



WEB COPY

WA.No.1885 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

WA.No.1885 of 2024

E.S.Thangaraj

Appellant

Vs

The Management, S.331, Edanganasalai Primary
Agricultural Cooperative Credit Society
Sankagiri, Salem 637502

Respondent

Prayer:- This Writ Appeal has been filed against the order dated, 01.02.2024 passed by the learned Single Judge of this Court in WP.No.7925 of 2020, allowing the said Writ Petition.

For Appellant : Mr.Infant Subash

For Respondent : Mr.C.Selvaraj, Additional Government Pleader

ORDER

(Order of the Court was made by M.S.RAMESH, J.)

1. This Writ Appeal has been filed against the order dated, 01.02.2024 passed by the learned Single Judge of this Court in WP.No.7925 of 2020, allowing the said Writ Petition.
2. The Appellant herein, who had joined the services of the Respondent Society as an Appraiser on 19.10.1991, had retired from the services of the Respondent Society on 31.10.2016 on attaining the age of superannuation.



WA.No.1885 of 2024

WEB COPY

According to the Petitioner, his last drawn salary was Rs.11,186/- at the time of attaining superannuation.

2.1 Since his retirement benefits were not settled to him within a period of thirty days as contemplated under the provisions of the Payment of Gratuity Act and his representations in this regard had also ended in vain, he had filed a computation petition in CP.No.90 of 2016 before the Labour Court under Section 33C(2) of the Industrial Disputes Act for computation of his retirement benefits. Through an order dated 03.09.2018 of the Labour Court, his retirement benefits were computed to the tune of Rs.4,31,182/- with interest.

2.2 When the said order of the Labour Court was challenged by the Respondent Society before the learned Single Judge of this Court in WP.No.7925 of 2020, the said Writ Petition came to be allowed on 01.02.2024, predominantly on the ground that the Petitioner is not a permanent Employee and by further holding that since the determination of his permanent status requires adjudication, it cannot be done in a petition under Section 33C(2) of the Industrial Disputes Act. With such observations, the order of the Labour Court was set aside. Challenging the order of the learned Single, the present Writ Appeal has been filed by the Appellant/ Employee.

3. The learned counsel for the Appellant/ Employee would submit that the Appellant had produced all the relevant documents before the Labour Court to substantiate that he was a permanent employee and that all such records,



WA.No.1885 of 2024

WEB COPY

including the service records, medical certificate and the order of retirement would substantiate that he was a permanent Employee and hence, the learned Single Judge of this Court was not correct in holding otherwise.

4. Per contra, the learned Additional Government Pleader for the Respondent Society would submit that the Appellant was only a temporary Employee and not a regular Employee and that since he has not contributed to the Provident Fund, he was not eligible for disbursement of the provident fund dues. However, on the written instructions from the Management of the Respondent Society, he would submit that the Society is ready to pay the gratuity and leave salary, as per the Special Bye-laws of the Respondent Society.
5. We have given our careful consideration to the submissions and also perused the materials placed on record.
6. Apart from the only reason that the permanent status of the Appellant herein requires adjudication, in the impugned order, no other reason has been assigned by the learned Single Judge for allowing the Writ Petition.
7. Insofar as the permanent status of the Appellant is concerned, the Appellant had marked his service record, medical certificate, the retirement order issued by the President of the Respondent Society and the legal notice as Ex.W1 to W4 before the Labour Court. From the service records, Ex.W1, it is seen that the services of the Appellant were regularised through a resolution of the Board, dated 19.05.2001 with effect from 01.04.2001 onwards. This service record, Ex.W1 is not disputed by the Respondent Society.



WA.No.1885 of 2024

8. Likewise, the order of retirement dated 31.10.2016, Ex.W3 issued by the President of the Respondent Society ratifies that the Appellant had retired from the services with effect from 31.10.2016. However, in this document, a reference has been made to the status of the Appellant as an Employee on daily wages.

9. When the learned Additional Government Pleader for the Respondent was confronted with the service record produced before the Authority, the only response to it was that the erstwhile President at the relevant point of time had wrongly made the entry in Ex.W3. We are not in agreement with such a submission made.

10. If the contention of the learned Additional Government Pleader is to be accepted, all that a Management requires to deny the claim of a workman is simply to make a casual objection touching upon the entitlement of his claim, in order to oust the jurisdiction of the Labour Court in entertaining his petition under Section 33C(2) of the Industrial Disputes Act, which would be impermissible. On the other hand, whenever a situation arises with regard to the existence of a right to make a claim for computation, the Labour Court or the Authority, as the case may be, will be well within its powers to conduct an inquiry into the “existence of the right” for the purpose of computing the claim in terms of money. In the case of **Central Bank of India Ltd. Vs. P.S.Rajagopalan Etc.**, reported in 1963 SCC OnLine SC 158, all these aspects were dealt with by the Hon'ble Supreme Court in the following manner:-



WEB COPY



WA.No.1885 of 2024

“16..... In our opinion, on a fair and reasonable construction of sub-section (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 term 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 not 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 to 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-section (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The clause “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-section (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 Section 33-C(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-section (2).”

11.The entry in the service record with regard to regularisation of the Appellant's service is pursuant to the resolution of the Board of the Respondent Society and it is not the President's individual decision. When such an entry has been recorded in the service records, the same cannot be overlooked, but rather the Respondent ought to have given effect to his



WA.No.1885 of 2024

service and treated him as a permanent Employee throughout his career.

Thus, the observation made in Ex.W3 that he was an Employee on daily wages is incorrect and hence, the same cannot be allowed to sustain. On an overall appreciation of the documents, which were produced and marked before the Labour Court and the findings in the computation order of the Labour Court, we are of the affirmed view that he was lawfully entitled to receive his retirement benefits and no adjudication was required to determine his entitlement. Hence, there is no infirmity in the order of the Labour Court.

12.In the light of the above discussions, we are of considered view that the Appellant was a permanent Employee and that he was entitled to receive the retirement benefits, which are capable of computation in terms of money and therefore, no adjudication is required thereupon. As such, the contrary observation made by the learned Single Judge of this Court in the impugned order cannot be sustained.

13.In fine, this Writ Appeal is allowed, setting aside the impugned order dated, 01.02.2024 passed by the learned Single Judge of this Court in WP.No.7925 of 2020 and confirming the order of the Labour Court, dated 03.09.2018 passed in CP.No.90 of 2016. Consequently, there shall be a direction to the Respondent Society to disburse the entire amount computed by the Labour Court through its order dated 03.09.2018 to the Appellant/Employee forthwith, in any event, within a period of six weeks. No costs.

(M.S.R.J.) & (C.K.J.)
20.08.2024



WA.No.1885 of 2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
Srcm

To

The Management, S.331, Edanganasalai Primary, Agricultural Cooperative
Credit Society, Sankagiri, Salem 637502



WEB COPY



WA.No.1885 of 2024

M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

Srcm

WA.No.1885 of 2024

20.08.2024