IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2021

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. NO. 30354 OF 2004

The Management,
S-965, Nallipalayam Primary Agricultural Co-operative Bank,
Nallipalayam,
Namakkal - 637 003. ...Petitioner

vs

1.The Presiding Officer,
Labour Court,
Salem.

2.Life Insurance Corporation of India,
Pension and Group Schemes Department,
Opposite to A.T.C. Depot,
Johnsonpet,
Salem - 636 007.

3.K.Kandasamy ...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, praying to call for the records in C.P. No. 553 of 2002 on the file of the Labour Court, Salem the First Respondent herein and quash the order dated 28.04.2004 passed therein.

For Petitioner : Mr. M.R.Raghavan

For Respondents : R1 - Court
Mr. S.S.Swaminathan (for R2)
Mr. K.V.Shanmuganathan (for R3)

O R D E R
(through video conference)

Heard M.R.Raghavan, Learned Counsel for the Petitioner, Mr. S.S.Swaminathan, Learned Counsel for the Second Respondent and Mr. K.V.Shanmuganathan, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is a Co-operative Society governed by the provisions of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the Co-operative Societies Act' for short). The Third Respondent, who had been employed in the Co-operative Society of the Petitioner, on his retirement from service on 31.05.2002, had made a claim against the Petitioner for gratuity and provident fund dues invoking Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D Act' for short) before the First Respondent, who had by order dated 28.04.2004 in C.P. No. 553 of 2002 determined the monetary benefits due as Rs. 1,64,000/- along with costs of Rs. 250/-, which is assailed in this Writ Petition.

3. It is accepted by the rival parties that since the Petitioner is not an 'establishment' to which the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Gratuity Act' for short) applies, the gratuity payable to the employees of the Petitioner would have to be in accordance with the provisions of Section 79 of the Co-operative Societies Act. In furtherance thereto, the Petitioner had obtained a policy of insurance from the Second Respondent, viz., Life Insurance Corporation of India, for meeting the liability towards the gratuity of its employees. The First Respondent in the impugned order has held that the entire sum of Rs. 1,09,938/- received by the Second Respondent under the insurance policy towards gratuity of the Third Respondent has to be paid to him. The Second Respondent has also placed materials by way of statement of calculation dated 24.06.2002 showing that the sum of Rs. 1,09,938/- was the gratuity amount payable to the Third Respondent and discharge receipt dated 27.06.2002 towards proof of its payment made to the Petitioner. On the contrary, no working-sheet had been produced by the Petitioner as to how it is claimed that the sum of Rs. 38,940/- was alone payable towards gratuity to the Third Respondent as per its bye-laws. Inasmuch as there is no dispute that the Petitioner had received the sum of Rs. 1,09,938/- towards gratuity of the Third Respondent from the Second Respondent, it is not possible to accept the contention of the Petitioner that the Third Respondent has to confine his claim to Rs. 38,940/- as per its bye-laws. In any event, it is not the case of the Petitioner that it has returned any amount in excess of Rs. 38,940/- to the Second Respondent, meaning thereby that the retention of such excess amount is undue enrichment made by the Petitioner, which cannot be countenanced in law. In that view of the matter, the differential amount of gratuity of Rs. 71,000/- payable to the Third Respondent by the Petitioner as awarded in the impugned order passed by the First Respondent has to be upheld.

4. Coming to the provident fund amount of Rs. 93,000/- required to be paid by the Petitioner to the Third Respondent

under Section 78 of the Co-operative Societies Act in the impugned order passed by the First Respondent, it is noticed that such conclusion has been arrived relying on a settlement under Section 18(1) of the I.D. Act. Though the Petitioner impeaches its correctness by citing the decision of the Division Bench of this Court in L.Justine -vs- Registrar of Co-operative Societies, Chennai [(2002) 4 CTC 385], where it has been held that settlement under Section 12 or 18 of the I.D. Act shall have no application to the staff of the Co-operative Societies appointed beyond the cadres strength, the said dictum cannot have any relevance for the entitlement to the amount of wages payable to a person who had actually worked in a Co-operative Society beyond the approved cadres strength. That apart, the Petitioner cannot take advantage of its own wrong in availing the services of the Third Respondent, but unfairly deprive him of his legitimate rights to the benefits flowing therefrom. In this context, it must be highlighted here that the Hon'ble Supreme Court of India in State of Punjab -vs- Jagjit Singh [(2017) 1 SCC 148] has explained as to how the concept of 'equal pay for equal work' is distinguishable from the entitlement to permanent absorption in service in respect of those employees who have been engaged without conforming to the recruitment rules and has upheld the claim for parity in pay for such persons with those appointed against the sanctioned posts by observing as follows:-

