



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.11.2019

CORAM:

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THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.MD).No.12928 of 2010

and

M.P.(MD)No. 2 of 2010

The Management,
Dindigul District Central Cooperative Bank Ltd.,
Rep. by its Special Officer,
Dindigul. .. Petitioner

Vs.

- 1.The Joint Commissioner Of Labour,
Tiruchirappalli.
- 2.The Assistant Commissioner Of Labour,
Dindigul.
3. A.Subbaiah,
4. O.Andiyappan,
5. S.Seetha,
6. M.Subramaniyan,
7. P.Suruliyappan,
8. V.Chinnaiah,
9. S.Arumugam,
10. S.Kandasamy,
11. M.Muthuchamy,
12. K.Neelamegam,
13. A.Kandasamy,
14. P.Veluchamy

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the common order passed by the first respondent in P.G.A.No.12/09 to 23/09 dated 18.03.2010 confirming the order passed by the second respondent in P.G.No.13/2005 to 34/2005 dated 10.06.2008 including the amendment dated 23.07.2008 and quash the same as far as the respondents 3 to 14 are concerned.

For Petitioner : Mr.D.Shanmugaraja Sethupathy
For R1 & R2 : Mr.R.Murugan,
Additional Government Pleader



For R3 to 6, 8 to 14 : No appearance
R7 : Died

ORDER

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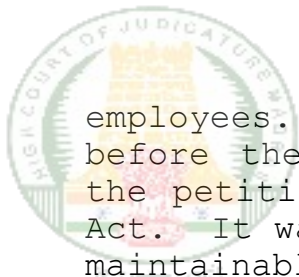
This Writ Petition is filed challenging the order of the first respondent viz., Joint Commissioner Of Labour, Tiruchirappalli, in P.G.A.Nos.12/2009 to 23/2009, dated 18.03.2010 confirming the order passed by the second respondent in P.G.Nos.13/2005 to 34/2005 dated 10.06.2008. Despite service of notice on respondents 3 to 6, 8 to 14, no one appeared. It is reported that the seventh respondent is no more.

2. The brief facts, that are necessary for the disposal of this Writ Petition are as follows:

2.1. The petitioner is a Central Co-operative Bank incorporated under the Tamilnadu Co-operative Societies Act. The respondents 3 to 14 are the employees of the petitioner's Bank and they also retired from service on attaining superannuation on various dates between 1994 and 2002. It is stated that the respondents 3 to 14 are covered by a Group Gratuity Scheme, which was linked with the Life Insurance Corporation of India. As per the settlement dated 21.02.1997 arrived at under Section 12(3) of the Industrial Disputes Act [herein after referred to as 'the Act'], it was mutually agreed that the petitioner shall make arrangements for introduction of Gratuity linked with the collaboration of Life Insurance Corporation of India as in T.N.S.C. Bank South Arcot and Tirunelveli District Central Co-operative Banks. It was also agreed under the settlement that for the purpose of calculation of gratuity, 26 days will be reckoned as a month not only for arriving at the pay but also for calculation of length of service in accordance with the provisions of Gratuity Act, 1972. It is stated that as per the settlement there is no ceiling limit, which is contemplated in the Payment of Gratuity Act. As per the Scheme, the employees are entitled to get 15 days wages for every completed year as gratuity, subject to the maximum amount equivalent to 20 months salary.

2.2. It is not disputed that the gratuity was paid to the respondents 3 to 14 on the basis of the settlement under Section 12 (3) of the Industrial Disputes Act and as per the calculation, which was mutually agreed in the settlement.

2.3. The respondents 3 to 14 filed an application before the Controlling Authority viz., first respondent claiming difference of gratuity relying upon the terms of the settlement for the purpose of calculation of gratuity. Based on settlement, it appears that the employees have claimed benefit by taking into account, the length of service more than the actual years of service rendered by the



employees. A preliminary objection was raised by the petitioner before the Controlling Authority regarding the maintainability of the petition, in view of the settlement under Section 12(3) of the Act. It was contended by the petitioner that the application is not maintainable before the Controlling Authority as he has no jurisdiction to adjudicate upon the dispute arising out of the settlement under Section 12(3) of the Act. However, the Controlling Authority rejected the preliminary application and allowed the application filed by the respondents 3 to 14. Aggrieved over the order passed by the Controlling Authority in P.G.Nos.13 of 2005 to 34 of 2005, dated 10.06.2008, the petitioner preferred appeals before the first respondent in P.G.A.Nos.12 of 2009 to 23 of 2009. The said appeals were dismissed by order dated 18.03.2010. Aggrieved by the decision of the Appellate Authority, this Writ Petition is filed.

3. The learned Counsel for the petitioner submitted that the Controlling Authority has no jurisdiction to entertain a dispute arising under the settlement under Section 12(3) of the Act. As a matter of fact, in a different batch of cases which are also in respect of the petitioner / Management, the Joint Commissioner of Labour, Madurai has allowed the appeal preferred by the petitioner / Management and found that the Controlling Authority has no jurisdiction to entertain the application filed by the employee by citing the settlement under Section 12(3) of the Act.

4. It is further submitted that the decision of the Joint Commissioner, Madurai, has been upheld by this Court in the petition filed by the petitioners therein in W.P.(MD)No.602 of 2010 by order dated 16.10.2012. The learned Counsel submitted that the petitioner's appeal ought to have been allowed on merits as there is a grave error in the calculation, contrary to the settlement agreed.

5. Even though this Court is convinced with the submissions of the learned counsel for the petitioner on merits, without going into the details of the calculation in every case, this Court can dispose of this Writ Petition on a short ground that the second respondent has no jurisdiction to decide the dispute arising out of the settlement under Section 12(3) of the Act. In the judgment relied upon by the learned Counsel for the petitioner in the case of ***S.Sanmugam and others Vs. The Controlling Authority, Payment of Gratuity and two others*** in W.P.(MD)No.602 of 2010, dated 16.10.2012, the very same issue has been considered by the learned Single Judge of this Court. After referring to several judgments which are applicable to the facts, the learned Judge held that the Controlling Authority under the Act, has no jurisdiction to resolve any dispute arising out of a settlement under Section 12(3) of the Act. In view of the judgment of this Court, following several precedents, this Court has no reason to take a different view.



6. Hence, this Writ Petition is allowed and the common order passed by the first respondent in P.G.A.Nos.12/09 to 23/09 dated 18.03.2010 confirming the order passed by the second respondent in P.G.Nos.13/2005 to 34/2005 dated 10.06.2008 including the amendment dated 23.07.2008, are quashed.

7. It is noted that the petitioner has filed a Single Writ Petition to quash the order passed by the first respondent in a batch of appeals arising out of the individual applications filed by the respondents 3 to 14. Separate writ petitions ought to have been filed. Hence, this Court direct the petitioner to pay a sum of Rs.2,400/- (Rupees Two Thousand Four Hundred only) towards Court fees. Therefore, this writ petition is allowed as above, subject to payment of separate Court fees to the tune of Rs.2,400/- (Rupees Two Thousand Four Hundred only). Copy of order can be issued only on payment of money as directed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ls

To

1.The Joint Commissioner Of Labour,
Tiruchirappalli.

2.The Assistant Commissioner Of Labour,
Dindigul.

+1 CC to Mr.D. SHANMUGARAJA SETHUPATHI, Advocate (SR-97942[F] dated 13/11/2019)

W.P.MD).No.12928 of 2010
12.11.2019

MK (26.02.2020) 4P 4C