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W.P.Nos.40166 and 40167 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21/11/2023
Pronounced on	24/4/2024

C O R A M

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.Nos.40166 and 40167 of 2015

&

WMP Nos. 23819 and 23820 of 2016

WP.No.40166 of 2015

- 1.D.Arunachalam
- 2.R.Ponnusamy
- 3.P.K.Subramanian
- 4.C.Govindaraju
- 5.P.Rajamani
- 6.P.Subramaniam
- 7.C.Karuppusamy
- 8.S.Krishnasamy
- 9.K.M.Deivasigamani
- 10.P.Chinnasamy
- 11.E.M.Ramu
- 12.E.K.Arumugam
- 13.Thangamuthu
- 14.P.Palanisamy
- 15.A.Balasubramaniam
- 16.P.C.Subramaniyam
- 17.N.Eswara Moorthy
- 18.K.Palanisamy



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19.C.Kandasamy
20.S.Arthanari
21.S.Ramaraj
22.B.P.Thangavelu
23.P.S.Ramalingam
24.V.R.Sampath
25.P.Ramasamy
26.G.A.Kadirvelu
27.M.G.Narayanasamy
28.K.Perumal
29.R.Periyasamy
30.S.S.Murugesan
31.K.Chinnasamy
32.A.Mylsamy
33.S.Ponnusamy
34.N.Rajaiah
35.V.Muthusamy
36.R.Govindasamy
37.M.P.Dhandapani
38.K.S.M.Eswaran
39.C.Marimuthu
40.R.Muthusamy
41.Ramayammal

..Petitioners

versus

1.The Registrar of Co-op.Societies,
Office of the Registrar of Co-op.Societies,
No.170, Periyar E.V.R. Salai,
Kilpakkam, Chennai-600 010.

2.The Management of
Erode District Central Co-op Bank,
Bhavani Main Road,
PB.No.558, Erode-3,
rep. by the Chairman

... Respondents



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a n d

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- 1.Amsaveni Manoharan
- 2.Nachammal
- 3.P.Kamalam
- 4.Rukmani
- 5.Kannammal
- 6.Thiyaneswaran
- 7.Padmavathi
- 8.N.Lakshmi
- 9.Rukmani
- 10.Mageswari
- 11.Dhanalakshmi
- 12.Parvathi
- 13.Kanthamani
- 14.Sulochana
- 15.Vasantha Kokilam
- 16.K.Rajamani
- 17.Subbathal
- 18.Kannammal
- 19.Parvathy
- 20.Naj Munnisha
- 21.Lakshmi Ammal
- 22.Valliammal
- 23.A.Sukumar

.. Petitioners

versus

1. The Registrar of Co-op.Societies,
Office of the Registrar of Co-op.Societies,
No.170, Periyar E.V.R. Salai,
Kilpakkam, Chennai-600 010.



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2. The Management of
the Erode District Central Co-op Bank,
rep. by the Chairman.
Bhavani Main Road,
PB No.558, Erode-3,

.... respondents

COMMON PRAYER in WP.Nos.40166 and 40167 of 2015 : Writ
Petitions filed under Article 226 of the Constitution of India, praying to
the issuance of a Writ of Mandamus, to direct the first respondent to
accord permission to the second respondent Bank to pay gratuity amount
with 12% interest as per the settlement dated 15.03.1997 entered into by
the petitioners with the second respondent Bank under Section 18(1) of
the Industrial Disputes Act, 1947.

For Petitioners(in both Wps) : Mr.K.V.Shanmugunathan

For Respondents(in both Wps) : Mr.L.P.Shanmugasundaram

for R1

Mr.M.R.Raghavan for R2



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COMMON ORDER

Since the facts and circumstances as well as the issue involved in both the Writ Petitions are common, these Writ Petitions are taken up together and being disposed of by way of this common order.

2.The brief facts of the case as narrated in the affidavits filed in support of the Writ Petitions, are stated below:

These writ petitions were filed by the petitioners against the Registrar of Cooperative Societies/first respondent and Management of Erode District Central Cooperative Bank/second respondent, seeking for a mandamus, directing the first respondent to accord permission from the second respondent Bank to pay gratuity amount with 12% interest as per the Settlement dated 15/3/1997 entered into between the petitioner and second respondent Bank under Section 18 (1) of the Industrial Disputes Act, 1947.



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3. The second respondent Bank was registered under the provisions of the Tamil Nadu Cooperative Societies Act. The petitioners joined the services of the second respondent on various dates and in various capacities and also retired on various dates as mentioned in paragraph 4 of the affidavits.

