

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.06.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.15211 of 2018 &
W.M.P.No.18044 of 2018

The Management of Coimbatore District
Co-operative Milk Producers Union Ltd.,
rep. by its General Manager,
Pachapalayam,
Coimbatore-643 010. ... Petitioner

Versus

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. K.N.Murugesan ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the order of the 1st respondent Labour Court, Coimbatore dated 26.09.2017 in Computation Petition Nos.202/2003, 959/2003, 422/2004 and 202/2007 and quash the same.

For Petitioner : Mr.P.Narayanamoorthy
For Respondents : Mr.K.G.Ramesh for R2

सत्यमेव जयते
ORDER

This Writ Petition has been filed, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the order of the 1st respondent Labour Court, Coimbatore dated 26.09.2017 in Computation Petition Nos.202/2003, 959/2003, 422/2004 and 202/2007 and quash the same.

2. The second respondent herein was employed as Clerk in the petitioner Management and he was dismissed from service on 15.04.1974 on the basis of disciplinary action initiated against him. The employee raised an industrial dispute in I.D.No.149 of 1977 before the Labour Court, Coimbatore. The dispute was allowed and an award was passed on 12.10.1988 by the 1st

respondent Labour Court, by directing the petitioner Management to reinstate the 2nd respondent with continuity of service and back wages. Aggrieved by the award of the Labour Court, the petitioner Management filed a Writ Petition in W.P.No.3059 of 1998, which came to be dismissed on 30.06.1989 by this Court. Later, a Writ Appeal in W.A.No.2287 of 2000 was filed. In the meanwhile, the 2nd respondent employee filed a claim petition in C.P.No.498 of 1999 before the Labour Court, Coimbatore, claiming a sum of Rs.19,35,077/- with interest and the Labour Court passed an order directing the petitioner Management to pay a sum of Rs.6,27,698/- after deducting Rs.45,413/- which was already paid.

3. The Management challenged the above said order passed in C.P.No.498 of 1999 in W.P.No.18810 of 2003 and obtained interim stay subject to the condition to deposit Rs.5,82,277/- to the credit of C.P.498 of 1999. Thereafter, the 2nd respondent employee once again filed another C.P.202 of 2003 claiming Rs.7,54,286/- for the period 27.11.1999 to 31.03.2003. However, the amount which was finally ordered was far low than what was claimed in the C.P. and the orders passed by the Labour Court were the subject matter of challenge at the instance of the employee in W.P.No.21303, 21304 and 21305 of 2005. A further Writ Petition in W.P.No.159 of 2011 was filed against dismissal of C.P.No.422 of 2004. All the Writ Petitions were posted on 31.01.2017 and a common order was passed by this Court. In the meanwhile, the Writ Petition filed by the Management, came to be dismissed on 31.12.2006.

4. As regards W.P.Nos.21303 to 21305 of 2005, this Court vide its common order dated 30.01.2017, remanded the matter back to the Labour Court, directing the Management to file a calculation memo before the Labour Court, showing the salary that would have been paid to the employee as Clerk from 21.11.1999 to 11.04.2004 had he continued in service. The employee was also permitted to withdraw the amount of Rs.5,82,277/- with interest. In pursuance of direction of this Court, Calculation memos were filed both by the Management and the employee and by the impugned order dated 26.9.2017, the Labour Court disposed of the CPs, by directing the Management to pay a sum of Rs.8,54,754/- towards wages and bonus to the 2nd respondent employee. The said order passed by the Labour Court is now put to challenge in the present Writ Petition by the petitioner Management.

5. Mr.P.Narayanamoorthy, learned counsel appearing for the petitioner would submit that the Labour Court has completely erred in arriving at Rs.8,54,754/-by unduly comparing the 2nd respondent employee with that of one Mr.Dhiyaneswaran, who was actually working as Manager in the petitioner Management whereas

the 2nd respondent employee was only a Clerk and hence, his salary cannot be equated with that of Dhiyaneswaran. Therefore, the learned counsel would submit that the ultimate assessment of the claim amount payable to the 2nd respondent employee made by the Labour Court was erroneous and cannot be sustained either in law or on facts.

