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W.A.No. 621 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.621 of 2022

R.Swaminathan (died)

1. M.Ramalingam
K.Saraswathi (died)
M.Elanthirayan (died)
2. P.Shanmugam
3. A.Eswaran
4. S.Arthanareeswaran
5. E.Radhakrishnan
A.Sarojini (died)
A.Moses (died)
V.K.Kuppuswamy (died)

6. V.Ponnusamy
7. N.R.Ayyasamy
8. N.Umanath Singh
9. V.K.Subbannan
S.Dhandapani (died)
U.S.Govindarajan (died)
S.Kandanathan (died)
K.Mayilsamy (died)
K.Palaniappan (died)

- 10.K.G.Balasubramanian
- 11.N.Saraswathi
R.Duraisamy (died)

- 12.O.S.Arumugam
- 13.S.Karuppusamy



W.A.No. 6 of 2019

R.Rathinam (died)

14.S.Rajeswari

P.Vageesan (died)

V.Saraswathi (died)

C.Natarajan (died)

S.Ramakkal (died)

15.K.N.Pattappan

16.K.Ganapathy

R.Kuppusamy (died)

17.C.Kumarappan

18.S.Srinivasan

19. K.Subburaj

20. G.Leelavathi

R.Sivanandam (died)

E.R.Palanivel (died)

21. P.Thirunavukkarasu

22. S.Saraswathi

23. S.Senthil Kumar

24. Sowndaram

25. Kaveri

26. Karpagam

27. Akilandeswari

28. Santhanalakshmi

29. N.Saravana Chandran

... Appellants

-vs-

1. The Coimbatore District Central Co-operative Bank
Limited, State Bank Road,
Coimbatore-18 rep. by its Special Officer

2. The Presiding Officer,
Labour Court,
District Court Complex, Coimbatore.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent to set aside the order dated 25.09.2019 passed in W.P.No.32279/2004 and allow the Writ Appeal.



W.A.No.6 of 2019

For Appellants : Mr.Ajay Khose
for M/s.C.Murugesan

For R1 : Mr.R.Parthiban

J U D G M E N T

Challenging the order passed in W.P.No.32279 of 2004 dated 25.09.2019, the present Writ Appeal has been preferred by some of the workmen of Coimbatore District Central Co-operative Bank Limited, along with others, who are the legal heirs of the deceased employees and were parties to the proceedings in the Labour Court.

2. The employees concerned have joined the services in various designations and retired from service prior to 01.07.1996. On 01.07.1996, the By-law got amended wherein it has been decided to extend certain benefits in terms of the Government Order as per the clause in the Settlement dated 30.03.1979. In terms of Clause No.38 of the Settlement, the Management has agreed to grant encashment of the monetary benefits of the Unearned Leave on Private Affairs in terms of Rules in force that would be applicable to the employees working in the Tamil Nadu State Government. The Government has issued G.O.Ms.No.488, Finance (Pension) Department, dated 12.08.1996 wherein, it has been decided to extend the benefit of encashment of 50% of the unearned leave on private affairs up to the maximum period of 90 days itself and the relevant clause in the Government Order is extracted below:

"2. The Government have decided to accept the long pending demand of various associations of employees to surrender half pay leave on private affairs at the time of retirement and also to grant full leave salary for encashment of the entire earned leave at credit of retiring employees. Accordingly, Government pass the following Orders:-



W.A.No. 6 of 2017

(a) At the time of retirement, 50% of the leave on private affairs standing to the credit of the employees, upto a maximum of 90 days, be entitled for full leave salary. The Head of office shall draw the leave salary on encashment of leave on private affairs, as in the case of encashment of earned leave."

The By-law of the bank was amended incorporating the extension of the benefit of encashment of leave on private affairs and the leave amendment is extracted below:-

"(c) Unearned Leave:- Every employee of the Bank shall be entitled to unearned leave on private affairs for six months on half pay and allowances and medical certificate upto 18 months during the entire period of service on full pay and allowances and such leave may be granted not exceeding two months at a time.

