

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32279 of 2004

The Management of Coimbatore District Central
Co-operative Bank Ltd.,
Rep.by its Special Officer,
Coimbatore.

...Petitioner

vs.

1.The Presiding Officer,
Labour Court, Coimbatore.

2.R.Swaminathan (deceased)

3.M.Ramalingam

4.K.Saraswathi

5.Elanthirayan

6.P.Shanmugam

7.A.Easwaran

8.S.Arthanareeswaran

9.E.Radhakrishnan

10.A.Sarojini

11.A.Moses

12.V.K.Kuppusamy

13.V.Ponnusamy

14.N.R.Ayyasamy

15.N.Umanath Singh

16.V.K.Subbannan

17.S.Dhandapani

18.U.S.Govindarajan

19.S.Kandanathan

20.K.Mayilsamy

21.K.Palaniappan

22.K.G.Balasubramanian

23.N.Saraswathi

24.R.Duraisamy

25.O.S.Arumugam

26.S.Karuppusamy

27.R.Rathinam

28.S.Rajeswari

29.P.Vagheesan

30.V.Saraswathi
31.C.Natarajan (Deceased)
32.S.Ramakkal
33.K.N.Pattapan
34.K.Ganapathy
35.R.Kuppusamy
36.C.Kumarappan
37.S.Srinivasan
38.K.Subburaj
39.G.Leelavathi
40.R.Sivanandan
41.E.R.Palanivel
42.P.Thirunavukkarasu
43.S.Saraswathi
44.S.Senthil Kumar
45.Sowndaram
46.Kaveri
47.Karpagam
48.Akilandeswari
49.Santhanalakshmi
50.N.Saravana Chandran

... Respondent

Substituted as legal heirs of Deceased R2 as per order dated 25/09/2019 in W.M.P.No.28064 of 2019 in W.P.No.32279 of 2019.

Substituted as legal heirs of deceased R31 as per order dated 25/09/2019 in W.M.P.No.28065 of 2019 in W.P.No.32279 of 2004

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 1st respondent in C.P.Nos.351 to 354 of 2002, 521 to 523 of 2002, 526 to 542 of 2002, 663 to 667 of 2002, 685 to 687 of 2002, 853/2002, 854/2002, 913/2002, 914/2002, 918/2002 and 924/2002 dated 04.03.2004, quash the same.

For Petitioner : Mr.R.Parthiban

For Respondents : R1-Labour Court
Mr.C.Murugesan
for RR3 to 30, 32 to 50.
RR2, 31-Deceased.

O R D E R

The order dated 04.03.2004 passed in C.P.Nos.351 to 354 of 2002, 521 to 523 of 2002, 526 to 542 of 2002, 663 to 667 of 2002, 685 to 687 of 2002, 835/2002, 854/2002, 913/2002, 914/2002, 918/2002 and 924/2002 dated 04.03.2004, by the Labour Court is sought to be quashed in the present writ petition.

2. The writ petitioner is the Management of Coimbatore District Central Co-operative Bank.

3. The writ petitioner states that the respondents are working in various capacities from the cadre of Managers to Sub-staff. The respondents/employees were retired from service in between the years 1998 and 1999 and after a delay of about 3 years from their respective date of retirement, the respondents/employees filed a computation petition under Section 33(C)(2) of the Industrial Disputes Act, claiming encashment of unearned leave on private affairs for 90 days as full salary along with 18% interest from their date of retirement.

4. The petitioner states that the Bye-laws of the petitioner bank were amended for inclusion of Encashment of Unearned Leave on Private affairs and the same was registered by the Deputy Registrar of Co-operative Societies on 25.05.2001. However, the respondents in this writ petition had already retired by that time. The Bye-law had been amended without instructions from the Registrar of Co-operative Societies, for amendment of the Special Bye-law. It is necessary to state that when the special bye-laws of the Bank are to be amended, it has to be endorsed by the Registrar of Co-operative Societies.

5. Though the Bye-law was amended with effect from 01.07.1990, it was neither endorsed nor approved by the Registrar of Co-operative Societies. In fact, the Registrar vide his letter dated 11.04.2002, instructed the Special Officer to arrange for cancellation of the amendment made in respect of encashment of unearned leave on private affairs. In the light of the instructions issued by the Registrar, the Special Officer of the petitioner Bank has passed a resolution to cancel the amendment and the same is pending.

6. Under these circumstances, the computation petition was filed by the respondents under Section 33(C)(2) of the Industrial Disputes Act. The contention raised by the writ petitioner before the Labour Court was that the petition itself is not maintainable, as there was no pre-existing right for claim of encashment of unearned leave on private affairs. When the benefit of unearned leave on private affairs are not

crystallized and the rights are not ensured by way of an amendment, the bye-law which is to be approved by the Registrar of Co-operative Society. The petition under Section 33(C)(2) of the Industrial Disputes Act cannot be entertained, as the very entitlement itself is disputed by the writ petitioner/Management.

7. The writ petitioner states that in respect of the dispute raised in this regard and also maintainability of the claim petition under Section 33(C)(2) of the Industrial Disputes Act, the Labour Court allowed the claim petition and computed the amount and passed an order, which is in violation of Section 33(C)(2) itself.

