



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.02.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANW.P(MD)No.14097 of 2014 and
MP(MD)Nos.1 & 2 of 2014

The Management,
Virudhunagar District Central Co-operative Bank Ltd,
Rep.by its Managing Director/Joint Registrar,
Madurai Road,
Virudhunagar - 626 001.

... Petitioner

Vs.

1. The Joint Commissioner of Labour,
Appellate Authority under
Payment of Gratuity Act, 1972,
O/o. Joint Commissioner of Labour,
Madurai.

2. The Assistant Commissioner of Labour,
Controlling Authority under
Payment of Gratuity Act, 1972,
O/o. Assistant Commissioner of Labour,
Madurai.

3. K.Subramanian

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the order passed by the first respondent in P.G.A.No.7 of 2013 dated 30.10.2013 confirming the order passed by the second respondent in P.G.No.124/2010 dated 30.04.2012 and quash the same.

For Petitioner

: Mr.D.Shanmugaraja Sethupathi

For Respondents

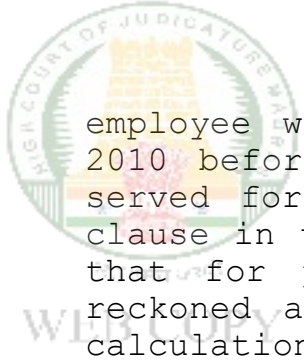
: Mr.K.Saravanan,

Government Advocate for R1 and R2

Mr.V.O.S.Kalaiselvam for R3

ORDER

The petitioner is a bank registered under the Tamil Nadu Cooperative Societies Act, 1983. The third respondent was employed in the petitioner bank. He reached the age of superannuation on 31.05.2009. Since the gratuity dues payable to the third respondent



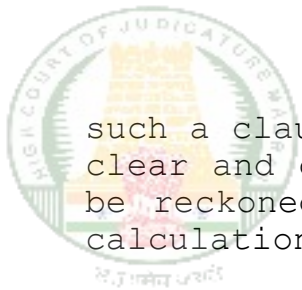
employee were not settled, the third respondent filed P.G.124 of 2010 before the controlling authority. The third respondent had served for a period of 36 years. But, by applying the relevant clause in the Group Gratuity Scheme, the third respondent contended that for purposes of calculation of Gratuity, 26 days will be reckoned as a month not only for arriving at pay, but also for calculation for length of service.

2.Thus, the length of service for the third respondent for purpose of computation of gratuity amount became 42 years even though he had served only for a period of 36 years. However, the controlling authority accepted the claim and subscribed to the method suggested by the third respondent for calculating the length of service and ordered to pay gratuity amount accordingly. The said order dated 30.04.2012 was questioned by the petitioner before the appellate authority who confirmed the same by order dated 30.10.2013. The same is assailed in this writ petition.

3.The learned counsel appearing for the petitioner contended that in view of the decision of the Hon'ble Supreme Court reported in **(1984) 4 SCC 356 (Jeewanlal Ltd and others Vs. Appellate Authority under the Payment of Gratuity Act and others)**. The controlling authority will not have the jurisdiction to direct the management to pay gratuity to the employee when the employee is claiming on the basis of settlement or scheme entered into between the employer and the employee.

4.In the present case, the third respondent claimed gratuity on the basis of settlement under Section 12(3) of the Industrial Disputes Act, 1947. This Court is of the view that the orders impugned in the writ petition deserves to be sustained. The learned counsel appearing for the third respondent drew the attention of this Court to the order dated 25.11.2009 passed by this Court in WP.Nos.2069 of 2005 and 2364 of 2009. In the said case also, the Court was concerned with the expression "for purposes of calculation of gratuity, 26 days will be reckoned as a month not only for arriving at pay, but also for calculation for length of service. It is similar to the case on hand. This Court allowed the writ petition filed by the workman and dismissed the writ petition filed by the management. The Management namely, Erode District Central Co-operative Bank filed WA.Nos.1200 & 1221 of 2010. But, the Hon'ble Division Bench by order dated 29.10.2013 dismissed the appeals. The Hon'ble Supreme Court also dismissed the SLPs filed by the Erode District Central Cooperative Bank by order dated 05.05.2014.

5.Section 4(5) of the Payment of Gratuity Act, 1972 states that nothing in Section 4 shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. In this case, the settlement entered into between the management and the workman provides for better terms. This Court can only observe that the object in incorporating



such a clause is intended to reward a long length of service. It is clear and categorical that the settlement states that 26 days will be reckoned as a month not only for arriving at pay, but also for calculation for length of service.

6. This expression will have to be understood in its plain meaning. By applying the said clause, even though the third respondent has put in only 36 years of service, his total length of service will be reckoned for the purpose of computing gratuity as 42 years. It may sound illogical. But, then when such a beneficial consequence flows out of the plain meaning of the terms of the Group Gratuity Scheme, it is not for this Court to hold otherwise.

7. In this case, the authorities under the Payment of Gratuity Act, 1972 have accepted such an interpretation and this Court while exercising the jurisdiction under Article 226 of the Constitution of India will not be justified in interfering with the same. In this view of the matter, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

1. The Joint Commissioner of Labour,
Appellate Authority under
Payment of Gratuity Act, 1972,
O/o. Joint Commissioner of Labour,
Madurai.
2. The Assistant Commissioner of Labour,
Controlling Authority under
Payment of Gratuity Act, 1972,
O/o. Assistant Commissioner of Labour,
Madurai.

+ 1 CC TO Mr.V.O.S.KALAI SELVAM, ADVOCATE IN SR No. 46959
+ 1 CC TO Mr.D.SHANMUGA RAJA SETHUPATHI, ADVOCATE IN SR No. 46745
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 47290

SKM

TE/JC/SAR-2 : 28/02/2018 : 3P/6C