The above leave shall be regulated as follows:

	Period of Service 1	Leave on Private affairs to which the employee will be entitled with half pay 2
1.	For the first ten years	3 months
2.	Beyond ten years	6 months
II.	Period of Service	Leave on Medical Certificate with full pay to which the employee will be entitled.
1.	Upto 5 years	3 months
2.	More than 5 years but less than 10 years	6 months
3.	More than 10 years but less than 15 years	9 months
4.	More than 15 years but less than 20 years	12 months
5.	More than 20 years	18months

"The leave under this by law shall be governed as per the rules applicable to Tamil Nadu State Government servants, subject to Regulations framed by the Board of Management from time to time and approved by the Registrar."



W.A.No. 6 of 2001

3. The Bank, on 24.02.2001, has approved that the amendment would come into effect from 01.07.1996. The relevant portion is extracted hereunder:

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"Add the following under Special by laws relating to service conditions of employees No.8(1) (c)

"I shall be competent to the authority sanctioning unearned leave on private affairs to permit the employees to encash the unearned leave on private affairs at their credit on the date of superannuation /voluntary/pre mature retirement /Death while in service, 50% of leave on private affairs, standing at the credit of the employees, upto the maximum of 90 days. The leave salary on encashment of leave on private affairs shall be permissible as in the case of encashment of earned leave."

Note: This By-law will come into effect from 1.7.96.

Sd/-G.A.Athipathi, President and 113 members."

On 25.05.2001, the amendment of the by-law was registered. The Deputy Registrar has approved it, by specifically endorsing in the Proceedings dated 25.05.2001 that the by-law has been registered and approved by him in terms of Sub-Section 5 of Section 11 of the Tamil Nadu Co-operative Societies Act, 1983. In addition to the above, the order passed by the Deputy Registrar dated 25.05.2001 was communicated to the Bank, as extracted below:

"Under Sub-Section 5 of Section 1 of the Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983), I hereby register the following amendments to the by-law No.8(1) (C) of the special by laws relating to the service conditions of the Coimbatore District Central Co-operative Bank Ltd. No.427, Coimbatore.

The Registered by-laws and the certificate are enclosed herewith."



W.A.No. 6 of 2017

4. The Labour Court, in the Computation Petitions filed by the employees, came to the conclusion that the employees have accrued right to demand the wages in terms of the settlement, by-laws and Government Orders, as it would form part of their pre-existing right accrued in the light of the amendment to the by-laws and the employees, who have already attained the age of superannuation, would be entitled to the benefit to those employees who retired after the amendment.

5. The employer has resisted the claim on the ground that there is no pre-existing right for the employees to claim the benefit under Section 33(C)(2) of the Industrial Disputes Act, 1947. Apart from the preliminary objection that the employees are officers and non-workmen and the benefits of the settlement cannot be extended to those employees, as they are not covered by the provisions of the Industrial Disputes Act, 1947, it was contended that many of them are General Managers and Assistant General Managers and that the burden is on the workmen to prove that they are not workmen falling under the purview of Section 2(s) of the Act, that there was a delay in making the claims which are beyond 5 years in filing the computation petitions and that on the ground of laches, the claim of the persons who approached the Labour Court, has got to be rejected.

6. Learned Counsel appearing for the 1st Respondent contended that when the benefit was sought to be demanded by the workmen in terms of Clause No.38 of the Settlement dated



