

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.739 of 2018
and CMP No.7110 of 2018

The Management/Special Officer,
H.H.617, Nallur Primary Agricultural
Co-operative Credit Society,
Nallur and Post, Vandhavasi Taluk,
Thiruvannamalai District. ... Appellant/Petitioner

versus

1. The Principal Labour Court,
Vellore Court, Vellore District.
2. P.Irusan ... Respondents/Respondent

Appeal filed against the order passed by this Court dated 14.09.2017 passed in W.P.No.780 of 2013. Praying to issue a writ of certiorari, to call for the records in C.P.No.154 of 11 dated 12.10.2011 on the file of the 1st Respondent herein & quash the same.

For appellant : Mr.R.Ramesh

For 2nd Respondent : Mr.S.T.Varadarajulu

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra Court Appeal is to the order of the learned Single Judge made in WP No.780 of 2013 dated 14.09.2017. The said Writ Petition was filed by the appellant, challenging the award of the Labour Court made in CP No.154 of 2011 dated 12.10.2011.

2. The facts as set out in the Writ Petition are as follows:
The workman joined the services of the appellant Society as Salesman on 01.01.1979. He was promoted as an Attender on 09.03.1999. He raised an Industrial Dispute through the Union claiming that though he was promoted as attender on 09.03.1999,

he was directed to work as clerk from 09.03.1999 and he continued as such till the date of retirement on 30.06.2009. Therefore, according to the workman, he should be paid wages as a clerk for the said period. The said Industrial Dispute was referred to Conciliation before the Labour Officer and the settlement under Section 12(3) of the Industrial Dispute Act would arrive at between the workman and the Management.

3. As per the said settlement, the workman agreed not to press for wages as a clerk as claimed by him and the Management in turn agreed to promote him as Secretary, it was further agreed that the order of appointment as Secretary will be issued within one month from the date of the settlement. The settlement was reached on 28.12.2017. The Management, however, did not honour the said settlement. Therefore, the workman moved the Labour Court, Vellore by a Computation Petition No.154 of 2011. The prayer in the Computation Petition was for computation of the benefits due to the petitioner, based on the wages payable to him as if he had been a clerk for the period from 09.03.1999 to the date of superannuation in the year 2009. The Labour Court by its award dated 12.10.2011 allowed the Computation Petition and directed the Management to pay a sum of Rs.4,67,000/- as claimed by the workman.

4. Aggrieved the Management had approached this Court by filing the above Writ Petition seeking to quash the award of the Labour Court dated 12.10.2011.

5. We have heard Mr.R.Ramesh, learned counsel appearing for the appellant and Mr.S.T.Varadarajulu, learned counsel appearing for the 2nd respondent.

6. Mr.R.Ramesh, learned counsel appearing for the Management would contend that the Labour Court was not right in allowing the Computation Petition inasmuch as the workman never worked as a clerk, but he was only working as an attender. Since, there was no sanctioned post of a clerk, the Labour Court was not right in allowing the Computation Petition and directing the Management to pay the salary of the clerk to the second respondent workman.

7. Per contra, Mr.S.T.Varadarajulu, learned counsel appearing for the 2nd respondent workman would contend that having scuttled his attempt to have his right declared by the Labour Court by entering into the 12(3) settlement and having not acted as per the settlement, the Management cannot now take a stand that the appellant never worked as a clerk. The fact that the appellant had worked as a clerk has been admitted by the Management during the 12(3) settlement and the same has been recorded in the 12(3) settlement itself. Therefore, according to the learned counsel for the 2nd respondent, the learned Single

Judge was right in dismissing the Writ Petition filed by the Management.

