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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2021

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THE HONOURABLE Mr.JUSTICE M.S.RAMESH

W.P.No.33342 of 2013

and

M.P.No.1 of 2013

The Coimbatore District
Central Cooperative Bank Ltd.,
State Bank Road,
Coimbatore - 641018,
Rep. By its General Manager.

...Petitioner

Vs

1. The Presiding Officer,
Labour Court,
Coimbatore.
2. V.Ponnusamy
3. Kalaiselvi
4. Nandakumar,
Represented by his Power agent
Tr.V.Ponnusamy
5. Kalpana Rani

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the first respondent in CP No.225 of 2008 and quash its order dated 25.04.2013.

For Petitioner : M/S.T.S.Gopalan & Co.

For Respondents: Mr.C.Murugesan
for R2 to R5

ORDER

In this writ petition, the Co-operative Bank has challenged the order passed by the Labour Court, Coimbatore in Computation Petition No.225 of 2008.



2. It is brought to the notice of this Court that when identically placed workmen of the petitioner-Co-operative Bank had earlier filed Computation Petitions under Section 33-C(2) of the Industrial Disputes Act, 1947 in C.P..Nos.1109 of 2002 etc., the issue came to be dealt with by a Hon'ble Division Bench of this Court in W.A.No.1727 of 2011, in the case of The Management of Coimbatore District, Central Co-operative Bank Ltd., Rep. by its Special Officer, Coimbatore Vs. The Presiding Officer, Labour Court, Coimbatore and 17 others and in the order dated 24.06.2021, the Hon'ble Division Bench had found that the settlement arrived between the Management and the workmen of the petitioner-Bank would be binding and therefore, the workmen would be consequently entitled for the monetary benefits mentioned therein. It was further held that the respondents therein/ employees of the petitioner-Bank are deemed to be workmen under Section 2(s) of the Industrial Disputes Act and therefore, the settlement arrived between them is binding. The relevant portion of the order reads as follows:-

"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:

'(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



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Corporation vs. KSRTC Staff and Workers' Federation and another reported in 1999 (2) SCC 687 as under:

'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



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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, intent and effect of the section is an 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



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Section 19 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 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



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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 உரத்து 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



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respondents 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."

3. Since the Hon'ble Division Bench has already dealt with the matter and had upheld the rights of the workmen in the Computation Petition Nos.1109 of 2002, batch etc., which case is similar to the order passed in the present Computation Petition No.225 of 2008, which is the subject matter of the present writ petition, this Court may not be in a position to deviate from the findings of the Hon'ble Division Bench.

4. In the light of the above observations, this Court does not find any infirmity in the impugned order passed by the Labour Court. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

hvk

To

The Presiding Officer,
Labour Court, Coimbatore.

+1cc to Mr.T.S.Gopalan and Co, Advocate, S.R.No.45688

W.P.No.33342 of 2013
and
M.P.No.1 of 2013

PCH(CO)
SU(05/10/2021)