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IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 24.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.NO.1727 OF 2011
AND
M.P.NO.1 OF 2011

The Management of Coimbatore District,
Central Co-operative Bank Ltd.,
rep. by its Special Officer,
Coimbatore. ... Appellant

versus

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. P.Muthusamy
3. S.K.Rajagopal
4. K.Ravi
5. P.Subbarayan
6. K.Govindasamy
7. P.S.Dhandapani
8. K.Krishnan
9. V.Balasundaram
10. T.K.Venkatesan
11. K.Govindasamy
12. T.K.Venkatesan
13. A.Jothinathan
14. K.Shanmugam
15. S.Padmanabhan
16. M.Ayyasamy
17. S.Shanmugam
18. S.Thiagarajan ... Respondents

PRAYER:-

Appeal filed under Clause 15 of Letters Patent against the order dated 08.07.2011 in W.P.No.9972 of 2007 by this Hon'ble Court.

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Prayer in Writ Petition No.9972 of 2007:-

Writ Petition preferred under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the order of the Ist respondent in C.P.No.1109/02, C.P.No.333/2003, C.P.No.334/2003, C.P.No.673/2003, C.P.No.674/2003, C.P.No.956/2003, C.P.No.957/2003, C.P.No.958/2003, C.P.No.965/2003, C.P.No.966/2003, C.P.No.967/2003, C.P.No.420/2004, C.P.No.421/2004, C.P.No.768/2004, C.P.No.1232/2004, C.P.No.195/2005 and C.P.No.242/2005 dt 05.05.2006, quash the same.

For Appellant : Mr.S.Saravanan

For Respondents : Mr.V.Ajoykhose for RR2 to 12 and RR14 to 18
R1-Court
R13-No appearance

JUDGMENT

(Judgment of this Court was delivered by T.RAJA,J.)

This writ appeal has been directed against the impugned order dated 08.07.2011 passed by the learned Single Judge in W.P.No.9972 of 2007.

2. Mr.S.Saravanan, learned counsel appearing for the appellant, assailing the correctness of the impugned order, argued that while entertaining the claim made by the contesting respondents in Computation Petitions in C.P. Nos.1109 of 2002 etc., filed under Section 33-C(2) of the Industrial Disputes Act, 1947 (in short 'the Act'), the Labour Court has computed various amounts due to the contesting respondents in terms of the encashment of privileged leave salary and partly allowed the petitions. Aggrieved by the same, the above writ petition has been filed by the appellant Management. But, the learned Single Judge has failed to consider the fact that respondents 2 to 18 were not entitled to any benefit under Clause 8(1)(c) of the by-law as to the un-earned leave wages. Moreover, respondents 2 to 18 were not even entitled to the encashment of earned leave as claimed in the Computation Petitions because there is no pre-existing right available to them as the by-law of the Society was subsequently amended. Admittedly, when the amendment of the by-law of the Society was questioned that was also pending, it goes without saying that the pre-existing right was no longer available to them as per Clause 8(1)(c) of the by-law of the Society. Since a Settlement has been reached between the parties under Section 12(3) of the Act the moment Clause 8(1)(c) of the

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by-law of the Society was amended removing from the by-law, there is no need to amend the Settlement because the settlement also becomes infructuous. This vital aspect has been overlooked by the Labour Court. When the order of the Labour Court was being on the ground that the Resolution passed in the General Body is not implementable for the reason that there is an order of status quo in I.A. No.907 of 2002 in O.S. No.880 of 2002, the same is not sustainable in law. When this crucial aspect was questioned before this Court in the above writ petition, the learned Single Judge has not considered the entire issue and decided the same on the point that it is immaterial that the by-law which were sought to be framed by the Board with effect from 01.07.1996 came to be cancelled by them subsequently in the absence of approval. Though the learned Single Judge has accepted the case of the appellant that respondents 2 to 18 were not workmen, the learned Single Judge has come to the conclusion that the appellant Bank cannot discriminate between the contesting respondents and the workmen within the meaning of Section 2(s) of the Act. Moreover, when they are all Managers and Assistant Managers and their monthly remuneration are more than Rs.10,000/-, they are not at all workmen and therefore, they are not entitled to lay their claim before the Labour Court invoking Section 33-C(2) of the Act. Finally, when the unearned leave benefits conferred on respondents 2 to 18 under Clause 8 (1)(c) of the by-law was amended, the learned Single Judge ought to have allowed the writ petition because on the date of adjudication made on the petitions filed under Section 33-C(2) of the Act, there was no pre-existing right available to the contesting respondents for the simple reason that Clause 8(1)(c) of the by-law was removed. Since this aspect has also been overlooked by the learned Single Judge and the Labour court, this appeal deserves to be allowed by setting aside the impugned order.

