

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.17219 of 2001

Cuddalore District Central
Co-operative Bank Ltd.,
Rep. by its Special Officer
1, Beach road
Cuddalore-1.

.. Petitioner

Vs.

1.The Joint Commissioner of Labour
Chennai-6.

2.The Assistant Commissioner of Labour
Chennai-6.

3.R.Balakrishnan

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for records on the file of the respondents relating to the order of the 1st respondent dated 13.07.2001 in P.G.Appeal No.25 of 2001 confirming the order of the 2nd respondent dated 18.04.2000 in P.G.case No.23/2000 and quash the order dated 13.07.2001.

For Petitioner : Mr.R.Arumugam

For R1 & R2 : Mr.R.S.Selvam
Government Advocate

For R3 : Mr.V.Ajoy ghose

O R D E R

Writ Petition is filed for issuance of a writ of Certiorari calling for records on the file of the respondents relating to the order of the 1st respondent dated 13.07.2001 in P.G.Appeal No.25 of 2001 confirming the order of the 2nd respondent dated 18.04.2000 in P.G.case No.23/2000 and quash the order dated 13.07.2001.

2(i).The learned counsel appearing for the petitioner contended that the 3rd respondent was employed as Assistant Manager in the petitioner bank and retired from service on 30.06.1998. On his retirement, the petitioner calculated the gratuity as per the Payment of Gratuity Act and paid a sum of Rs.2,14,400/- to the 3rd respondent. After receipt of the said gratuity amount, the 3rd respondent approached the 2nd respondent claiming a sum of Rs.40,200/- as balance gratuity payable as per the settlement dated 15.04.1997 under Section 12(3) of the Industrial Disputes Act. The petitioner filed counter statement opposing the said application and contended that entire gratuity amount has been paid to the 3rd respondent calculating the amount as per the provisions of the Payment of Gratuity Act. The petitioner entered into a settlement under Section 12(3) of the Industrial Disputes Act with Union, in which the 3rd respondent is a member, whereby the petitioner bank agreed to calculate the gratuity payable by taking 26 days as a month. The clause 28 in the settlement was entered into in order to calculate the gratuity payable by taking 26 days as a month. The Registrar of Co-operative Societies objected to the clause 28 of the settlement dated 15.04.1997 and clarified that there is no provision in the Payment of Gratuity Act for calculating length of service by reckoning 26 days as a month. The calculating length of service by reckoning 26 days as a month is totally against the provisions of the Payment of Gratuity Act and also against the interest of the bank. The petitioner calculated the gratuity amount as per the Act and paid the amount to the 3rd respondent. The learned counsel appearing for the petitioner contended that clause 28 of the settlement, wherein 26 days was taken as a month, is contrary to the statutory provision of the Payment of Gratuity Act and it cannot be enforced.

2(ii).The learned counsel appearing for the petitioner contended that as per the provisions of the Payment of Gratuity Act, 30 days has to be taken as a month. Contrary to the said provision, clause 28 has been included in the settlement under Section 12(3) of the Industrial Disputes Act, wherein 26 days has been mentioned as a month. The provisions of the Payment of Gratuity Act will prevail over the clause 28 of the settlement and the respondents 1 and 2 erred in holding that the 3rd respondent is entitled to gratuity as per clause 28 of the settlement. The respondents 1 and 2 erred in holding that clause 28 is incorporated in the settlement with an intention to pay more gratuity to the employees. The Registrar of Co-operative Societies has objected to payment of gratuity calculated at 26 days as a month. The respondents 1 and 2 have granted more gratuity than what was asked by the 3rd respondent. Further, the 3rd respondent was appointed on 15.04.1966, but the 3rd respondent claimed that he was appointed on 12.08.1964. The date of

appointment as 15.04.1966 was upheld by the Labour Court. The respondents 1 and 2 failed to consider the same. When the seniority of the 3rd respondent was fixed taking his date of appointment as 15.04.1966, the 3rd respondent did not object to the same. The 3rd respondent is claiming that he was appointed on 12.08.1964, but has not produced any material to substantiate this claim. The respondents 1 and 2 without properly appreciating the materials produced by the petitioner erroneously held that the 3rd respondent was appointed on 12.08.1964 and calculated the gratuity, which is erroneous and prayed for allowing the writ petition.

