



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.7666 of 2011

and

M.P.(MD)No.1 of 2011

The Management,
Thirunelveli Junction Cooperative
Urban Bank Limited,
73/35, V.K.Road,
Thirunelveli Junction.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
District Court Complex at Palayamkottai,
Thirunelveli.

2.R.Paramasivam

... Respondents

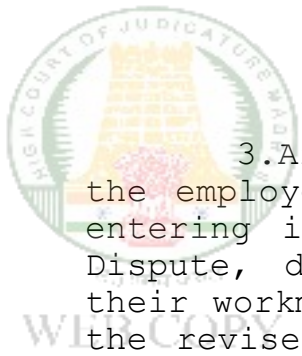
Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the first respondent relating to C.P.No.11/2007 and quash the impugned order of the first respondent, dated 11.03.2011.

For Petitioner :Mr.S.Seenivasagam
For R2 :Mr.K.Kannan

ORDER

This Writ Petition is filed by the Cooperative Urban Bank Limited for issuing a Writ of Certiorari to quash the order of Labour Court, Tirunelveli, in C.P.No.11 of 2007, dated 11.03.2011.

2.The second respondent was working in the petitioner bank as Secretary. While he was working, he tendered his resignation on 31.10.1995 and his resignation was also accepted. The second respondent was also relieved from service. It is stated by the petitioner that the second respondent's terminal benefits were computed and paid to him by a cheque, dated 26.03.1996 and the same was accepted by the second respondent without any remark.



3. After the second respondent's resignation, the services of the employees of the petitioner Bank underwent upward revision by entering into a settlement under Section 12(3) of the Industrial Dispute, dated 11.03.1996 and it was between the petitioner and their workmen, represented by four Trade Unions. Though fitment in the revised basic pay was made effect from 01.07.1991 as per the settlement, it is agreed under the settlement that the monetary benefit will be given effect from 01.04.1995. It was in the said context, the second respondent filed a claim petition in C.P.No.11 of 2007 under Section 33(c)(2) of the Industrial Disputes Act, seeking for a direction to the petitioner to pay difference in arrears of salary by calculating his pay as per the settlement, dated 11.03.1996, which was also as per the direction of Government.

4. The said petition was contested by the petitioner on various grounds. First of all, it is contended by the petitioner that the second respondent, who is a Secretary, holding the position of Officer and discharging managerial and administrative function, is not a workman under Section 2(s) of the Industrial Disputes Act. It is further contended that the Labour Court, while deciding an application under Section 33(c)(2) of Industrial Disputes Act, can only enforce lawful decision on resolution of dispute declaring the right and entitlement of employee. Unless, there is pre-existing right, the second respondent is not entitled to raise a dispute under Section 33(c)(2) of Industrial Disputes Act, where, the Labour Court does not have jurisdiction to entertain the disputed question of fact regarding entitlement. It was also contended by the petitioner that the second respondent's name was not included in the settlement reached under Section 12(3) of the Industrial Disputes Act, and that therefore, the second respondent is not entitled to revive his claim. Despite all these objects, the Labour Court allowed the claim petition and awarded a sum of Rs.1,50,779/- by way of difference in pay calculated between the actual salary and the salary due to the second respondent by extending the benefit of settlement under Section 12(3) of Industrial Disputes Act. Aggrieved by the same, the Management has preferred the above Writ Petition.

5. The learned Counsel for the petitioner submitted that the Government issued G.O.(2D)No.70, dated 12.11.1993, regarding classification of Urban Cooperative Bank on the basis of working capital of the individual Cooperative Bank and to revise the pay of service condition of employee of Cooperative Bank, depending upon the classification of Bank. The Government Order was issued with a direction to the Register of Cooperative Societies to direct the Management of all Urban Cooperative Banks, immediately to enter into fresh 12(3) settlement under the Industrial Disputes Act for five years with effect from 01.07.1991. It is not in dispute that the settlement relied upon by the second respondent was pursuant to the Government Order in G.O. (2D)No.70, dated 12.11.1993.



6.The learned Counsel for the petitioner further submitted that the Government has no power to pass any order regulating service conditions or service benefits of the employee of Cooperative Societies. It is further stated that the petitioner is not bound by any Government Order, as it is held by Honourable Supreme Court in Umarani case. Though it is admitted that the settlement, dated 11.03.1996 was drafted in terms of the Government Order, it is contended that the petitioner is not bound by the Government Order.

7.The learned Counsel for the petitioner also relied upon the judgment of Honourable Supreme Court in the case of **State Bank of India vs Ram Chandra Dubey**, reported in **(2001) 1 SCC 73**, wherein, the Honourable Supreme Court has held as follows:

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows:

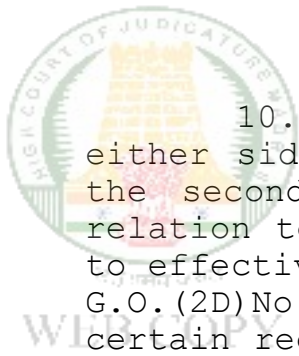
Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case



that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages"

8. In the light of decision of the Honourable Supreme Court, the learned Counsel for the petitioner submitted that the applicability of the settlement under Section 12 of the Industrial Disputes Act, is a serious issue and the Labour Court cannot entertain the dispute in a petition filed under Section 33(c)(2) of the Act. The learned Counsel for the petitioner then submitted that Annexure-III to the settlement, enumerates the list of beneficiaries to the settlement. Pointing out that the name of the second respondent was not included in Annexure-III, it is submitted by the learned Counsel for the petitioner that the second respondent is not entitled to the benefit of settlement.

