

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.NO.18560 of 2014

The Management
Dharmapuri District Central Co-operative
Bank Limited, Dharmapuri-1. ... Petitioner

Vs

1. The Presiding Officer
Labour Court, Salem.

2. S.Prasannan ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in C.P.No.89 of 2012 on the file of the Labour Court, Salem, the first respondent herein and quash the same.

For Petitioner : Mr.M.R.Raghavan
For Respondents : R1 - Labour Court
R2 - M/s.Dasaratha Rao

ORDER

This writ petition is filed by the management, aggrieved over the direction issued by the first respondent, directing the management to pay a sum of Rs.73,331/- towards difference in subsistence allowance.

2. The short facts leading to the filing of the present writ petition is as follows.

3. The second respondent worked as cashier in Royakottai branch of the petitioner co-operative bank during 1992 to 2000. It is alleged that he indulged in serious misconduct resulting in loss to the bank to the extent of Rs.9,43,000/-. In respect of the misconduct, departmental proceedings were initiated against the second respondent and charge sheet was issued to him on 06.03.2002. After the enquiry, the charges were held proved and he was ordered to be dismissed from service from 13.04.2009.

3. The second respondent filed C.P.No.9 of 2006, claiming subsistence allowance for the period from 19.06.2001 to 21.01.2003. It was his claim that from the date of suspension,

for the first three months, he is entitled to 50% of the wages and thereafter, he was entitled to 75% of the wages and therefore he was entitled to a sum of Rs.1,69,498.

3.1. Admittedly, a sum of Rs.89,167/- had been paid by the management and therefore the balance payable was only Rs.73,331/-. So claiming, he filed a petition in C.P.No.9 of 2006. Thereafter, for reasons best known, he has chosen to withdraw the same. The said claim petition has been dismissed as withdrawn on 12.04.2006. For the very same relief, after six years, he filed C.P.89 of 2012 before the labour court. The labour court has allowed the petition as prayed for by directing the management to pay the said amount of Rs.73,331/- within a period of two months from the date of order along with 9% interest. Challenging the same, the management is before this Court.

4. The main contention raised by the learned counsel for the management is that the claim made in C.P.89 of 2012 before the labour court was barred by the principle of res judicata, as previously the very same workman has filed C.P.No.9 of 2006, which was withdrawn on 12.04.2006. Learned counsel for the management submits that an entry also has been made in the court docket by the workman to the effect that he is withdrawing C.P.No.9 of 2006. No doubt, this incident has happened and the perusal of the copy of the court docket, proves the same. But the question is whether withdrawal of C.P.No.9 of 2006 would have the effect of barring the right of the workman from moving the labour court again for the same relief.

4.1. Learned counsel for the management also contends that there is a delay of six years between the first and second claim petitions and such delay has put the interests of the management in jeopardy.

5. Learned counsel appearing for the workman / second respondent submits that though there is a delay, this court need not rely on technical plea of maintainability on the ground of res judicata and that the present position of the workman deserves special consideration as he is bed bound on account of his old age and sickness.

6. So far as the jurisdiction of the labour court is concerned, the procedure is not governed by strict rules of Civil Procedure Code of Evidence Act. There are special rules of evidence applicable to labour jurisprudence. Even assuming that the principle of res judicata would be applicable to labour cases, still when the issue between the management and the workman was neither decided on merits nor decided fully and completely, whether the plea of res judicata would be available

for the management is the issue.

7. When the case has been dismissed on the endorsement of withdrawal, can it be contended that the second claim petition is not maintainable. Unless it is shown that the claim is barred by limitation, or the withdrawal would amount to waiver, this Court is of the opinion that the second claim petition is maintainable. No doubt, delay in making the claim would have some repercussions on the side of the management, but still, balancing of interests of both sides is possible.

8. Though the claim is made for a sum of Rs.73,331/-, deducting certain sum towards belated claim, an order can be passed permitting the claimant / workman to receive a sum of Rs.50,000/-, along with accrued interest in full quit of his claim made. That would save the interests of both sides. The management has already deposited a sum of Rs.50,000/-on 05.08.2014 (on the orders of this Court dated 15.07.2014) and that amount would enure for the benefit of the workman and the workman is permitted to withdraw the same from the account of C.P.89 of 2012 on the file of the labour Court, Salem, in full and final settlement of the claim of the petitioner towards difference in subsistence allowance.

9. With these modifications, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

kst

To

1. The Presiding Officer
Labour Court, Salem.

+1cc to Mr.M.R.RAGHAVAN, Advocate, S.R.No.58073
+1cc to Mr.R.DASARATHA RAO, Advocate, S.R.No. 57811

W.P.No.18560 of 2014

TR(24/08/2018)