



W.A(MD)No.1608 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2023

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A(MD)No.1608 of 2023
and
C.M.P(MD)No.12502 of 2023

The Management,
A-1257, Sholavandhan Urban Co-operative Bank Limited,
Represented by its President,
Cholavandhan,
Madurai District. ... Appellant/Writ Petitioner

Vs.

1.The Appellate Authority/Additional
Commissioner of Labour,
Under Payment of Gratuity Act 1972,
Madurai.

2.The Controlling Authority/Deputy Commissioner of
Labour,
Under Payment of Gratuity Act 1972,
Office of the Joint Commissioner of Labour,
Madurai-2.

3.K.S.Muthu Sapabathy ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the
order dated 20.03.2023 in W.P(MD)No.23942 of 2019.

For Appellant : Mr.S.Kumar

For Respondents : Mr.J.Ashok
Additional Government Pleader for R1 & R2

Mr.B.Prahalad Ravi for R3



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JUDGMENT

(Judgment of the Court was delivered by **D.BHARATHA CHAKRAVARTHY, J.**)

This writ appeal is directed against the order of the learned Single Judge, dated 20.03.2023 made in W.P(MD)No.23942 of 2022.

2. The brief facts leading to the filing of this writ appeal are that the third respondent herein was appointed as Night Watchman in the appellant bank on 01.11.1985. Upon initiation of disciplinary proceedings by order dated 15.07.1988, his services were terminated. The third respondent raised an industrial dispute in IDOP No.322 of 1989 which came to be dismissed by the Labour Court, Madurai by an award dated 27.04.1994. Upon challenge before this Court in W.P.(MD)No.6326 of 1995, the award was set aside and the matter was remitted back to the Labour Court for fresh consideration. Thereafter, by an award dated 18.03.2004, the Labour Court set aside the termination of the third respondent and directed reinstatement with continuity of service and back wages.

2.1 It is the case of the appellant when it was planning to challenge the said award, the workman entered into on 18(1) Settlement specifically agreeing that he will not make any claim regarding back wages or any other monetary benefits for the period in which, he was not



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employed. Pursuant thereto, he was reinstated into service with effect from 20.09.2004. Thereafter, the third respondent voluntarily retired from service with effect from 31.01.2007 and his gratuity amount was calculated by excluding the dismissal period and he was paid a sum of Rs.2,09,548/- as gratuity. However, the third respondent filed an application before the second respondent, the Controlling Authority under the Gratuity Act claiming a sum of Rs.3,49,245 being the balance gratuity amount. When the said claim was resisted by the appellant, without considering the objections of the appellant, the second respondent ordered the appellant bank to pay a sum of Rs.3,31,784/- along with interest at the rate of 10% p.a., by an order dated 27.12.2018. Aggrieved by the same, an appeal was preferred before the first respondent, which was also dismissed by an order dated 22.10.2019. Aggrieved thereby, the instant writ petition was filed by the appellant challenging the said award. While the learned Single Judge interfered with the interest portion by reducing it as 8% p.a., the award was upheld. Aggrieved by the same, the present appeal is filed.

3. *Mr.S.Kumar*, the learned counsel appearing on behalf of the appellant would submit that by a specific 18(1) Settlement, the workman had foregone that he will not claim any monetary benefits in respect of the period in which he was under dismissal from service, there is no question of claiming the said period as service for the purpose of calculation of gratuity



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7. In the result, the W.A(MD)No.1608 of 2023 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]
29.09.2023

Index : Yes/No
NCC : Yes/No
sjj

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