9. On the other hand, the learned Counsel for the second respondent relying upon G.O.(2D)No.70, dated 12.11.1993 and the earlier order passed by the Deputy Register, dated 16.10.2006, submitted that the second respondent's entitlement has already been accepted, acknowledged and approved by the Joint Register of Cooperative Societies, vide communication, dated 22.09.2006. Similar representation was given by the second respondent to the Deputy Register of Cooperative Societies, Tirunelveli, to hold that the second respondent is entitled to the benefit of pay revised despite the fact that his name was not in the list. It was, therefore, the learned Counsel for the second respondent submitted that the petitioner is bound to revise salary in terms of Government Order and the directions.

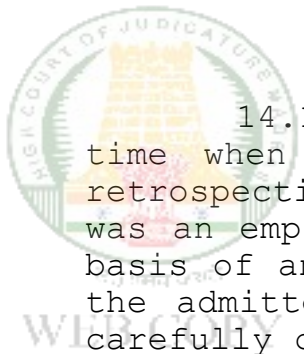


10.This Court considered the submissions of Counsel on either side carefully. As pointed out by the learned Counsel for the second respondent, the Government takes several decision in relation to the Cooperative Societies, particularly, with reference to effective functioning of administration of Cooperative Societies. G.O.(2D)No.70, dated 12.11.1993 is a Government Order, giving certain recommendations on the basis of a Committee constituted for streamlining the cadre strength, pay scale of employees of Urban Cooperative Bank, etc. It is on the basis of the recommendations of the Committee, classification of Urban Cooperative Bank as A, B, C based on their working capital was recommended. Guidelines regarding staff strength, categorisation of staff, scales of pay, merger of Dearness Allowance with the pay, regulation of future pay and Dearness Allowance, House Rent Allowance, City Compensatory allowance and several other things, as per the recommendations of the Committee, were given by the Government.

11.In the Government Order itself, the Register of Cooperative Societies was requested to direct the Management of Urban Cooperative Banks immediately to enter into fresh 12(3) settlement under Industrial Disputes Act for five years with effect from 01.07.1991 in lieu of existing 12(3) settlement. Though Annexure-III of the settlement refers to 13 names working in various posts, the list of names in Annexure-III is only an illustration for fitment as indicated in clause-V(6)(h) of the settlement.

12.The parties before this Court admitted that the fitment in the revised pay scale shall be effected from 01.07.1991 as per the settlement and that monetary benefit would be given to the employees with effect form 01.04.1995. From this, it is evident that the settlement was made giving effect restrictively and that the monetary benefit should be paid to all the employees with effect from 01.04.1995. There is no other clause in the settlement excluding the applicability of the settlement to anyone, who retired prior to the settlement, but after the date on which the settlement came into effect.

13.The learned Counsel for the petitioner argued much regarding the maintainability of the petition under Section 33(c)(2) of the Act. From the judgment of Honourable Supreme Court cited supra, it is true that an employee can approach the Labour Court under Section 33(c)(3) of Industrial Disputes Act only for a benefit, which is already conferred on him. In other words, unless there is a pre-existing benefit that flows from a binding contract or a decision by the authority competent, it is not possible for the employee to file an application under Section 33(c)(2) of the Act. In this case, the settlement is not in dispute. The applicability of the settlement is an issue. An adjudication of a dispute arising out of a settlement is permissible in a petition filed under Section 33(c)(2) of the Industrial Disputes Act, if relief is based on the terms of settlement. This Court approves the finding of Labour Court that the petitioner is entitled to the benefit of settlement.



14.In the present case, the petitioner was in service at the time when the settlement was to take effect. In view of the retrospective effect of the settlement, the second respondent, who was an employee of the petitioner, cannot be denied benefit on the basis of an interpretation, which cannot be countenanced in view of the admitted facts. The Labour Court has passed the award after carefully considering the scope of settlement and the entitlement of the second respondent getting benefit of settlement for revision of pay for a marginal period of about five years. This benefit was in tune with the Government Order and the proceedings of the Deputy Register of Cooperative Societies, Tirunelveli, dated 14.10.2006.

15.Having regard to the above factual background, this Court has no reason to interfere with the award of Labour Court. Accordingly, the Writ Petition is dismissed and the award passed by the Labour Court, Tirunelveli, in C.P.No.11 of 2007, dated 11.03.2011 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

The Presiding Officer,
Labour Court,
District Court Complex at Palayamkottai,
Thirunelveli.

+1 CC to M/s.V. KANNAN, Advocate (SR-99633[F] 20/11/2019)

+1 CC to M/s.S. SEENIVASAGAM, Advocate (SR-101295[F] 26/11/2019)

W.P. (MD) No.7666 of 2011
19.11.2019

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