4. In the year 1994, when the petitioners were in service, Government of Tamil Nadu had appointed a Streamlining Committee for making recommendations for revision in pay scales and conditions of service for Central Cooperative Bank Employees, vide G.O.Ms.No.2 (D) No.71 dated 7/10/1994 under the Chairmanship of Thiru.D.Murugaraj, I.A.S. The Committee after elaborate and detailed discussions, submitted a report to the Government. The Government in turn issued G.O.Ms.No.161 Cooperative Food and Consumer Protection Department, dated 5/9/1996 in respect of the recommendations of the Committee. The Registrar of Cooperative Societies, by way of a letter dated 15/10/1996 and another letter dated 21/11/1996 has endorsed the Government order and issued guidelines for arriving at the Settlement with the Employees Union concerned in respect of recommendations.



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5. The Employees working in the Central Cooperative Bank are not fully satisfied with the Government Order. They wanted the Government to accept all the recommendations of Streamlining Committee. However, some of them are not made part of the Government Order. The Government in turn, after considering the demands of the employees, released the revised Government Order vide G.O.Ms.No.6 Co-operation, Food and Consumer Department dated 8/1/1997. Consequently, the Registrar of Cooperative Societies by his letter dated 9/1/1997 had endorsed the said Government Order. Later, the Management has initiated discussions with the representatives of the employees of the Bank in respect of various recommendations as per G.O.Ms.Nos.161 and 6, dated 5/9/1996 and 8/1/1997. Ultimately, the second respondent has entered into a Settlement with the Employees Union and with individual employees under Section 18 (1) of the Industrial Disputes Act, 1947. Similarly, an agreement was also entered into by the second respondent with its staff members on 15/3/1997.



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6. Basing on the agreement under Section 18 (1) of the Industrial Disputes Act and also basing on the agreement entered into with the staff members on 15/3/1997, the benefits are conferred on the employees of the second respondent Bank under Payment of Gratuity Act. Agreement dated 15/3/1997 were applicable to all the employees who were all on the rolls of employment on 13/6/1994 and thereafter. The period of agreement was for five years, i.e., from 1/7/1994 to 30/6/1999.

7. The second respondent has refused to abide by the agreement dated 15/3/1997 in respect of Payment of Gratuity Act. Aggrieved by the same, 25 employees, who had retired from service between 1996 and 2000 had preferred gratuity applications before the Controlling Authority under the Payment of Gratuity Act, Salem for seeking gratuity as per the Settlement dated 15/3/1997. The said applications were rejected by the Controlling Authority on 4/2/2002. The employees have preferred an appeal. The said appeal was also rejected by an Appellate Authority on 29/1/2004. Aggrieved by the same, employees have preferred W.P.No.2069 of 2005 before this Court.



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8. In the meanwhile, some of the gratuity applications preferred by some of the employees, seeking gratuity as per the terms of the agreement and Settlement dated 15/3/1997 were allowed by the Controlling Authority as well as by the Appellate Authority constituted under the Payment of Gratuity Act. Aggrieved by the same, second respondent has preferred W.P.No.2364 of 2009 before this Court. Both the writ petitions, viz., W.P.Nos.2364 of 2009 and 2069 of 2005 were heard together and finally, this Court has upheld the claim of the employees and allowed W.P.No.2069 of 2005. The second respondent has preferred Writ Appeal Nos.1220 and 1221 of 2010 and vide, order, dated 29/10/2013 both the Writ Appeals were dismissed. Aggrieved by the said dismissal, the second respondent has preferred S.L.P.(C) No.s13134 of 2014 and 13135 of 2014 before the Hon'ble Supreme Court. Both of them were dismissed with costs. After dismissal of S.L.Ps, second respondent paid gratuity to the employees as per the agreement and Settlement dated 15/3/1997.



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9. Subsequently, 32 employees have filed gratuity applications as per the terms of Settlement dated 15/3/1997, but the same were rejected. One Mr.N.Sivasubramaniam, a retired employee of the second respondent made a representation on 27/2/2012 on behalf of all those who had retired before November 2003 seeking to direct the second respondent to pay gratuity as per the Agreement and Settlement dated 15/3/1997. The first respondent has rejected the said representation stating that in view of the Corrigendum dated 20/11/2001, issued by the Department of Food and Consumer. However, the first respondent has permitted the payment of gratuity to the retired employees of Chennai Central Cooperative Bank calculating one month as 26 days, i.e., as per the Agreement and Settlement dated 17/12/1997.

10. On a further representation made by the said M.Sivasubramaniam, under the provisions of RTI Act, 2005, the Joint Registrar of Co-operative Societies (Law & Training) permitted the Payment of Gratuity to the retired employees by calculating 26 days as a month. The petitioners have submitted a representation to the first respondent seeking directions to the second respondent Bank to pay the



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gratuity calculating 26 days a month but the first respondent has not chosen to give any reply. Therefore, sought for a direction as stated supra.

