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W.A. No.979 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.979 of 2023 & C.M.P. No.9761 of 2023

1 The Managing Director
Tamil Nadu Water Supply & Drainage Board
Kamarajar Salai
Chennai 600 005

2 The Assistant Executive Engineer
Tamil Nadu Water Supply & Drainage Board
Urban Sub-Division
Sankari

Appellants

v

1 The Presiding Officer
Labour Court
Salem

2 Karunagaran

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 28.02.2023 passed in W.P. No.21274 of 2005.

For appellant

Mr. S. Ravindran, Sr. Counsel
for Ms. S.Mekhala

R1

Court

For R2

Mr. V. Ajay Khose



JUDGMENT

For the sake of clarity and to avoid verbosity, the parties will be referred to as per their rank in this writ appeal.

2 The facts in brief leading to the institution of this writ appeal are as under:

2.1 The second respondent joined the services of the appellant Board on 15.11.1992 as Electrician and his services were terminated on 17.01.1994. Against his termination, he raised an industrial dispute before the first respondent in I.D.No.6 of 1997, in which, *vide* award dated 28.08.1997, the appellant Board was directed to reinstate him into service.

2.2 Assailing the award of the first respondent, the appellant Board preferred a writ petition being W.P. No.14328 of 1998, which was dismissed on the basis of the settlement entered into, in the meanwhile, under Section 12(3) of the Industrial Disputes Act, 1947, and in pursuance of the said settlement, the second respondent was reinstated into service.

2.3 However, since he was not paid as per the settlement, he filed a Computation Petition in C.P. No.680 of 2002 before the first respondent, which was allowed *vide* order dated 29.11.2004 determining the amount to be paid to him as Rs 3,28,338/- with interest @ 6%.



W.A. No.979 of 2023

2.4 The order passed in the computation petition was appealed against by the appellant Board, in W.P. No.21274 of 2005, which was dismissed by a Single Bench *vide* order dated 28.02.2023, questioning the correctness of which, this writ appeal has been filed.

3 According to Mr. S. Ravindran, learned Senior Counsel appearing for the appellant Board, the second respondent is not entitled to any relief and even going by his averments in the affidavit filed in this writ appeal, he would be entitled to only Rs.72,116/- and the determination of Rs.3,28,338/- by the first respondent is incorrect and perverse as there is no documentary or verbal evidence on the side of the second respondent to substantiate the same.

4 When this Court posed a suggestion to the learned counsel for the second respondent as to whether there is a feasibility for the second respondent giving up a portion of the amount determined, Mr. Ravindran submitted that it will have greater repercussion, inasmuch as, several workmen may knock at the doors of this Court claiming benefits, which they may not be actually entitled to and that the second respondent workman is not entitled to any amount, much less, what has been stated by means of settlement before this Court.



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5 Mr. V. Ajay Khose, learned counsel for the second respondent, submitted that pursuant to the settlement under Section 12(3) *ibid.*, the appellant Board should have granted all the monetary benefits to the second respondent by conferring on him permanent status on completion of 480 days in a period of 24 calendar months and that the order of the first respondent in extending the benefit of Rs.3,28,338/- with interest @ 6% per annum, which is also upheld by the Single Bench is perfectly justified.

6 He also admitted that there is no verbal evidence tendered. But, according to him, determination of Rs.3,28,338/- made by the first respondent is based on the settlement reached under Section 12(3), *ibid.*, entered into between the appellant Board and the union.

7 A glance of the order passed by the first respondent in the computation petition would make it clear that there was no evidence tendered by the second respondent. However, a copy of the 12(3) settlement dated 08.08.1996 has been marked before the first respondent as Ex.P.3. The first respondent ought to have computed and determined the amount only based on evidence and mere settlement itself is not sufficient to determine the amount payable to the second respondent. It is also worth pointing out that the first respondent also, in the order



dated 29.11.2004, has observed that as it is not known as to whether the second respondent was granted permanent status and whether his services have been regularised or not. The relevant paragraphs of the order of the first respondent are extracted below:

“8. The petitioner in claimed the amount as per the 12(3) settlement dated 08.08.1996. Ex.P.3 is the 12(3) settlement dated 08.08.1996 in the 12(3) settlement certain conditions have been laid down. As per the conditions laid down in 12(3) settlement, the employees who have completed 480 days in two years are entitled to permanent status and also re-fixation of salary. It was also stated that the re-fixation of salary shall be granted to the employees from 01.06.1996. In the above settlement, basic salary and D.A. of the employees of each category have not been mentioned. It is also not known whether the petitioner was granted permanent status and whether the petitioner's services have been regularised or not? It has not been stated by the petitioner that from what date his service was regularised by the respondent or whether the management has passed any order informing the service of the petitioner. Under these circumstances, the wage claimed by the petitioner should be paid to the petitioner subject to the G.O., rules, or any order of the management. The petitioner is also entitled to 6% interest from the date of this petition till the date of realization. The points are answered accordingly.

9. In the result, the petition is allowed the respondents are directed to pay a sum of Rs.3,28,338/- to the petitioner with 6% interest from the date of this petition till the date of realization, subject to the rules or order of the Management. The petitioner is also entitled to cost of Rs.300/- from the respondents.”
(emphasis supplied)

As categorically and rightly observed by the first respondent, unless there is a concrete evidence, the amount due to the second respondent cannot be determined/computed.

8 In view of the above, the order dated 28.02.2023 passed by the Single Bench and also the order dated 29.11.2004 passed by the first respondent are set



accordance with law, by ascertaining the amount due to the second respondent based on the settlement dated 08.08.1996 entered into under Section 12(3), *ibid.*, which was marked as Ex.P.3, and also based on the verbal and documentary evidence to be adduced by the parties. It is made clear that both parties are entitled to adduce both verbal and documentary evidence to substantiate their case and the first respondent is expected to ascertain the amount due to the second respondent within a period of six months from the date of receipt of a copy of this judgment. The first respondent shall conduct the proceedings on a day-to-day basis without adjourning the case beyond seven working days at any point of time.

9 It is represented by the second respondent that the calculation now produced by the appellant Board is only upto a limited period and not the entire period. We are not inclined to delve into this aspect. The amount lying in the deposit with the first respondent, shall be returned to the appellant Board together with interest. The amount, if any, withdrawn by the second respondent can be retained by him. However, it is made clear that this order is subject to the outcome of the computation petition. In case, the second respondent gets himself relieved from the services of the appellant Board, the disputed amount paid alone shall be retained by the appellant Board and other terminal benefits, if any, can be paid to the second respondent.



W.A. No.979 of 2023

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This writ appeal stands disposed of in the above terms. Costs made easy.

Connected C.M.P. is closed.

(S.V.N., J.) (K.R.S., J.)
19.06.2023

cad

To

The Presiding Officer
Labour Court
Salem



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