6. On the other hand, Mr.K.M.Ramesh, learned counsel appearing for the 2nd respondent employee would submit that in pursuance of the direction of this Court in the Writ Petition filed by the employee, a calculation memo was filed in detail and the Labour Court has rightly compared the salary payable to the employee on the basis of another co-employee who was appointed during the time when the 2nd respondent employee was appointed. The comparison was made on the basis of comparative assessment between two similarly placed employees and there was nothing wrong in such comparison being applied by the Labour Court in arriving at the final entitlement to the employee.

7. The learned counsel would draw the attention of this Court to the reasons adopted by the Labour Court in para 18 of the order which speak for itself about the correctness of the computation by the Labour Court, which is extracted hereunder:

"18. From the above discussions, it is quite clear that from the year of 1999 the petitioner was purposefully denied employment by the management on the ground that an appeal has been filed against the order of reinstatement. Further, the respondent has neither shown as to how the calculations made by the petitioner are wrong nor produced any material or evidence to show that the petitioner's calculations and the amount arrived at are wrong and erroneous. It is also noted that the decisions relied on by the learned counsel for the respondent are not applicable to the facts of the case and are hereby rejected. Applying the principles adopted in the above decisions referred by the learned counsel for the petitioner to the case on hand and from the above discussion this Court concludes that the objections of the respondent is devoid of merits and the petitioner is entitled to get the amounts on par with Dyaneswaran. A comparison of Ex.P5, the Salary Details Slips of Dyaneswaran with the Calculation memo of the petitioner would show as follows:

S.No	Pay and Allowances of the petitioner for the period from 21.11.1999 to 11.04.2004	(in Rs.)
1	Basic Pay	4,38,223/-
2.	DA	1,79,520/-
3.	HRA	33,330/-
4.	CCA	9,486/-
5.	Medical Allowance	6,526/-
	Total	6,67,085/-

Apart from the above, the petitioner has claimed,

1.	Bonus	1,87,669/-
2.	Leave Salary	1,09,083/-
	Total	2,96,752/-

However, he is not entitled to leave salary. Hence he is entitled to get the following heads of the amounts:-

1.	Pay and Allowances of the petitioner for the period from 21.11.1999 to 11.04.2004	6,67,085/-
2.	Bonus	1,87,669/-
	Total	8,54,754/-

8. He would therefore submit that the Labour Court was guided by correct comparison and based on such comparison, order was passed holding that the 2nd respondent is entitled to Rs.8,54,754/-, which requires no interference of this Court.

9. This Court has considered the submissions made on behalf of the petitioner Management as well as the 2nd respondent employee.

10. As rightly contended by the learned counsel for the second respondent employee, the Labour Court has adopted correct comparison as between the 2nd respondent employee and another co-employee, Dhiyaneswaran, who was placed in comparable position

as that of 2nd respondent employee and on the basis of salary and allowances paid to Dhiyaneswaran during the relevant period, the Labour Court has arrived at the figure that became payable to the 2nd respondent employee during the period of his non-employment. This Court does not see any infirmity in such factual finding given by the Labour Court in regard to the final entitlement of the employee herein.

11. As rightly contended by the learned counsel Mr.K.M.Ramesh, for the 2nd respondent employee, the basis on which the entitlement was arrived at by the Labour Court was clearly and factually sustainable and the same does not call for any interference by this Court. In fact, in pursuance of earlier direction passed by this Court, a comparative calculation memo was filed both on behalf of the Management and the employee, the Labour Court has adopted the correct method by comparing the salary payable to the 2nd respondent employee with that of similarly placed co-employee and there was nothing wrong in such comparison. The contention raised on behalf of the Management about the co-employee Dhiyaneswaran, who was employed as a Manager before his retirement, cannot be considered to be a valid submission for the simple reason that had the 2nd respondent employee been continued in the employment during the relevant time, he would have attained the same status as that of Dhiyaneswaran and therefore, the comparison with the said co-employee by the Labour Court does not suffer from any infirmity at all.

12. For the above said reasons, this Court is unable to interfere with the order passed by the first respondent Labour Court and hence, the Writ Petition is dismissed as devoid of merit. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

To
The Presiding Officer,
Labour Court,
Coimbatore.

WEB COPY

+lcc to Mr.P.Narayanamoorthy, Advocate sr.46068
+lcc to Mr.K.G.Ramesh, Advocate sr.46530

W.P.No.15211 of 2018

nr 15/07/2019