W.A.No. 6 of 2017

30.03.1979, which may not be applicable to the employees, as contended by them in the light of the by-law 8(1)(c) that is said to have come into effect from 01.07.1996, a resolution was passed by the bank to cancel the said amendment to the by-law. On coming to know of this fact, the Union approached the District Manager, Coimbatore and thereafter, obtained an interim order of status quo on 15.07.2002 in I.A.No.906/2002 in O.S.No.830/2002. Hence, the by-law stood as such without cancellation. Ultimately, the said application was dismissed for default on 03.11.2010 and the by law was cancelled subsequently with retrospective effect on 01.07.1996. In view of the same, the employees are not entitled to any benefit. According to him, the learned Single Judge has accepted the contention of the management that when the amendment itself is disputed by the Management, the only remedy for the respondents in the writ petition was to raise an industrial dispute and not to make a claim by way of filing a Computation Petition under Section 33(C)(2) of the Act. The learned Single Judge has also observed that when the statute requires approval of the Registrar of Co-operative Societies, in the absence of such approval, the employees are not entitled to get benefits in view of the incomplete amendments. The learned Single Judge has also accepted the case of the Management that there was a delay of more than 3 years in making a claim before the Labour Court after the retirement of the applicants. Since the employees have not established any pre-existing right before the Labour Court, the Computation Petitions itself are not entertainable without ascertaining the fact as to whether the right of the benefit of encashment of Unearned Leave on Private Affairs has to be extended or not. The award of the Labour Court was set



W.A.No. 1 of 2019

aside by the learned single Judge *vide* order dated 25.09.2019, challenging which, this writ appeal has been filed.

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7. Heard both sides. We have also gone through the records carefully.

8. At the outset, it has been brought to the attention of this Court that some of the employees working under the same Management have gone before the Labour Court by filing a different computation petition and the management has stated before the Labour Court that Clause No.38 of the Settlement dated 30.03.1979 would be applicable to all the employees including the General Manager and the Joint General Manager. The relevant portion is extracted hereunder:

"தொ.சா.ஆ.1ல் ஷரத்து 38 வங்கியில் உள்ள அனைத்து ஊரியர்களுக்கும் பொருந்தும். இந்த மனுதாரர்களுக்கும் பொருந்தும். தொ.சா.ஆ.1 ஒப்பந்தம் பொது மேலாளர் இணை மேலாளர் அனைவருக்கும் பொருந்துவதாக உள்ளது."

However, the learned Counsel for the workmen referred to this evidence in the present case to have persuasive value for this Court to come to a conclusion that the settlement is applicable to all the workmen and non-workmen. He would further submit that even though the persons have been designated as Managers and Deputy Managers, the evidence tendered by the Management, as referred to by the Labour Court, would make it very clear that the employees did not have any managerial or supervisory nature of work and the relevant paragraph is extracted hereunder :



W.A.No. 111 of 2017

"எதிர்மனுதாரர் வங்கியில் பணியாற்றி வரும் உதவி மேலாளர் தன்னுடைய சாட்சியத்தில் மிகத் தெளிவாக கீழ்க்கண்டவாறு சான்றுரைத்துள்ளார்.

மனுதாரர்களுக்கு வங்கியின் சார்பாக வங்கிக்காக காசோலைகளை வழங்கப்படுகின்ற அதிகாரம் வழங்கப்படவில்லை. காசோலைகளில் இரு அதிகாரிகள் சேர்ந்து கையொப்பமிட வேண்டும். மேலும், வங்கிக்காக வேண்டி முன்றாம் நபர்களுடன் ஏற்படுகின்ற ஒப்பந்தங்களில் கையொப்பமிடக்கூடிய அதிகாரமும் மனுதாரர்களுக்கு வழங்கப்படவில்லை. மேலும் கொள்கை முடிவுகள் எடுக்கக்கூடிய அதிகாரமும் மனுதாரர்களுக்கு வழங்கப்படவில்லை. மேலும் தனக்கு கீழ் பணியாற்றக்கூடிய ஊரியர்கள் மீது நடவடிக்கை எடுக்கக்கூடிய அதிகாரமும் கிடையாது. மேலும் மனுதாரர்களுக்குத் தனக்குக் கீழ் பணியாற்றக்கூடிய பணியாளர்களுக்கு தற்செயல் விடுப்பு வழங்கக்கூடிய அதிகாரம் உள்ளது."

