

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.29289 of 2003

- 1.V.Somasundaram
- 2.D.Santhanakrishnan

...Petitioners

vs.

- 1.The Presiding Officer,
Labour Court,
Coimbatore.
2. The Coimbatore District Central
Co-operative Bank Ltd.,
State Bank Road,
Coimbatore-18,
Rep.by its Special Officer.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent pertaining to the common order in C.P.No.306 and 308/2001 dated 01.08.2003, quash the same and consequently, direct the 2nd respondent to pay a sum of Rs.45,243/- (Rupees Five Thousand Two Hundred and Forty Three Only) to the 1st petitioner and Rs.40,102/- to the 2nd petitioner, with 18% interest from 28.02.1997 for the 1st petitioner and from 31.05.1998 for the 2nd petitioner, the respective dates of their retirements, and pass such other suitable orders.

WEB COPY

For Petitioner : Mr.C.Murugesan

For Respondents : R1-Labour Court
Mr.M.S.Palani samy
for R2.

O R D E R

The order dated 01.08.2003 passed in C.P.Nos.306 & 308 of 2001 is under challenge in the present writ petition.

2. The writ petitioners state that the first petitioner was employed in the second respondent bank on 12.12.1957 and he retired from service on 28.02.1997, on attaining the age of superannuation as a Branch Manager from Negamam Branch, Coimbatore District. The second petitioner was also employed in the 2nd respondent bank and retired from service on 31.05.1998, on attaining the age of superannuation as Assistant Manager. The writ petitioners further state that the entire particulars of the Co-operative Bank Limited was administered by the petitioners 1 and 2 being Branch Manager and Assistant Manager, and therefore, both the petitioners were working as Managerial employees and they cannot be construed as 'workmen' within the meaning of Section 2(S) of the Industrial Dispute Act.

3. The learned counsel for the writ petitioner states that 12(3) settlement was entered into between the Management and the workmen on 30.03.1979. As per Section 12(3) settlement, the benefit of unearned leave to employees will be regulated with reference to the rules in force, as in the case of Tamil Nadu State Government Employees after following procedures. Thus, both the writ petitioners are entitled to get the benefit of unearned leave, but the same had not been extended to them. Therefore, the writ petitioners were constrained to move the present writ petition.

4. The learned counsel for the writ petitioners further stated that the Managing Director is the administrator of the entire bank and therefore, other employees are workmen and Managing Director alone is in the Managerial cadre.

5. Such a contention is unacceptable. Under the Provisions of the Tamil Nadu Co-operative Society Act, 1983, the elected members constitute the board and administer the society. The Managing Director is a Government Officer, working on foreign service terms and conditions. Such an officer is in no way connected with the affairs of the Co-operative Societies and they are the administrative controller of the Society, appointed by the Government, in order to protect and regulate public money under the Provisions of the Tamil Nadu Co-operative Society Act, 1983.

6. In respect of other employees, two categories of employees are in the Central Co-operative Bank. One is the Managerial cadre or supervisory cadre and the other category is

the Workmen. As far as Group III and IV are concerned, they are coming under the Workmen Category. The Branch Manager is bound to perform the duties and responsibilities of the Central Co-operative Bank and they have to monitor the transactions of the Bank.

7. This being the principles to be followed, the Branch Manager and the Assistant manager cannot be construed as a "Workmen" and they are performing the duties and responsibilities of the Managerial Cadres and accordingly, they are defined as Managerial Cadre employees.

8. It is relevant to note section 2(S) of the Industrial Dispute Act which reads as follows:

"(S) "workman" means any person (including an apprentice) employed in an industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any providing under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person."

9. Clause (iii) of Section 2(S) of the Industrial Disputes Act enumerates that if an employee is mainly in a managerial or administrative capacity or (iv) who being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function namely of a managerial nature, they cannot be construed as a workmen within the meaning of the said provisions.

10. The Branch Manager of the Central Co-operative Bank is exercising the full administrative powers of the branch and he is responsible and accountable for the entire branch. The Assistant Manager is also a Managerial cadre and therefore, both the writ petitioners were holding the post in Managerial cadre and they cannot be defined as workmen within the meaning of Section 2(S) of the Industrial Dispute Act. The Labour Court has also considered all these aspects in a right perspective and arrived at a conclusion that both the writ petitioners were employed in the Managerial cadre. This Court does not find any infirmity or illegality in the order passed by the Labour Court.

11. However, this Court is of the considered opinion that these writ petitioners do have an effective remedy. In fact

these Managerial employees of the Central Co-operative bank are entitled to approach the competent authority under the provisions of the Tamil Nadu Co-operative Societies Act for redressal of their grievances. More specifically, the Co-operative Society employees are at liberty to file a revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act for the purpose of redressing their grievances in this regard.

12. This being the statutory remedy available to the Managerial Cadre employees of the Co-operative Society under the provisions of the Tamil Nadu Co-operative Societies Act, the writ petitioners are at liberty to file an appropriate application before the Competent Authority.

13. Accordingly, this Court has no hesitation in coming to a conclusion that there is no perversity in respect of the findings of the Labour Court and consequently, the awards dated 01.08.2003 passed in C.P.Nos.306 & 308 of 2001 are confirmed. Consequently, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssb
To

1.The Presiding Officer,
Labour Court,
Coimbatore.

2. The Special Officer,
Coimbatore District Central
Co-operative Bank Ltd.,
State Bank Road,
Coimbatore-18.

+1cc to Mr.R.Krishnasamy , Advocate SR.No. 80914
+1cc to Mr.M.S.Palanisamy , Advocate SR.No. 80781

W.P.No.29289 of 2003

A.SK(02/12/2019)