMP No.14554 of 2018

VG I(CO)
GMY(04/12/2018)

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