



WP(MD)Nos.15309 of 2012 & 13588 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)Nos.15309 of 2012 & 13588 of 2021
MP(MD) No.2 of 2012 and WMP(MD) Nos.7685 of 2021, 10523 & 10524 of 2021

WP(MD)No.15309 of 2012 :-

Kanyakumari District Central Co-Operative Bank,
Rep by its Special Officer,
Alexandra Press Road,
Nagercoil – 629 011,
Kanyakumari District.

... Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.The General Secretary,
Kanyakumari District Central Co-Operative Bank,
Employees Union,
No.152/211,
Chidambara Nagar,
Nagercoil-2.

3.M.Madhusoodana Perumal

...Respondents



WP(MD)Nos.15309 of 2012 & 13588 of 2021

WP(MD)No.13588 of 2021 :-

Kanyakumari District Central Co-Operative Bank,
Rep by its Special Officer,
Alexandra Press Road,
Nagercoil – 629 011,
Kanyakumari District.

... Petitioner

Vs

1. The General Secretary,
Kanyakumari District Central Co-Operative Bank,
Employees Union,
No.152/211,
Chidambara Nagar,
Nagercoil-2.

2. Chidambara Vadivu

3. Ponnammal

4. Jeyanthi

... Respondents

PRAYER in WP(MD) No.15309 of 2012 : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records in pursuant to the order dated 27.10.09 in I.D.No.112/2004 on the file of the first respondent and quash the same and to pass such further or other orders.

PRAYER in WP(MD) No.13588 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned award passed by the Labour Court in C.P.No.53 of 2010, dated 19.08.2011 and quash the same.



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For Petitioner : Mr.D.Shanmugarajasethupathi.
For Respondents : Mr.G.Mohan Kumar
(In both WPs)

COMMON ORDER

These writ petitions are filed by the Special Officer of Kanyakumari District Central Co-Operative Bank, Nagercoil, Kanyakumari, as against the award /order passed by the Labour Court in ID.No.112 of 2004, dated 27.10.2009 and C.P.No.53 of 2010, dated 19.08.2011.

2.Since the parties to these writ petitions are one and the same and the issue in these writ petitions are inter-linked, these writ petitions are taken up together and disposed of by this common order.

3.The case of the petitioner Bank is that one Madhusoodana Perumal was originally appointed as a Peon in the petitioner's Bank on 09.01.1969. He attained the age of superannuation on 31.08.1999 and therefore, he was allowed to retire from the petitioner Bank, vide proceedings in R.C.No.3268/99-2000 A1, dated 30.08.1999. As against the



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decision of the petitioner Bank, the said Madhusoodana Perumal has filed a writ petition before the Principal Seat of this Court in WP No.14691 of 1999, for a Mandamus, forbearing the petitioner Bank from passing any order of retirement against him till he attained 60 years and sought for a direction to permit him to continue the service and he has also obtained an interim order. Pursuant to the interim order of this Court, he continued to work in the petitioner Bank for a period of 10 months. Thereafter, the writ petition filed by the said Madhusoodana Perumal/the employee of the petitioner Bank was dismissed on 20.11.2002 that this issue has to be raised only before the Labour Court as Industrial Dispute. Accordingly, the employee has raised I.D.No.112 of 2004 before the Labour Court, Tirunelveli. The Labour Court has passed an award on 27.10.2009, holding that the employee comes under the category of sub staff, eligible to serve upto his age of 60 years, thereby he is entitled for monetary benefits for a period of 16 months. The award passed by the Labour Court has not been challenged by the petitioner Bank. The employee has filed a claim petition in the month of August 2010 in C.P.No.53 of 2010 and that was also ordered on 19.08.2011 in favour of the employee. For enforcing these orders, an Execution Petition was filed by the employee in EP No.36



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of 2012. After receiving notice in the execution proceedings, the petitioner Bank has filed WP(MD)No.15309 of 2012 on 24.09.2012, challenging the award passed by the Labour Court in I.D.No.112 of 2004, dated 27.10.2009. The other writ petition in WP(MD) No.13588 of 2021 is filed on 28.07.2021 as against the order passed in the claim petition in CP No. 53 of 2010, dated 19.08.2011.