3. Mr.V.Ajoykhose, learned counsel for respondents 2 to 12 and 14 to 18 urging this Court to dismiss this appeal, submitted that the arguments advanced by the learned counsel for the appellant that respondents 2 to 18 were not workmen, since Clause 8(1)(c) of the by-law was amended by removing the un-earned leave wages and the pre-existing right have been taken away and therefore, the Computation Petitions should have been rejected, are un-justified for the reason that the benefits sought from the Labour Court under Section 33(c)(2) is independent and is nothing to do with Clause 8(1)((c) of the by-law of the Society. Therefore, whether Clause 8(1)(c) of the by-law of the Society is existing or taken away, respondents 2 to 18 are entitled to approach the Labour Court by laying their claim under Section 33(c)(2) of the Act for the clear reason that their rights are regulated by the Settlement reached between the parties under Section 12(3) of the Act.

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4. In support of his submission, taking reliance from the judgment in the case of Karnataka State Road Transport Corporation vs. KSRTC Staff and Workers' Federation and another reported in 1999 (2) SCC 687 dealing with the binding effect of the Settlement reached between the employer and workman, learned counsel for respondents 2 to 12 & 14 to 18 submitted that the binding effect of the settlement will continue between the parties on the basis of the earlier settlement reached between the parties till the new settlement is reached. In the present case, when there was a 12(3) Settlement reached between the parties on 30.03.1979 and the same has not been replaced by any new Settlement, the binding effect of the settlement will continue between the parties. This legal fact has been considered by the Apex Court in the case of LIC of India vs. D.J.Bahadur reported in 1981 (1) SCC 315 holding that till any new Settlement on the question of grant of the payroll check-off facility was substituted by the parties, the legally binding effects of the earlier settlement of 1988 would continue to operate and the Corporation will then be contractually bound to confer the payroll check-off facility on the Union.

5. Again taking support from the judgment of our High Court in the case of Tamil Nadu Cements Corporation Ltd. and another vs. N.Pandurangan and others reported in 2005 (1) LLN 964 holding that the Management cannot deviate from the bilateral settlement by the unilateral circular, submitted that having entered into the 12(3) Settlement dated 30.03.1979, granting un-earned leave to the employees and the same having been approved in G.O. No.488 Finance (Pension) Department dated 12.08.1996 stating at the time of retirement, 50% of the leave of private affairs standing to the credit of the employees upto maximum of 90 days, be entitled to full leave salary, the appellant, cannot act on their own whims and fancies, which would be detrimental to the interest of the contesting respondents.

6. We find merits on the submission made by the learned counsel appearing for respondents 2 to 12 and 14 to 18. When there is a memorandum of settlement reached between the appellant and respondents 2 to 18 granting unearned leave to employees and the same has been approved in the G.O. No.488 Finance (Pension) Department dated 12.08.1996 stating at the time of retirement, 50% of the leave of private affairs standing to the credit of the employees upto maximum of 90 days, be entitled to full leave salary, it is not open to the appellant to canvass either before the Labour Court or before us that there was no pre-existing right available to respondents 2 to 18 to lay their claim under Section 33(c)(2) of the Act. To throw more light on the appellant, it is relevant to refer to Section 33-C(2) as under:

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'(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government][within a period not exceeding three months:]'

7. A mere perusal of the above provision shows that any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court.

8. In the case on hand, when the settlement has been reached on 30.03.1979 and the State Government has issued the said G.O. No.488 Finance (Pension) Department dated 12.08.1996, granting 50% of the leave of private affairs standing to the credit of the employees upto maximum of 90 days, at the time of retirement, we are able to see that there is a pre-exisiting right available to respondents 2 to 18. Therefore, they are entitled to approach the Labour Court under Section 33(c)(2) of the Act.

9. Since the terms and conditions mentioned in the Memorandum of Settlement reached under Section 12(3) of the Act on 30.03.1979 makes the legal position clear granting un-earned leave to employees and the rights conferred in clause 8(1)(c) of the Special by-law making it clear that every employee of the Bank shall be entitled to un-earned leave on private affairs for six months on half pay and allowances and the said G.O. providing 50% of leave on private affairs standing to the credit upto the maximum of 90 days at the time of retirement, it is not known as to how the appellant can raise an issue that Computation Petitions filed by the contesting respondents, based on the Settlement dated 30.03.1979 reached under Section 12(3) of the Act, cannot be taken upon for consideration though the amendment was made only on 02.08.2011 to remove the said benefit.

10. In this regard, it is relevant to extract the judgment of the Apex Court in the case of Karnataka State Road Transport Corporation vs. KSRTC Staff and Workers' Federation and another reported in 1999 (2) SCC 687 as under:

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'19.But even on an assumption that the aforesaid notification satisfied the requirements of section 19 Section 19 sub-section (2) for terminating the settlement dated 28-7-1988, even then till a new settlement laying down fresh terms of settlement on the question of the payroll check-off facility saw the light of day, the binding effect of the 1988 settlement has to continue to bind the parties by way of contractual obligations. This aspect is well-settled by a three-judge Bench decision of this court in LIC of India v. D.J.Bahadur where Krishna Iyer,J., speaking for the Supreme Court at SCR p.1114 of the Report, has made the following pertinent observations:(SCC pp.340-41, para 34)

''34. The core question that first falls for consideration is as to whether the settlements of 1974 are still in force. There are three stages or phases with different legal effects in the life of an award or settlement. There is specific period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become non est but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. then comes the last phase. If notice of intention to terminate is given under Section 19(2) of 19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like nature, law abhors a vacuum and even on the notice of termination under Section 19(2) or (6) the sequence and consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes, negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Courts and of this Court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the ID Act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distil from the provisions of Section 19 a conclusion diametrically opposite of the objective, intendment and effect of the section is an

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interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon a lawless void and under general law the contract of service created by an award or settlement lives so long as a new lawful contract is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end -- order in society -- can it commit functional hara-kiri by leaving a conflict situation to lawless void?''

