

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.213 of 2012

The Kancheepuram Central Coop. Bank Ltd.,
Rep. By its Special Officer,
15, Sheikpet North Street,
Kancheepuram 631 501.

.. Petitioner

Vs.

1.The Presiding Officer,
First Additional Labour Court,
Chennai.

2.V.Guna

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records culminating in the order of the first respondent dated 30.06.2011 made in C.P.No.624 of 2010 and quash the same.

For Petitioner : Ms.G.Thilakavathi
(Senior Counsel)
for M/s.R.Gopinath

For R1 : Court

For R2 : Mr.Vasudevan

ORDER

The present Writ Petition is filed for an issuance of a Writ of Certiorari, calling for the records culminating in the order of the first respondent dated 30.06.2011 made in C.P.No.624 of 2010 and quash the same.

2.The 2nd respondent filed the claim petition in C.P.No.624 of 2010 under Section 33 C (2) of the Industrial Disputes Act, claiming a sum of Rs.18,187.50/- being the

wages for suspension period between February, 1988 to April, 1989 and a sum of Rs.2,53,385.34/- as petitioner has not given appropriate fitment of scale of pay to the 2nd respondent. According to the 2nd respondent, while he was on deputation in Kovur Agricultural Service Cooperative Society as Secretary, he was suspended on 05.02.1988 for certain alleged mis-conduct. Subsequently, the order of suspension was revoked on 10.05.1989. The 2nd respondent was prosecuted for the said offence alleged to have been committed by him while he was working as a Secretary of Kovur Agricultural Service Cooperative Society in C.C.No.318 of 1991 on the file of the Judicial Magistrate No.1, Poonamallee. The 2nd respondent was convicted by the learned Judicial Magistrate No.1, Poonamallee by the judgment dated 08.10.2002. On appeal in C.A.No.78 of 2002 before the learned Additional District Judge (Fast Track Court-IV), Poonamallee, by the judgment dated 11.04.2003, the learned Judge acquitted the 2nd respondent. According to the 2nd respondent, he was entitled to a sum of Rs.18,187.50/- towards wages for the period of suspension from February, 1988 to April, 1989 and a sum of Rs.2,53,385.34/- as the petitioner had not given appropriate fitment of scale of pay to the 2nd respondent and filed the claim petition under Section 33 C (2) of the Industrial Disputes Act.

3.The petitioner filed counter statement before the 1st respondent. According to the petitioner, the 2nd respondent was given appropriate scale of pay. The 2nd respondent is claiming his pay for July, 1989 at Rs.623/-, while the petitioner has given fitment to the 2nd respondent at Rs.725/- on 01.07.1989 in the time scale of pay, 505-30-655-830 etc. Further in January, 1990, the 2nd respondent is claiming Rs.653/-, while the petitioner granted Rs.760/-. The petitioner contended that calculation made in the annexure are erroneous and basic pay claimed by the 2nd respondent is erroneous and the petitioner has granted correct fitment, even in excess of fitment claimed by the 2nd respondent.

4.Before the 1st respondent, the 2nd respondent examined himself as W.W.1 and marked 8 documents as Exs.P1 to P8 and one K.Narayanan was examined as M.W.1 on behalf of the petitioner and petitioner marked two documents as Exs.R1 and R2. The 1st respondent considering Ex.R2, held that the petitioner has granted more amounts as salary than the amount claimed by the 2nd respondent. The 1st respondent held that petitioner has not filed any document to show that the 2nd respondent was paid the said amount and allowed the claim petition on the ground that the amount claimed by the 2nd respondent is less than the amount mentioned in Ex.R2.

5.Challenging the said order, the petitioner has come out with the present Writ Petition.

6.The learned Senior Counsel appearing for the petitioner contended that the salary of the 2nd respondent as mentioned in Ex.R2 was directly deposited to his bank account and the 2nd respondent has withdrawn the said amount. To substantiate the same, the petitioner produced the bank ledger before the 1st respondent and hence, the order of the 1st respondent is erroneous and prayed for setting aside the order of the 1st respondent and allowing the Writ Petition.

7.The learned counsel appearing for the 2nd respondent contended that the petitioner has not correctly fixed the scale of pay of the 2nd respondent and the petitioner is liable to pay the amounts as claimed by the 2nd respondent in the claim petition and prayed for dismissal of the Writ Petition.

8.Heard the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the 2nd respondent and perused the materials available on record.

9.From the impugned order of the 1st respondent, it is seen that the petitioner has filed Ex.R2 and contended that the petitioner has fixed the 2nd respondent in the scale of pay more than what the 2nd respondent has claimed. The petitioner has contended that while the 2nd respondent claimed basic pay of Rs.623/- in July, 1989, the petitioner has fixed Rs.725/- on 01.07.1989 and the 2nd respondent claimed Rs.653/- as basic pay in January, 1990 while according to the petitioner, the 2nd respondent was fixed basic pay of Rs.760/- on 05.01.1990. The 1st respondent has accepted Ex.R2 and held that the petitioner has granted more amounts than what is claimed by the 2nd respondent. The 1st respondent having accepted Ex.R2, erred in holding that the petitioner failed to prove that the said amount was paid to the 2nd respondent. The 1st respondent has failed to consider that the petitioner is a Central Co-operative Bank and salary to their employees are directly credited to the bank account of their employees and no cash will be paid to their employees by way of salary. The learned counsel appearing for the 2nd respondent has not disputed the contention of the learned Senior Counsel appearing for the petitioner that salary to the employees are directly credited to the bank account. The 2nd respondent also has not disputed Ex.R2. Considering the above facts, the Writ Petition is liable to be allowed, setting aside the order of the 1st respondent dated 30.06.2011.

10.Accordingly, this Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

gsa

To

The Presiding Officer,
First Additional Labour Court,
Chennai.
+1cc to M/s.R.Gopinath , Advocate SR.No. 49622

W.P.No.213 of 2012

A.SK(22/07/2019)



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