3(i).The learned counsel appearing for the 3rd respondent contended that the 3rd respondent joined the service of the petitioner on 01.08.1964 as a Supervisor/Lower Division Clerk and retired on 30.06.1998 from the post of Assistant Manager (Head Office Cashier). The 3rd respondent had put in 33 years, 10 months and 29 days of service. The petitioner entered into a settlement dated 15.04.1997 under Section 12(3) of the Industrial Disputes Act with Union and as per the clause 28 of the settlement, for calculating gratuity, 26 days has to be taken as a month. Applying the said clause, the petitioner has put in 12,374 days i.e., 39.66 years of service. At the time of retirement of 3rd respondent, the petitioner issued income tax calculation memo dated 30.06.1998 showing that the 3rd respondent's total completed year of service is 33 years and the gratuity payable to the 3rd respondent is Rs.2,54,600/-. Contrary to the said memo, the petitioner has paid only a sum of Rs.2,14,400/- as gratuity instead of Rs.2,54,600/-. The petitioner has received a sum of Rs.2,54,600/- from the Life Insurance Corporation, where premium was paid by the petitioner as per the scheme evolved under a settlement entered into under Section 12(3) of the Industrial Disputes Act in 1982. After having received the said amount from the Life Insurance Corporation, the petitioner is not entitled to withhold a portion of the amount paid by the Life Insurance Corporation towards gratuity payable to the 3rd respondent. On enquiry, the General Manager of the petitioner bank informed the 3rd respondent that as per the instructions of the Registrar of Co-operative Societies, gratuity payable to the 3rd respondent was calculated taking 30 days as a month instead of 26 days as per the settlement and the amount paid is correct.

3(ii).The date of appointment of the 3rd respondent is 01.08.1964 as stated in his rejoinder to the counter filed by the petitioner. The petitioner did not deny the said statement in rejoinder. In the counter statement filed by the petitioner before the authority, the petitioner has admitted that the 3rd respondent was appointed on 01.08.1964 and after break in service, his services were regularised. If the date of appointment of the 3rd respondent is taken as 01.08.1964, he has

put in 12,374 days i.e., 39.66 years and the gratuity payable to the 3rd respondent is Rs.2,68,014/-, whereas the petitioner has paid only a sum of Rs.2,14,400/- to the 3rd respondent. The petitioner is liable to pay the balance sum of Rs.53,614/- along with interest at the rate of 18% per annum from 01.07.1998. Both the respondents 1 and 2 have properly appreciated the contentions of the 3rd respondent and have given valid reason for the orders passed by them. The settlement entered into under Section 12(3) of the Industrial Disputes Act cannot be unilaterally cancelled and it can be cancelled or modified only by following the procedure contemplated under Section 9-A of the Industrial Disputes Act. The Registrar of Co-operative Societies has no power to modify the clause of settlement under Section 12 (3) of the Industrial Disputes Act. The learned counsel appearing for the 3rd respondent relied on the following judgment reported in 2017 SCC Online Kerala 16518 (Chandrasekaran Nair G., vs. The Kerala State Co-operative Agricultural and Rural Development Bank Ltd.,);

"8.The liability to pay gratuity does not get shifted to the insurer by the compulsory insurance and the effect is only that the maturity value of the master policy would go to the credit of the dues of the employee. Any amount in excess of the gratuity due would also go to the employee since the contract of insurance would fail within the ambit of Section 4(5) of the Central Act. Any deficit in the amount due as gratuity to the employee after payment by the insurer has to be met by the employer only as the liability squarely rests on him under Section 4(2) of the Central Act."

4.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 1 & 2 and the learned counsel appearing for the 3rd respondent and perused the materials available on record.

