



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P. (MD)No.12004 of 2011

and

M.P (MD)No.1 of 2011

M.P (MD)No.1 of 2014

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The Management
A-1258, Maduraii District Central
Co-operative Bank Staff's Cooperative Credit Society Ltd.,
MDCC Bank Building, 187, North Veli Street,
Madurai. ... Petitioner

Vs.

1.S.Ganapathy
2.The Presiding Officer, Labour Court,
Madurai. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the Award passed in I.D.No.162/2007, dated 20.04.2011, by the Labour Court, Madurai, the 2nd respondent herein and quash the same.

For Petitioner : Mr.D.Shanmugaraja Sethupathi
For R1 : Mr.S.Mohan Doss

O R D E R

This writ petition has been filed by the petitioner, to call for the records relating to the Award passed in I.D.No.162/2007, dated 20.04.2011, by the Labour Court, Madurai, and to quash the same.

2.The case of the petitioner is that the petitioner is the Madurai District Central Co-operative Bank Staff's Co-operative Credit Society Ltd., and the first respondent is the workman. The 1st respondent raised an Industrial Dispute before the Labour Court, Madurai, claiming that he was appointed as Call Boy in the Petitioner Society, on 02.12.1971 and thereafter, he was promoted as Attender on 16.02.1979. At the age of 58 years, the petitioner Society has passed an order allowing the first respondent to retire from service on attaining the age of 58 years on 31.05.2008. According to the first respondent, he is entitled to work upto 60 years, as per the Special By-law of the Madurai District Central Co-operative Bank. Aggrieved over the order of retirement, the 1st respondent filed the Industrial Dispute before the Labour Court.

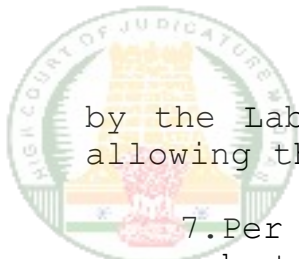


3. The Petitioner Management resisted the claim of the 1st respondent before the Labour Court on the ground that the issue raised would not come under the definition of Industrial Dispute and within the meaning of Section 2(A) of the Industrial Disputes Act. As per Rule 149(3) of the Tamil Nadu Co-operative Societies Rules, insofar as the retirement age is concerned, the Rule applicable to the Government employee shall be applicable. As per the Fundamental Rule, 58 years is the retirement age for Government Servant. However, the Labour Court came to the conclusion that as per the Special By-law of the Society, the retirement age for the basic servant is 60 years and therefore, the 1st respondent is entitled to work till attaining the age of 60 years and directed to pay the back wages to him. Challenging the same, the petitioner has filed the present Writ Petition with the aforesaid prayer.

4. On the side of the first respondent/employee, one witness was examined and documents Ex.W.1 to Ex.W.11 were marked and on behalf of the petitioner, one witness was examined and documents Ex.M1 to M3 were marked.

5. After analyzing oral and documentary evidence, the Labour Court determined the retirement age of the 1st respondent as 60 years. Since the question of reinstatement of the 1st respondent does not arise, the Labour Court directed the Society to pay the backwages from 31.05.2006 to 31.05.2008 and other retirement benefits. As against the Award of the Labour Court, the present writ petition is filed.

6. The learned counsel appearing for the petitioner would submit that the dispute raised would not come under the definition of Industrial Dispute and within the meaning of Section 2(A) of the Industrial Disputes Act. As per Rule 149(3) of the Tamil Nadu Co-operative Societies Rules, insofar as retirement age is concerned, the Rule applicable to the Government employees shall be applicable. As per the Fundamental Rule, 58 years is the retirement age for the Government Servants and there is no by-law in the Society providing the age of retirement as 60 years for the post of Attender. If the 1st respondent is aggrieved over the order of retirement, he can very well file a Revision under Section 153 of the Act before the Registrar of the Co-operative Societies, instead of raising an Industrial Dispute. When efficacious remedies are available under the Tamilnadu Co-operative Societies Act, which is a special enactment and having an exhaustive mechanism, the first respondent should not have resorted to the remedy under the Industrial Disputes Act. However, the Labour Court, without considering all these aspects, had erroneously come to a conclusion that as per the Special By-law of the Society, the retirement age for the basic servants is 60 years and therefore, the 1st respondent is entitled to work till attaining the age of 60 years and directed the Society to pay the back-wages to him. The Award passed



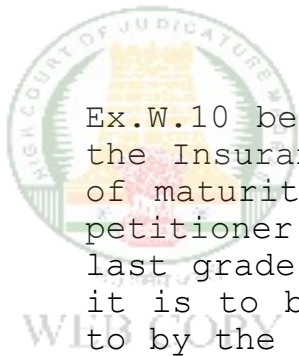
by the Labour Court is totally misconceived. Hence, he prays for allowing the present writ petition.