> "58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a Welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

However, it is apparent from the materials borne out from the record that neither the Third Respondent nor the Petitioner had adduced any evidence in support of their rival claims for the actual period of work and the wages payable as per the settlement so as to determine the provident fund amount due to the Third Respondent. The proper recourse to be followed in such circumstances would be to remit the matter for re-consideration before the First Respondent in this regard.

5. It has been brought to notice that pursuant to the interim order dated 19.10.2014 in W.P.M.P. No. 36812 of 2004 passed in this Writ Petition, the Petitioner had remitted the sum of Rs. 82,000/-, which has been withdrawn by the Third Respondent. Having regard to the fact that the Third Respondent is entitled to a substantial sum of Rs. 71,000/- towards differential amount of gratuity, the Third Respondent shall be entitled to adjust it towards the same and shall continue to retain the remaining amount of Rs. 11,000/- out of that sum for the present, subject to the outcome of C.P. No. 553 of 2002 before the First Respondent.

6. The result of the foregoing discussion is that the Writ Petition is disposed on the following terms:-

(i) The impugned order dated 28.04.2004 in C.P. No. 553 of 2002 passed by the First Respondent granting the differential amount of Rs. 71,000/-towards gratuity payable by the Petitioner to the Third Respondent is confirmed;

(ii) the impugned order dated 28.04.2004 in C.P. No. 553 of 2002 passed by the First Respondent insofar it relates to the sum of Rs. 93,000/- towards provident fund dues payable by the Petitioner to the Third Respondent is concerned is alone set aside and that aspect of the matter is remitted to the First Respondent to be determined afresh on the basis of the evidence to be let in by the parties in that regard;

(iiii)the Petitioner and the Third Respondent shall appear in person or through their respective Counsel before the First Respondent on 22.12.2021 as well as on the subsequent dates to which it is adjourned and extend their co-operation for the expeditious disposal of the matter;

(iv) if the First Respondent is not in a position to take up the case on the said date, the date to which it is adjourned shall be informed in the prescribed manner;

(v) after affording full opportunity of hearing to the Petitioner and the Third Respondent following the prescribed procedure in consonance with the principles of natural justice, the First Respondent shall deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the concerned parties under written acknowledgment;

(vi) it shall be ensured that there is atleast one effective hearing every week showing progress of the case and monthly reports in that regard shall be sent to the Registrar (Judicial) of this Court till the matter is finally decided;

(vii) the sum of Rs. 11,000/- retained by the Third Respondent shall be adjusted towards the amount that is determined as eventually due towards provident fund payable by the Petitioner to him;

(viii) if the Third Respondent is found to be entitled to receive any further amount from the Petitioner towards provident fund dues by the First Respondent, the same may be recovered by appropriate legal proceedings before the proper forum; and

(ix) the parties shall bear their respective costs.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

vjt

To

1.The Presiding Officer,
Labour Court,
Salem.

2.The Head of the Department,
Life Insurance Corporation of India,
Pension and Group Schemes Department,
Opposite to A.T.C. Depot,
Johnsonpet,
Salem - 636 007.

Copy to

1.The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

2.The Management,
S-965, Nallipalayam Primary Agricultural Co-operative Bank,
Nallipalayam,
Namakkal - 637 003.

3.K.Kandasamy,
S/o. Kuppusamy Gounder,
4/65, Karupattipalayam,
Nallipalayam (P.O.),
Namakkal – 637 003.

Copy To

1.The Sub Assistant Registrar,
Writ Section,
High Court, Madras.

2.The Section Officer,
ER Section,
High Court, Madras.

+1cc to Mr.M.R.Raghavan, Advocate SR.No.57305

W.P.No.30354 of 2004

NK(CO)
RVM(07/12/2021)