5.The issue whether the gratuity payable to the 3rd respondent is to be calculated taking 36 days as a month or 26 days as a month, is no longer res integra. This issue was considered by this Court in a batch of writ petitions, in which the petitioner was also a party and this Court has held that the gratuity payable to the employee like the 3rd respondent has to be calculated taking 26 days as a month as per the clause 28 of the settlement under Section 12(3) of the Industrial Disputes Act. The learned counsel appearing for the petitioner filed the copy of the said order of this Court dated 09.07.2010 made in W.P.Nos.16395 to 16398 of 2001 etc., batch in the typed set of papers. This Court has taken into consideration in the said case

that the petitioner had deposited the amounts as ordered by the authority and reduced the interest payable by the management from 12.% to 10% to 6% per annum. In view of the same, the gratuity payable to the 3rd respondent has to be calculated taking 26 days only as a month. This Court in the said order reduced the rate of interest from 12% and 10% to 6% per annum. The learned counsel appearing for the 3rd respondent submitted that even though he appeared for some of the employees, his name was not printed, but name of some other counsel was printed and contended that the said order is not binding on the 3rd respondent. The said contention is not acceptable. This Court has given reason for reducing the rate of interest to 6% per annum. The said reason is squarely applicable to the facts and circumstances of the present case. In view of the above said order of this Court, the 3rd respondent is entitled to interest only at 6% per annum.

6.The next question to be decided is whether the 3rd respondent had put in continuous service from 01.08.1964 as claimed by him or only from 15.04.1966 as claimed by the petitioner. It is an admitted fact that the 3rd respondent was appointed on 01.08.1964. But there was a break in service and subsequently, he was appointed on 15.04.1966. To substantiate this contention, the learned counsel appearing for the petitioner has produced a copy of the award dated 26.04.2000 made in I.D.No.83 of 1997. In the said award, it has been mentioned that the date of appointment of the 3rd respondent is 15.04.1966. Further the contention of the learned counsel appearing for the petitioner is that in the seniority list, the 3rd respondent's date of appointment was mentioned only as 15.04.1966 and the 3rd respondent did not object to the same. This contention of the learned counsel appearing for the petitioner was not disputed by the learned counsel appearing for the 3rd respondent. The contention of the learned counsel appearing for the 3rd respondent is that in the counter statement filed by the petitioner before the 2nd respondent, it has been admitted by the petitioner that the 3rd respondent was appointed on 01.08.1964 and after break in service, the services of the 3rd respondent were suitably regularised. In view of such admission, the 3rd respondent is entitled to gratuity from the date 01.08.1964 is contrary to the award of the Labour Court dated 26.04.2000 made in I.D.No.83 of 1997. In view of the categorical finding of the Labour Court that the 3rd respondent was appointed only on 15.04.1966 and the date of appointment mentioned in the seniority list, the 3rd respondent is entitled to gratuity only from 15.04.1966.

7.For the above reason, the 2nd respondent is directed to calculate the gratuity payable to the 3rd respondent taking his date of appointment as 15.04.1966 and calculating 26 days as a

month. The 3rd respondent is entitled to interest at the rate of 6% per annum instead of 10% per annum as ordered by the 2nd respondent. The 2nd respondent on such calculation directed to pay the amounts to the 3rd respondent after deducting the amount already paid by the petitioner from and out of Rs.56,424/- deposited by the petitioner and pay the balance amount to the petitioner.

8.With the above modification, the writ petition is partly allowed. No costs.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

kj

To

1.The Joint Commissioner of Labour
Chennai-6.

2.The Assistant Commissioner of Labour
Chennai-6.

+1cc to Mr.R.Arumugam, Advocate SR.No.66242

+1cc to Mr.V.Ajoy ghose, Advocate SR.No.66269

+1cc to Government Pleader, High Court, Madras SR.No.67124

W.P.No.17219 of 2001

PPA (CO)
GMY (12/09/2019)

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