



W.P.(MD)No.23942 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.23942 of 2019

and

W.M.P.(MD)Nos.20553 and 20554 of 2019

The Management,
A 1257, Sholavandhan Urban Co-operative
Bank Limited,
represented by its President,
Cholavandhan, Madurai District.

... 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,
Office of the Joint Commissioner,
Madurai-2.

3.K.S.Muthu Sapabathy

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records in the order passed in P.G.A.No.36 of 2019, dated 22.10.2019, on the file of the 1st respondent and also in the order passed in P.G.No.147 of 2017, dated 27.12.2018, on the file of the 2nd respondent and to quash the same.

For Petitioners : Mr.S.Kumar
For R1&2 : Mr.S.R.A.Ramachandran
Additional Government Pleader
For R3 : Mr.T.Ravi Chandran

ORDER

This writ petition is filed for issuance of a writ of Certiorari, to quash the order passed in P.G.A.No.36 of 2019, dated 22.10.2019, on the file of the 1st respondent and also in the order passed in P.G.No.147 of 2017, dated 27.12.2018, on the file of the 2nd respondent.

2. The 3rd respondent was employed in the petitioner management as Night Watchman from 01.11.1985. Subsequently, based on some charges the petitioner was terminated from service on 15.07.1988.



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Aggrieved over the same, the 3rd respondent filed I.D.O.P.No.322 of 1989 and the same was dismissed on 27.04.1994. Challenging the same, W.P.No.6326 of 1995 was filed, wherein order of the Labour Court has set aside the dismissal order and remitted the matter back to the Labour Court. Thereafter, the Labour Court had set aside the dismissal order and directed the Bank to pay backwages, vide order, dated 18.03.2004. When the petitioner management was about to challenge the order of the Labour Court, the 3rd respondent came forward with a petition, dated 08.09.2004, forgoing the monetary benefits awarded by the Labour Court and prayed to reinstate with continuity of service. Consequentially, section 18(1) settlement was arrived between the petitioner management and the 3rd respondent whereby, the 3rd respondent agreed to give up the backwages. Thereafter, the 3rd respondent was reinstated on 20.09.2004. Then, on 31.01.2017, the petitioner on voluntary retirement option retired from service and his gratuity was calculated by excluding the dismissal period in terms of settlement and paid Rs.2,09,548/- as gratuity



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on 01.03.2017.

3. The 3rd respondent claimed gratuity for the period of dismissal and filed an application before the second respondent claiming Rs. 3,49,245/- as balance gratuity amount in P.G.No.147 of 2017. The petitioner management took a stand that the 3rd respondent has relinquished the monetary benefits through the 18(1) settlement. Therefore, the 3rd respondent is not entitled to any gratuity for the period of dismissal. However, declining the plea of the management, the second respondent has granted gratuity for the said period. Aggrieved over the same, the petitioner management has filed an appeal in P.G.A.No.36 of 2019, whereby the same was confirmed through the order, dated 22.10.2019. Aggrieved over the same, the present writ petition is filed by the petitioner management.

4. The learned Counsel for the 3rd respondent vehemently opposed the plea of the petitioner management that the period of dismissal cannot



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be taken for calculating gratuity and relied on the agreement under 18(1) settlement. The agreement is only for giving up backwages and not for continuity of service. When the continuity of service is granted the said period should be included for calculating gratuity also. Hence, the 3rd respondent prayed to sustain the order passed by the respondents 1 and 2.

5. Heard Mr.S.Kumar, learned Counsel appearing for the petitioner and Mr.S.R.A.Ramachandran, learned Additional Government Pleader appearing for respondents 1 and 2 and Mr.T.Ravi Chandran, learned Counsel appearing for 3rd respondent and perused the records.

6. On perusal of the agreement entered into between the petitioner management and the 3rd respondent, it is seen that the agreement states that the 3rd respondent will not make any claim regarding back wages or any other monetary benefits for the dismissal period. The petitioner management is interpreting the phrase “or any other monetary benefits



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for dismissal period” as if the 3rd respondent is not entitled to any other benefits including monetary benefits, attendant benefits, gratuity, pension for the said period of dismissal. Such an interpretation cannot be accepted, since it will be meaningless to grant “continuity of service”. Giving up backwages cannot be a punishment to the 3rd respondent.

7. The said issue was considered by the Hon'ble Division Bench of this Court in W.A.No.2302 of 2021 vide order dated 03.02.2022 wherein it is held as under:

“7. So far consequences thereof are concerned and as noted above that is the controversy in this appeal, this Court finds that, since the action of the Management of terminating the service of the workman is held to be illegal and it has attained finality, the same needs to be understood as the declaration by the competent authority about the termination in question being illegal for all purposes, with all consequences flowing therefrom. The order of learned Single Judge dated 15.03.2021 was to be complied with within a period of



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discretion, on permissible parameters, of granting / not granting back wages but exercise of that power under no circumstances can be read as exclusion of that service as non-pensionable service as sought to be canvassed on behalf of the appellant / Management. We make it clear that even in those cases, where back wages is not granted for valid reason, the very fact that the termination was held to be illegal, the period during which the workman had remained out of employment for no fault attributable to him, has to be counted as pensionable service unless it is so specifically ordered / provided by the Court. Even with the aid of stipulation 10 e as quoted above, permitting the Management or the Pension Trust to exclude the said period as non-pensionable service would result in acceptance of the said termination to be valid for limited purpose which is already held to be illegal. No one can be permitted to take advantage of / benefited from his own wrong. The workman cannot be asked to suffer, for not being in the employment for the fault of his employer. Keeping this in view, we find that, harmonious reading of all the decisions relied by learned advocate for the Pension Trust would lead to



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this conclusion only. So far financial constraints are concerned, it is a matter to be reconciled by the Pension Trust and the Management of the respective Transport Corporations. Such administrative difficulties cannot be permitted to be stretched to the extent of reduction of pension for no fault on the part of the workman”.

8. The Hon'ble Division Bench has categorically held that the backwages was not granted, in order to meet the ends of justice, the continuity of service was granted only for the benefit to get gratuity, pension etc. The said concession cannot be stretched to the extent that the said period should be counted as non-pensionable service. When continuity of service is granted and only backwages was given up, then the employee is entitled to gratuity by calculating the period of dismissal in order to calculate the continuity of service. Also if such a claim of the management is accepted, it will amount to punishing the employee for giving up the backwages. Therefore, the Bank management is absolutely erroneous in declining the gratuity for the dismissal period. Hence, the



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3rd respondent is entitled to gratuity for the dismissal period. The impugned order is legally sustainable.

9. Following the above judgement of the Hon'ble Division Bench this Court has held that the employee is entitled to gratuity by taking the period of dismissal, if the continuity of service is granted in W.P. (MD)No.20056 of 2017. In W.P.(MD)No. 14145 of 2014 and W.P. (MD)No. 11608 of 2018 this Court has elaborately dealt with the consequences of granting “continuity of service” and “without continuity of service” and also had dealt with the phrase “fresh entrant”.

10. However, the petitioner finally prayed that the interest may be reduced. Considering the facts and circumstances of the case, this Court is granting 8% interest for the said period.



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11. The learned counsel for the petitioner management submitted that the amount is already deposited before the authorities. The 3rd respondent is at liberty to withdraw the same. However, the interest is reduced. The respondents 1 and 2 are directed to calculate the interest as 8% and disburse the amount to the 3rd respondent as and when the 3rd respondent is making an application to the authorities.

12. With the above said observation, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No

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