Though the last sentence in the aforesaid extract has been referred to by the Counsel appearing for the Management, in the light of the judgment of the Supreme Court reported in **1969 (2) LLJ 670 in Anand Bazar Patrika (P) Limited vs. The Workmen**, we are not inclined to take a different view that they are non-workmen. Even assuming for the sake of argument that the decision quoted by the management in the case in **Mukand Limited vs. Mukand Staff & Officers' Association** reported in **(2004) 10 Supreme Court Cases 460**, wherein, it was held that the non-employees cannot seek the protection under the Industrial Disputes Act, 1947, for the purpose of this benefit, the Management has treated the officials who are designated as Manager and Assistant Manager as workmen in the settlement and the preamble of the settlement would read as follows:

"It is agreed that the basic pay of officers and subordinate staff will be raised by 14%, the clerical cadre by 18%, and the full-time supervisors and scavengers by 25% with effect from 1-7-1978."

9. Once an employee ceases to be a non-workman, he may lose the protection under the



W.A.No. 1721 of 2011

Industrial Disputes Act, 1947. But, for the purpose of this case, the officers and superintending staff have been classified as workmen under the Industrial Disputes Act for the purpose of extending the benefit. As stated supra, the by-law has come into effect from 01.07.1996. The Labour Court has also rendered a finding of fact in paragraph 9 that the employer has treated all the staff of non-clerical or supervisor or manager cadre as Workman for the purpose of extending the benefit of the settlement. We reiterate that in view of the earlier finding of the Labour Court that those employees have been designated as such and the nature of work attract Section 2(s) of the Act, mere designation or salary they would be drawing, would not confer on them a non-workman status to exclude them from the purview of the Industrial Disputes Act, 1947. The Labour Court has also held that once the benefits have been extended to the employees retrospectively, there exists a pre-existing right and that an application under Section 33(C)(2) of the Act, 1947 is maintainable. A Division Bench of this Court, in a judgment dated 24.06.2021 in W.A.No.1721 of 2011 (**The Management of Coimbatore District Central Co-operative Bank Limited rep. by its Special Officer, Coimbatore vs. The Presiding Officer, Labour Court, Coimbatore and 17 others**), while dealing with a similar issue of extending the benefit of settlement dated 30.03.1979 in terms of clause No.8(1)(c) of the by-law, has held that the contention of the Management that there was no pre-existing right cannot be accepted. When there is a settlement which has got a binding force, in the light of the judgment of the Supreme Court in **Karnataka State Road Transport Corporation vs. KSRTC Staff and Workers' Federation and another** reported in 1999 (2) SCC 687, the clauses of settlement



W.A.No. 6 of 2017

need to be adhered to.

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10. This Court, in **Tamil Nadu Vatta Kooturavu Veetu Vasathi Sangangalin Anaithu Paniyalargal Madya Sangam vs. The Deputy Registrar of Cooperative Societies (Housing) and Others**, reported in **(2008) 2 MLJ 385**, held that the Authority concerned, while invoking Section 181 of the Co-operative Societies Act, is empowered to cancel any directions. In this case, the settlement, which has not been approved, can be ignored, in view of the fact that the suit filed by the Employees' Association was dismissed for default and that the by-law was amended, taking away the rights conferred retrospectively.

11. A reading of the order of this Court would make it very clear that even though the settlements have been tested, the present settlement dated 30.03.1979 is not tested. Secondly, without any approval, the settlement cannot be registered. Thirdly, the Deputy Registrar, by his order dated 25.05.2001, has clearly stated that the by-law has been approved and registered. Without approval, there cannot be any registration. It is no doubt true that the employer can amend the settlement either by means of a bi-partite or a tri-partite settlement to take away or restrict the benefits. This depends upon the consensus that can be reached at the negotiation table. In the case on hand, the benefits that have already been accrued cannot be taken away unilaterally. As stated supra, in the light of the settlement dated 30.03.1979, the employees would be entitled to the benefit of G.O.No.488, Finance (Pension) Department, dated 12.08.1996 in availing the encashment of 50% of the unearned leave on private affairs to the