8. The claim of the workman was that though he was promoted to the post of attender in 1999, he was directed to perform the duties of the clerk which he performed till his superannuation in the year 2009. Therefore, he had made a claim for payment of the wages as a clerk and not as an attender. During the pendency of the said claim the Management choose to enter into a 12(3) Settlement with the workman, wherein, it admitted the fact that the workman had worked as a clerk during the relevant period, however, the Management offered to appoint him as a Secretary and agreed to issue an appointment order within one month. Accepting the said offer the workman had relinquished his claim for payment of wages as a clerk. This settlement was reached on 28.12.2007, however, the Management did not implement such settlement which led to the workman approaching the Labour Court again with the Computation Petition. It is also seen that before filing the Computation Petition the workman had made several demands to the Management requiring the Management to comply with the settlement.

9. It is also seen from the award of the Labour Court, that the Management has not chosen to cross examine the workman and the evidence tendered by the workman stood unimpeached.

10. Therefore, we are of the view that the Labour Court was right in allowing the Computation Petition and the learned Single Judge is justified in rejecting the challenge there to by dismissing the Writ Petition. In the absence of any contra evidence led by the Management or in the absence of any cross examination of the workman by the Management, the Labour Court had no other alternative but to allow the Computation Petition as the evidence on record stood uncontroverted. We are therefore constrained to dismiss the appeal upholding the order of the learned Single Judge. However, there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

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Sub Assistant Registrar

jv

To

The Principal Labour Court,
Vellore Court, Vellore District.

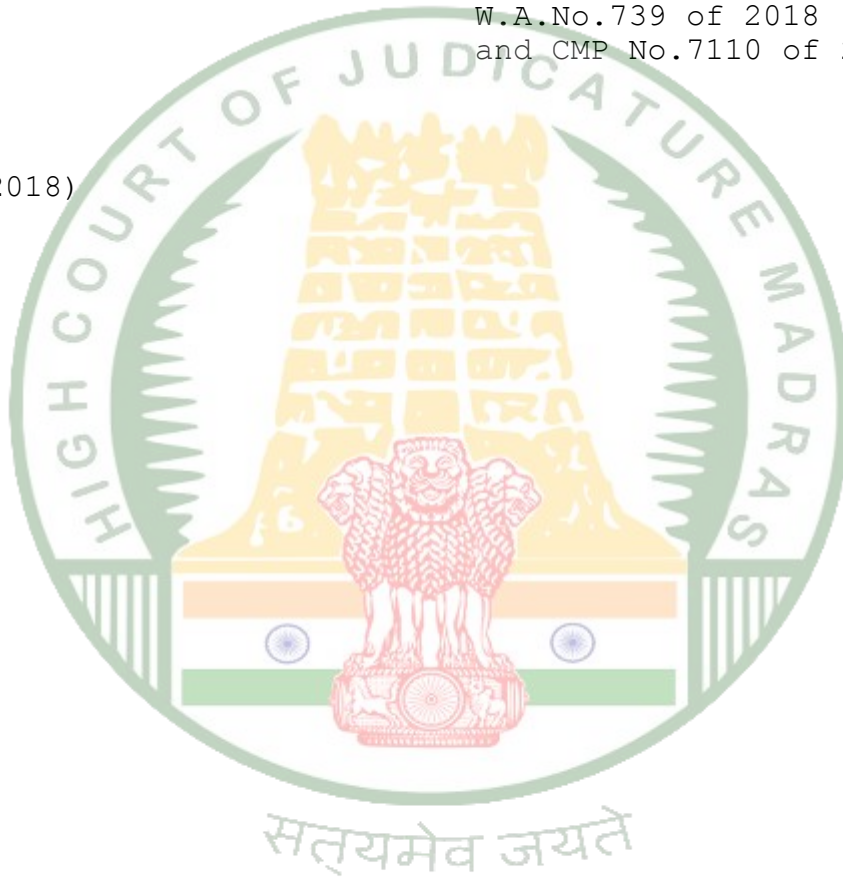
+ 1 cc to Mr.R. Ramesh, Advocate Sr.37374

+ 1 cc to Mr.S. T. Varadarajulu, Advocate Sr.37681

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SVI (CO)
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