In view of the aforesaid settled legal position, therefore, if any unilateral notice to terminate the binding settlement of 28-7-1988 was issued by the Corporation which, on the facts of the present case, is found not to have been issued, even then till any new settlement on the question of grant of the payroll check-off facility was substituted by the parties, the legally binding effects of the earlier settlement of 1988 would continue to operate and the Corporation will then be contractually bound to confer the payroll check-off facility on the Union. Consequently, there was no occasion for the Corporation to issue the impugned notification dated 21-9-1993 even on this ground as it was clearly violative of the mandatory requirement of Section19 sub-section(2) and was contrary to the settled legal position as aforesaid. It was, therefore, a stillborn notification and was rightly set aside by the learned Single Judge on that ground and also by the Division Bench of the High Court.'

11. A perusal of the above judgment would show that until a new settlement or contract replaces the previous one, the former settlement will regulate the relations between the parties and will bind both the parties. Following the same, the Apex Court in yet another judgment in the case of Gujarat Agricultural University vs All Gujarat Kamdar Karmachari Union reported in 2009 (15) SCC 335 has observed as under:

'21. It is an admitted position that no new settlement has been entered into between the employer and the workmen subsequently nor has any award replaced the settlement dated 22-8-1980. In this view of the matter, it has to be held that the settlement dated 22-8-1980 continues to regulate the conditions of service of the workmen covered thereby. The contract of service or the conditions of service provided in the settlement holds the field until new lawful settlement is brought into being. As a matter of fact, the employer was well

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aware of this legal position and, therefore, the daily-rated labourers governed by the settlement were continued to be given only a day off in a week until the change was effected vide Circular dated 3-10-1991. Thus, the Industrial Tribunal as well as the High Court cannot be said to have erred in relying upon the settlement dated 22-8-1980.'

12. A perusal of the same clearly shows that the contract of service or the conditions of service provided in the settlement holds the field until new lawful settlement is being effected. Therefore, in the present case, the Settlement dated 30.03.1979 reached under Section 12(3) of the Act would definitely bind the contesting respondents.

13. Yet another contention made by counsel for the appellant that respondents 2 to 18 are not entitled to maintain the Computation Petitions under Section 33(c)(2) of the Act as they are not workman is liable to go on the basis of the very admission made by the Management witness before the Labour Court admitting the controversy that the Settlement dated 30.03.1979 reached under Section 12(3) of the Act between them would cover all 38 persons working in the Bank including respondents 2 to 18 herein. In this context, it is also pertinent to extract the admission made by M.W.1 before the Labour Court:

'தொ.சா.ஆ.1ல் உடிரத்து 38 வங்கியில் உள்ள அனைத்து ஊழியர்களுக்கும் பொருந்தும். இந்த மனுதாரர்களுக்கும் பொருந்தும். தொ.சா.ஆ.1 ஒப்பந்தம் பொது மேலாளர் இணை மேலாளர் அனைவருக்கும் பொருந்துவதாகத்தான் உள்ளது.'

14. Besides, in the cross examination, M.W.1 had clearly admitted that respondents 2 to 18 do not have the power of signing cheques; they do not have power to take disciplinary action against the subordinates; they are not entitled to enter into any settlement on behalf of the Bank; and they cannot sue on behalf of the Bank. It is also further admitted that though they are entitled to grant ordinary leave viz., casual leave, with reference of other leave, they have only power to make recommendation. They are considered as Managers only for name sake, but in reality, they were doing the clerical work for the Bank. These admissions of M.W.1 would not be impeached. Therefore, the controversy raised by the appellant that respondents 2 to 18 being the Managers and Assistant managers, are not workmen and hence, they are not entitled to approach the Labour Court, cannot be accepted, since M.W.1/Subramanian in his evidence clearly admits that Ex.W.1 Settlement is applicable to the petitioners, namely, the contesting respondents herein. Since the binding effect of the settlement has to continue to bind the parties by way of contractual obligations, the contention of the appellant that the contesting respondents

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before us are not coming within the purview of workman as defined under Section 2(s) of the Act is not legally sustainable.

15. In the light of the above judgments, we are of the considered view that the Labour Court has rightly passed the common order and the same has been rightly confirmed by the learned Single Judge. Therefore, the appeal is liable to be dismissed, hence, the same is dismissed. Consequently, connected C.M.P. is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vga

To

The Presiding Officer,
Labour Court,
Coimbatore.

+1cc to Mr.Mr.S.Saravanan, Advocate, S.R.No.29262
+1cc to Mr.Mr.V.Ajoykhose, Advocate, S.R.No.29683

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