W.A.No. 6 of 2017

credit of the employees upto the maximum period of 90 days. The finding of the learned Single

Judge that there is no pre-existing right may not be correct. Merely because the employer

disputes the claim of the workman, it does not mean that the issue need not be adjudicated. In

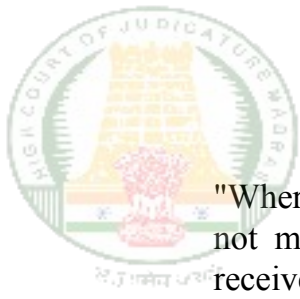
an industrial dispute, the court will have to see, as an incidental issue, whether there exists a

pre-existing right, in the light of the decision of the Constitution Bench of the Supreme Court in

Central Bank of India Limited (In all the appeals) vs. P.S.Rajagopalan etc. reported in AIR

1964 SC 743 and settlement alone is not sufficient. The relevant portion is extracted hereunder:

"16. Let us then revert to the words used in s. 33C(2) in order to decide what would be its true scope and effect on a fair and reasonable construction. When sub-s. (2) refers to any workman entitled to receive from the employer any benefit there specified, does it mean that he must be a workman whose right to receive the said benefit is not disputed by the employer ? According to the appellant, the scope of sub-s. (2) is similar to that of sub-s. (1), and it is pointed out that just as under sub-s. (1) any disputed question about the workman's right to receive the money due under an act can not be adjudicated upon by the appropriate Government, so under sub-s. (2) if a dispute is raised about the workmen's right to receive the benefit in question, that cannot be determined by the Labour Court. The only point which the Labour Court can determine is one relation to the computation of the benefit terms of money. We are not impressed by this argument. In our opinion, on a fair and reasonable construction of sub-s. (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is to disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clause of sub-s. (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The clause



W.A.No. 6 of 2017

"Where any workman is entitled to receive from the employer any benefit" does not mean "where such workman is admittedly, or admitted to be, entitled to receive such benefit". The appellant's construction would necessarily introduce the addition of the words "admittedly, or admitted to be" in that clause, and that clearly is not permissible. Besides, it seems to us that if the appellant's construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by sub-s. (2), because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under s. 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-s. (2). As Maxwell has observed "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution [Maxwell on Interpretation of Statutes p. 350.]." We must accordingly hold that s. 33C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled would be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers. Incidentally, it may be relevant to add that it would be somewhat odd that under sub-s. (3), the Labour Court should have been authorised to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under sub-s. (2). On the other hand, sub-s. 3 becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour Court under sub-s. (2).

It is very clear that the Labour Court is empowered to decide the issue and that is why, in the present case on hand, the Labour Court has decided the issue as to whether a person is a workman or not. Though that issue need not be gone into or ought not to have been gone into, more so, in the light of Clause No.1 in the settlement referred to earlier, the employer has treated all the persons in the bank as workmen for the purpose of settlement.

12. The Management has admitted in the counter in C.P.No.531 of 2002 (a simple case has been referred) before the Labour Court and some of the extracts are reproduced hereunder:



W.A.No. 61 of 2017

"... Proceedings under section 33-C(2) is in the nature of execution proceedings. A person can claim only the sums to which he is entitled to under a Settlement, Award or contract of service. In other words, a person must have a pre-existing right for claiming the sums under Section 33-C(2)....Moreover, the bye-law has been amended without instructions from Registrar of Co-operative Societies for amendment of bye-law based on G.O., it has to be endorsed by Registrar of Co-operative Societies, Chennai, with specific instructions to make provisions in the bye-law that whenever any amendment is made in the bye-law, it should be approved by the Registrar of Co-operative Societies. Though the amendment is given effect to from 01.07.1996, it has not been approved by the Registrar of Co-operative Societies, Chennai. In fact, the Registrar of Co-operative Societies vide his letter Rc.No.165668/201/CRS1 dated 11.04.2002 has instructed the Special Officer to arrange for cancellation of the amendment made in respect of encashment of unearned leave on private affairs by another amendment....."

