



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.11.2019
CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD)No.4802 of 2010

and

M.P.(MD)No.1 of 2010

WEB COPY

The Management,
Madurai District Central
Co-Operative Bank Limited,
187, North Veli Street,
Madurai -625 001.

... Petitioner

vs.

1.The Joint Commissioner of Labour,
Anjali Tower,
76, East Marret Street,
Madurai -625 001.

2.The Assistant Commissioner,
Lake Road, K.K.Nagar,
Madurai - 625 020.

3.N.Sivagurunathan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the first respondent in the proceedings in P.G.A.No.35 of 2009, dated 31.08.2009 confirming the order of the second respondent, dated 07.05.2008 in P.G.No.37 of 2005 and quash the same.

For Petitioner : Mr.D.Shanmuga Raja Sethupathi
For R1 and R2 : Mr.D.Muruganantham
Additional Government Pleader
For R3 : Mr.S.Mohandass

O R D E R

This Writ Petition is filed by the Management, challenging the order of first respondent, dated 31.08.2009, confirming the order of second respondent, dated 07.05.2008.

2.The third respondent is an employee of the petitioner Cooperative bank. It is stated that regarding gratuity, a Group Gratuity Scheme linked with Life Insurance Corporation of India Limited was introduced by the petitioner Management. As per the scheme, the employee is entitled to get 15 days wages as gratuity



for every year of service, subject to maximum of the amount equivalent to twenty months salary.

3.The Payment of Gratuity Act 1972, provides for gratuity calculated in the same manner, but, there is a ceiling limited and the maximum benefit that can be drawn by the employee under the Act is Rs.3,50,000/-. Since the gratuity scheme introduced by the petitioner was beneficial to the employees, than the Statute, where there is a ceiling limit, in the settlement, dated 17.02.1997, under Section 12(3) of the Industrial Disputes Act, it was mutually agreed that the employee will continue under the Group Gratuity Scheme. The third respondent retired from service on 30.06.2003. It is not in dispute that the third respondent received gratuity amount as per the amount calculated in terms of Group Gratuity Scheme. The gratuity amount paid to him was equivalent to his twenty months salary.

4.The third respondent filed an application before the Assistant Commissioner, Labour, Madurai, claiming that he is entitled to more than the amount, that was paid by the petitioner under the Payment of Gratuity Act. Even though the third respondent admitted that the calculation was as per the settlement, stated that he is entitled to get salary exceeding 20 months, as there was no ceiling limit under the Act. It was suggested that 26 days should be treated as a month. It is further admitted by the third respondent that he has been paid a sum of Rs.4,24,980/- towards gratuity. If his claim is strictly under the Payment of Gratuity Act, in view of the ceiling limit, the third respondent would not get a sum more than Rs.3,50,000/- irrespective of the length of service, he had in the petitioner Bank. It is only by virtue of settlement, the third respondent settled an amount, which is now taken by him.

5.The second respondent found that the third respondent has served for more than 40 years and that therefore, he is entitled to more than Rs.4,24,980/-, which is equivalent to twenty month salary. The third respondent claimed a sum of Rs.4,90,362/-. The second respondent found that the third respondent is entitled to a sum of Rs.4,90,362/- by taking into account 26 days as a month. The order of second respondent was also confirmed by the first respondent in the appeal preferred by the petitioner in P.G.A.No.35 of 2009. Aggrieved by the same, the above Writ Petition is filed by the petitioner Management.

6.The learned Counsel for the petitioner submitted that the issue is no more *res integra*, as the Honourable Division Bench of this Court has considered the issue in W.A.(MD)No.675 of 2007 in the case of "**The Management, Madurai District Central Co-Operative Bank Limited vs The Joint Commissioner of Labour and others**". Paragraph 19 of the said judgment reads as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