8. The respondents objected the contention of the writ petitioner by stating that the encashment of unearned leave on private affairs was included by way of an amendment and therefore, the employee have got a right to claim encashment of unearned leave on private affairs. It was initially registered by the Deputy Registrar of the Co-operative Societies on 25.05.2001. Therefore, the respondents are entitled for the said benefit and there is no infirmity in respect of the claim petition filed before the Labour Court under Section 33(C)(2) of the Industrial Disputes Act.

9. This Court is of the considered opinion that when certain benefits which are all sought to be included by way of an amendment, the statute requires the approval of the Registrar of the Co-operative Societies, then only, after such approval under the statute, the rights can be conferred. The mere process of amendment or incomplete amendments cannot be a ground to claim right and the same cannot be construed as a pre-existing right. In other words, if the amendments are approved by the Registrar of the Co-operative Societies, such amendments for grant of benefit of encashment of unearned leave on private affairs came into force, then alone, the Labour Court can entertain a claim petition under Section 33(C)(2) of the I.D Act and not otherwise. When the Management itself has disputed that the benefit was not granted to the respondents and they have filed a petition, after a lapse of 3 years from their respective date of retirement, then the Labour Court ought not to have entertained the petition under Section 33(C)(2) of the ID Act. Contrarily, if at all the respondents are of the opinion that they are entitled, then, only a dispute is to be raised, and not the claim petition filed under Section 33(C)(2) of the Industrial Disputes Act.

10. This being the principles to be followed, the respondents have not established any pre-existing right before the Labour Court, so as to entertain a claim petition under Section 33(C)(2) of the Industrial Disputes Act. The Labour Court also committed an error in entertaining the petition,

without even ascertaining the facts as to whether the right of the benefit of encashment of unearned leave on private affairs was conferred on the respondents or not.

11. Under these circumstances, the order of the Labour Court is perverse and not in consonance with the legal principles. Accordingly, the order dated 04.03.2004 passed in C.P.Nos.351 to 354 of 2002, 521 to 523 of 2002, 526 to 542 of 2002, 663 to 667 of 2002, 685 to 687 of 2002, 835/2002, 854/2002, 913/2002, 914/2002, 918/2002 and 924/2002 dated 04.03.2004, are quashed. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ssb

To

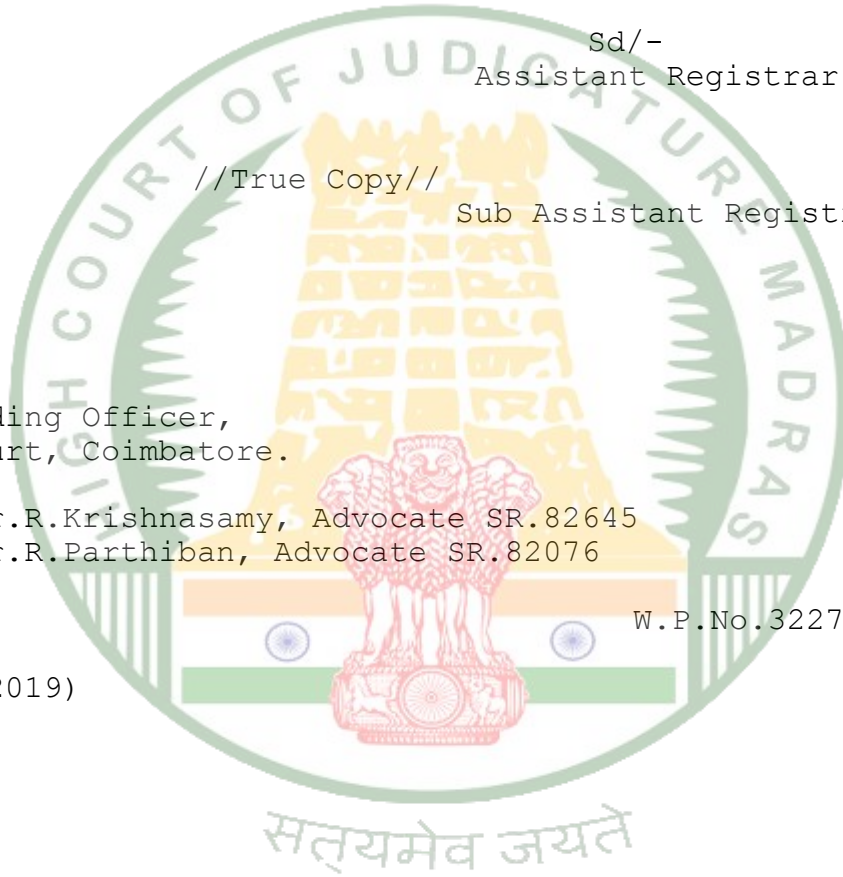
The Presiding Officer,
Labour Court, Coimbatore.

+1cc to Mr.R.Krishnasamy, Advocate SR.82645

+1cc to Mr.R.Parthiban, Advocate SR.82076

W.P.No.32279 of 2004

SVI (CO)
CB(12/12/2019)



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