4.The learned counsel appearing for the petitioner Bank submits that Kanyakumari District Central Co-Operative Bank is governed by Special Laws on service conditions and they can provide employment only as per the byelaws. These byelaws have been formulated under Section 149 of the Tamil Nadu Co-operative Societies Rules and also approved by the Registrar of Co-operative Societies. Here, in the present case, the said Madhusoodana Perumal was posted as a driver and continued in the same post with the salary attached to that post and with all other eligible benefits. His retirement age is 58 years and therefore, he cannot take advantage of the retirement date fixed for the category of sub staff. Accordingly, on completion of 58 years, the employee was allowed to retire from service on 31.08.1999. However, he was permitted to work



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for a further period of eight months, pursuant to the interim order of this Court in WP No.14691 of 1999, which was subsequently dismissed by this Court. Therefore, according to the learned counsel for the petitioner, the Labour Court has passed an award without considering the byelaws, which has been formulated under Section 149 of the Tamil Nadu Co-operative Societies Rules. He further submits that the post of driver cannot be equated with the post of peon or watchman or gardener.

5.The learned counsel appearing for the respondents submits that the Labour Court has passed the award, after considering the settlement under 12(3) of Industrial Dispute Act entered between the management and the employees. As per the settlement, the category of driver is treated as a sub staff. He has referred to a Clause in 12(3) settlement, which has been referred by the Labour Court as under:-

"the category of driver shall be merged with the category of sub staff"

6.The learned counsel has also produced the byelaws of the petitioner Bank and submits that there are seven categories of employees in the petitioner bank, which is as under:-



- i. Secretary
- ii. Assistant Secretary
- iii. Manager
- iv. Assistant Manager
- v. Senior Assistant/Chief Cashier
- vi. Junior Assistant (Typist, Cashier, Steno-Typist)

The learned counsel has also referred to the Byelaws No.5(2), which reads as under:-

“ii) No employee shall be continued in service of the Bank, if he has attained the age of 58 years. However, the age of retirement for the employees in inferior service like messenger, watchman, peons and Gardeners shall be 60 years. The date of retirement of the employees shall be on the afternoon of the last day of the month, in which an employee attain the age of superannuation.”

Therefore, according to the employee, the post of driver is also inclusive under the sub staff. The employee was appointed as a peon in the petitioner Bank, however, he was used as a driver. The learned counsel has referred to the proceedings of the Special Officer, Kanyakumari District Central Co-Operative Bank in fixing a scale of pay to the employees of the petitioner bank. Even as per the proceedings of the petitioner Bank, the



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employee is classified as a sub staff and in order to evade the payment, the petitioner Bank has filed these writ petitions after a long time to protract the proceedings. The learned counsel has pointed out the manner in which WP(MD)No.13588 of 2021 is filed as against the order passed in the claim petition filed by the employee in the year 2011, after ten long years, that too as against the legal heirs of the said Madhusoodana Perumal after his demise on 28.08.2017.

7.This Court considered the rival submissions made and also perused the materials placed on record.

8.Admittedly, one Madhusoodana Perumal was appointed as a Peon, however, he was used as a driver. As per the Byelaws of the Society, the retirement of a sub staff is at the age of 60 years. The sub-staff is also defined in the byelaw as "those who are in inferior service like Messenger, Watchman, Peon, Gardener". As rightly pointed out by the learned counsel for the employee, the Special officer by his proceedings in RC No. 953/96-97/A1, dated 22.03.1997 has fixed the scale of pay for the employees of the petitioner Bank, in which, the name of the employee



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(Madhusoodana Perumal) is mentioned in Sl.No.75 as a sub staff. Apart from that, the settlement arrived under 12(3) of the Industrial Dispute Act also reveals that the post of driver has been treated as sub staff and the same was also relied on by the Labour Court, while passing the award.

9.In view of the foregoing discussions and observations, these writ petitions are dismissed. Considering the manner in which, the order passed in the claim petition of the year 2010 has been challenged in the year 2021, after the demise of the employee on 28.08.2017, by impleading his legal heirs as parties to that writ petition, a sum of Rs.10,000/- is imposed as a cost, which has to be paid by the petitioner Bank to the employee's family, within a period of three weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

28.08.2024

NCC : Yes/No
Index : Yes/No
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To

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B.PUGALENDHI,J.

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Common Order made in
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