From the above, it is very clear that there was an amendment with regard to the inclusion of the encashment of unearned leave on private affairs. The by-law was registered by the Deputy Registrar of Co-operative Societies on 25.05.2001. The contention that the by-law has been amended without the instructions of the Registrar of Co-operative Societies cannot be accepted as, without approval, there cannot be any registration. Once it is registered and the rights have been accrued, the employees are entitled to demand the amount as per the settlement as it becomes a pre-existing right. The by-law has been registered as early as on 25.05.2001 giving benefit from 01.07.1996. Only after one year on 11.04.2002, the Registrar has instructed the Special Officer to arrange for the cancellation of the amendment in respect of encashment of the Unearned Leave on Private Affairs and the bank has passed a resolution with regard to the amendment. The finding of the learned single Judge that there was no pre-existing right for claim of encashment of unearned leave on private affairs, cannot be correct. As discussed



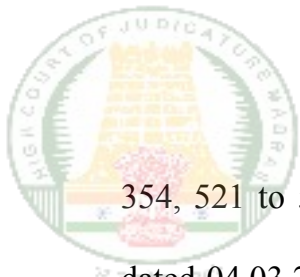
W.A.No. 61 of 2017

earlier, there exists a pre-existing right and the Labour Court was perfectly justified in granting the relief to the workman concerned before the Labour Court.

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13. Coming to the next question, viz., there was a delay in approaching the Labour Court in claiming monetary benefits, the Supreme Court, in a number of cases held that the delay may be fatal to the workman in those cases pertaining to industrial dispute and not with regard to the monetary claim due to the workmen which has already accrued to them. The Apex Court, in the case of **Town Municipal, Council, Athani vs. The Presiding Officer, Labour Courts, Hubli and Others**, reported in **1969 II LLJ 651**, where, the employees claimed benefits under Section 33(C)(2) of the Industrial Disputes Act, categorically held that on the ground of delay, the right accrued to the employees cannot be thrown out. The decision in the case of **Prabhakar vs. Joint Director, Sericulture** reported in **(2015) 15 SCC 1**, may be applicable, if it pertains to raising of an industrial dispute with delay. To be noted, the delay in raising a dispute under Section 2-A or Section 10 of the Industrial Disputes Act and the delay in claiming monetary benefits under Section 33(C)(2) read with Section 33(C)(5), *ibid.*, stand on a different footing.

14. In view of the aforesaid observations and findings, we are of the view that the order of the learned Single Judge in interfering with the orders of the Labour Court in C.P.Nos.351 to



W.A.No. 611 of 2022

354, 521 to 523, 526 to 542, 663 to 667, 685 to 687, 853, 854, 913, 914, 918 and 924/2002

dated 04.03.2004 is not warranted and the same is accordingly, set aside restoring the order of the Labour Court on file. The employer is expected to implement the order of the Labour Court within a period of 3 months from the date of receipt of a copy of this judgement, failing which, it will fetch interest at 9% p.a. from today. The Management cancelling the benefits was effected on 02.08.2011. This cannot take away the pre-existing right accrued to the employees on the date of the amendment of the by-law in the light of the settlement dated 30.03.1979 and G.O.No.488, Finance (Pension) Department, dated 12.08.1996.

With the above observations and directions, this Writ Appeal stands allowed. No costs.

[S.V.N., J.] [R.K.M., J.]
10.02.2023

Index: Yes / No
Internet: Yes / No
tsi/ar

To:

The Presiding Officer,
Labour Court,
District Court Complex,
Coimbatore.

S.VAIDYANATHAN,J.
and
R.KALAIMATHI,J.



WEB COPY



W.A.No.621 of 2022

tsi/ar

W.A.No.621 of 2022

10.02.2023