11 . The first respondent has filed counter affidavits stating that the petitioners have not challenged any of the orders of the Registrar of Co-operative Societies. In such a situation, the first respondent is neither a relevant nor a necessary party in the writ petitions.

12. The second respondent has not filed any counter.

13. Heard Mr.K.V.Shanmuganathan, learned counsel for the petitioners, Mr.L.P.Shanmuga Sundaram, learned counsel for the first respondent and Mr.M.R.Raghavan, learned counsel for the second respondent.

14. The main grievance of the petitioners is that the second respondent Bank has not paid the gratuity as per 18 (1) Settlement calculating 26 days per month. The relevant portion of Clause 21 of the



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Agreement dated 15/3/1997 in respect of Payment of Gratuity is extracted hereunder:-

“The existing system of payment of gratuity shall be continued. It is mutually agreed that for the purpose of calculation of gratuity 26 days will be reckoned as a month not only for arriving pay but also for calculation of length of service. The same Clause was adopted in 18 (1) Settlement also.”

15. On a perusal of the above Settlement, it is clear that the Management and employees have agreed to count 26 days as a month for arriving at the calculation of payment of gratuity but 26 days of a month will also be calculated for consideration of the length of service that means in case if a person has worked for 10 years his length of service for the purpose of calculation of gratuity will be 12 years.



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16. The second respondent Management having entered into an agreement under Section 18 (1) of the Industrial Disputes Act and also entered into similar agreement dated 15/3/1997 with the staff should have honoured the terms of agreement in respect of payment of gratuity calculating 26 days a month. However, the second respondent started refusing to honour the agreement under Section 18 (1) of the Act and refused to pay the gratuity as per Section 18 (1) Settlement and agreed to pay the gratuity as per Payment of Gratuity Act. Some of the employees who are aggrieved have filed the writ petitions and Management has also preferred writ petitions and both the writ petitions, viz., W.P.Nos.2364 of 1999 and 2069 of 2005 were taken up for hearing and of which this Court has upheld the claim of the petitioners/employees and directed the Management to pay the gratuity as per 18 (1) Settlement dated 15/3/1997.

17. The second respondent has filed W.As and they were dismissed and finally filed S.L.P.(C) Nos.13134 and 13135 of 2014 and both of them were dismissed. Subsequently, the Management has paid gratuity to the employees as per the Agreement and Settlement dated



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15/3/1997. However, subsequently, again on some flimsy ground of Corrigendum, ignoring the biparte Settlement, Management has refused to pay the gratuity as agreed upon. Once an agreement has been arrived at between the petitioner and Management, as per the provisions of the Industrial Disputes Act, Management is bound to accept and adhere to the Settlement. The Management is not expected to go beyond the settlement.

18. The Management has agreed to provide the gratuity even more than what the Payment of Gratuity Act provides for. Since the Management and employees have agreed mutually, provisions of the said agreement will prevail. Similarly, though the Management has taken a defence that on account of Corrigendum issued, the said biparte agreement cannot be followed. The said submissions cannot be accepted. In case, if there is a change in the policy in respect of Payment of Gratuity Act, biparte agreement required to be entered into subsequent to 15/3/1997 and until then, the arrangement made under Payment of Gratuity in biparte agreement shall be continued.



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19. The petitioner has also filed W.A.Nos.1220 and 1221 of 2010 filed by the Management wherein it is reiterated that Settlement under 18 (1) and 12 (3) of the Industrial Disputes Act will prevail and the appeals filed by the Management were dismissed.

20. The learned counsel appearing for the petitioners has cited a judgment of this Court made in W.P.Nos.28138, 32509 and 38766 of 2004, wherein at paragraph 15, it has been held thus:-

“Though the judgment of this Court relating to more or less an identical issue in respect of the Erode District Central Co-operative Bank in **C.KUTTIAPPAN AND OTHERS Vs. APPELLATE AUTHORITY under Payment of Gratuity Act, 2010 (1) LLN 262** was brought to the notice that was a case relating to workmen covered by the settlement and therefore, this



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Court held that the Settlement will apply to the workman and hence, for the calculation of gratuity, 26 days will be reckoned as a month not only for arriving at pay, but also for calculation of length of service. In the present case, the said judgment cannot be pressed into service in respect of the persons who are not workmen and who have based their claim only on the agreements which do not have any statutory basis and also the original Government Order which stood cancelled by the subsequent letter of the Government.”

21. The petitioner has filed a copy of the bi-partite agreement, wherein it is clearly mentioned that for the purpose of calculation of gratuity, 26 days will be reckoned as a month not only for arriving pay but also for calculation of length of service. The petitioner has filed a copy of the communication from the Registrar of Co-operative Societies to the Special Officer, Chennai, stating that in Chennai Central Co-



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Dr.D.NAGARJUN, J

mvs.

Pre-delivery common order made in
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24/4/2024