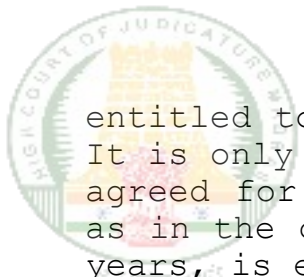


"19. In our considered view, the gratuity amount paid to the respondents 3 to 6 was in accordance with Sec.12(3) settlement. For instance, in the case of third respondent-Somasundaram, the monthly salary was Rs.16,828/-. As per Clause 1 (xiv), a day's wage is Rs.647.26 [16.826.26]. As per clause 10, 15 days salary is worked out at Rs.9,708/-. 3rd Respondent has got 38 years of service which is Rs.3,68,904/- [Rs.9708x38]. Gratuity is payable subject to maximum of 20 months salary i.e. Rs.3,36,960/ [Rs.16828/-x20]. As per Clause 10, the gratuity payable is subject to maximum of 20 months salary which was paid to Respondents 3 to 6. Since the Group Gratuity Scheme is linked with the Life Insurance having the scheme of insurance, the terms of settlement would govern payment of gratuity to Respondents 3 to 6. Respondents 1 and 2 were not right in ignoring the terms of settlement and directing the Appellant Bank to pay difference of the gratuity amount to Respondents 3 to 6."

7. In view of the judgment of Honourable Division Bench of this Court, the third respondent is governed by settlement and the amount paid to the third respondent is more than Rs.3,50,000/- which is the ceiling limit as per Statute. The petitioner need not pay more than, what the third respondent is entitled to, as per the settlement. As pointed out by the Honourable Division Bench of this Court, the gratuity payable to the petitioner is subject to the maximum of twenty months salary, which was paid to the third respondent.

8. The petitioner is liable to pay the amount due as per the settlement and the amount payable to the third respondent is more than the benefit, he would have derived, if he is opted to claim under the Payment of Gratuity Act. There is no injustice done to the third respondent. However, the learned Counsel for the third respondent submitted that the third respondent is entitled to get gratuity as per the Act, if it is beneficial to him. The statement of the learned Counsel for the third respondent is by relying upon a judgment of Honourable Supreme Court in the case of **Union Bank of India and others vs C.G.Ajay babu and another**, in Civil Appeal No.8251 of 2018, dated 14.08.2018. The Honourable Supreme Court in the said judgment has held that when better terms are offered, a workman takes it as a part of the package and that while interpreting even a beneficial statute, like, the Payment of Gratuity Act, quoted with approval the opinion of earlier judgment of Honourable Supreme Court to the effect that either contract has to be given effect to or the statute.

9. In the present case, the third respondent will not get the amount of Rs.4,24,980/-, if his claim is based on Payment of Gratuity Act, where there is a ceiling limit and the employee is not



entitled to more than Rs.3,50,000/- towards gratuity under the Act. It is only because of ceiling limit, the employee of petitioner Bank agreed for the settlement, which is more beneficial than Statute, as in the case of third respondent, who has served for more than 40 years, is entitled to twenty months salary, which comes to more than Rs.4,24,000/-. After receiving a sum of Rs.4,24,980/- towards gratuity, the third respondent would claim that as per the settlement, he is entitled to calculate without ceiling limit of twenty months salary. The case of the third respondent appears to be to get away with the ceiling limit of Rs.3,50,000/-, by relying upon the terms of settlement and then fall back on the Statute to claim that the maximum ceiling limit of twenty months is contrary to the Statute. The third respondent either can choose the Statute or settlement. He cannot take the benefits both under the Statute as well as the contract, even as per the judgment of Honourable Supreme Court relied upon by him.

10.Be that as it may, it is admitted that the third respondent is bound by the settlement reached under Section 12(3) of the Industrial Disputes Act. When there is a settlement, a dispute arising out of the said settlement, cannot be the subject matter of adjudication by the respondents 1 and 2 exercising their functions under the Payment of Gratuity Act. This Court has earlier held that the dispute regarding terms of settlement under Section 12(3) of Industrial Disputes Act, cannot be decided by the respondents 1 and 2. Hence, for want of jurisdiction also, the order of first respondent confirming the order of second respondent is invalid.

11.As a result, this Writ Petition is allowed and the order passed by the first respondent in P.G.A.No.35 of 2009, dated 31.08.2009, confirming the order of second respondent in P.G.No.37 of 2005, dated 07.05.2008 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (records)

// True Copy //

Sub Assistant Registrar(CS)

cmr

To

1.The Joint Commissioner of Labour,
Anjali Tower,
76, East Marret Street,
Madurai -625 001.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Assistant Commissioner,
Lake Road, K.K.Nagar,
Madurai - 625 020.

+1 CC to Mr.MOHANDASS, Advocate (SR-98922[F] dated 18/11/2019)
+1 CC to spl.GP (SR-99043[F] dated 18/11/2019)
+1 CC to Mr.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-99390[F] dated
19/11/2019)

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15.11.2019

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