7. Per contra, the learned counsel appearing for the first respondent would submit that admittedly, the petitioner was initially appointed as Call Boy and subsequently, he was promoted as Attender in the year 1979. The said post is coming under the purview of the basic Servant Rules and the retirement age of the basic servants is 60 years. However, the Special by-law of the Madurai District Central Co-operative Bank provided the retirement age of the basic servants as 60 years. Further, the learned counsel for the first respondent would submit that the first respondent continuously worked 33 years of service and the same was accepted by the petitioner/Management and he has also produced a copy of the L.I.C Policy, which was marked as Ex.R.1, in which, the date of maturity is 25.03.2008 and as per Ex.R.1, the retirement age of the first respondent is 60 years. whereas, the first respondent was allowed to retire from service on 31.05.2006, which is unsustainable one. Hence, he prays for dismissal of the present writ petition.

8. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the 1st respondent-employee and carefully perused the materials placed on record.

9. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the Award of the Labour Court. The Hon'ble Supreme Court, in a catena of decisions, has held that normally a writ Court should not interfere with the Award of the Labour Court, unless the Award is perverse. It has been further held that if the Award is not irrational or perverse, the High Court should not interfere with the reasons in the Award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned Award.

10. The facts in the present case are not in dispute. Admittedly, the first respondent/workman was initially appointed as a Call Boy in the Petitioner Society on 02.12.1971 and thereafter, he was promoted as Attender on 16.02.1979. The petitioner Society has passed an order allowing the first respondent to retire from service on attaining the age of 58 years, on 31.05.2008. According to the first respondent, he is entitled to work upto the age of 60 years, as per the Special By-law of the Madurai District Central Co-operative Bank. Therefore, the first respondent/workman raised an industrial dispute before the Labour Court. Further, in order to



Ex.W.10 before the Labour Court. A perusal of Ex.W.1, reveals that the Insurance was taken by the petitioner Society and the last date of maturity of the policy is 25.03.2008. It is the stand of the petitioner that the Special By-Law provides the age of retirement of last grade servants in the petitioner Society as 60 years. However, it is to be pointed out that the Special By-law, which is referred to by the workman relates to the Co-operative Bank and is in no way connected with the petitioner/society. In the absence of any special by-law relating to the petitioner society, then it is clear that the basic servants service rules comes into play in relation to the service condition of the petitioner.

11. It is not in dispute that insofar as the retirement age is concerned, the Rule applicable to the Government employees shall be applicable to the petitioner Society. As per the Fundamental Rule 56, the retirement age of the basic servants is 60 years. In the present case, it is not in dispute that the workman was in basic servants and would be squarely covered by the basic servants service rules. Such being the case, the finding of the Labour Court that the workman is entitled to be continued in service till the age of 60 years is perfectly sustainable and does not suffer the vice of illegality.

12. However, the fact remains that the first respondent was allowed to retire from service on 31.05.2006. When the first respondent has not physically attended duty, the order of the Labour Court, awarding the back-wages to the first respondent is impermissible. The first respondent/workman has not physically attended work between 31.05.2006 and 31.05.2008 and, therefore, applying the principle of 'No work No pay', the petitioner is not entitled for back-wages, but only entitled for service benefits and, accordingly, the order of the Labour Court granting backwages cannot be sustained.

13. Accordingly, this writ petition is disposed of with a direction to the petitioner to work out the terminal benefits of the workman as if he had been in service till the age of 60 years and superannuated on 31.5.08, and pay the terminal benefits to the workman within a period of twelve weeks from the date of receipt of a copy of this order, but it is made clear that the workman would not be entitled to backwages from 31.5.06 to 31.5.08. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

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/ /2021

Sub Assistant Registrar(CS)



W.P.(MD)No.12004 of 2011

To

The Presiding Officer,
Labour Court, Madurai.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-10462[F] dated
11/03/2021)

W.P. (MD) No.12004 of 2011
10.03.2021

SE (CO)

TR (05.07.2021) 5P 3C