



W.A.(MD).No.685 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.08.2024

CORAM :

**THE HON'BLE MRS. JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN**

W.A.(MD).No.685 of 2018

V.Sundararajan

... Appellant

Vs.

1.The Management,
Thoothukudi District Central,
Cooperative Bank Ltd.,
Rep. By, its Special Officer,
Thoothukudi.

2.The Presiding Officer,
Labour Court,
Tirunelveli.

... Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 09.09.2014 passed in W.P. (MD).No.526 of 2010.

For Appellant : Mr.D.Geetha
For Respondents : Mr.D.Shanmugaraja Sethupathi
for R1
Labour Court (R2)



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JUDGMENT

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[Order of the Court was made by **Mr.K.K.RAMAKRISHNAN, J.**]

This writ appeal has been filed to set aside the order dated 09.09.2014 passed in W.P.(MD).No.526 of 2010.

2. The appellant was formerly working as a supervisor in the erstwhile Tirunelveli District Central Cooperative Bank Limited. He was appointed in the said Co-operative Society, on 14.05.1965. He was dismissed from service on 10.10.1973. Thereafter, he filed a petition in I.D.No.8 of 1978, to raise industrial dispute and the same was allowed on 17.10.1980 with continuity of the service and other benefits. In the I.D., there was no direction for payment of the back wages. In the said I.D., the labour Court allowed and set aside the dismissal from service imposed against the appellant with continuity of service with all other attendant benefits without back wages. Subsequently, he was allowed to join and work as a “Senior Superintendent”. Hence, even though he is allowed to work as senior superintendent, the benefit was not disbursed. Hence, he filed the claim petition under Section, 31, 33(C)(2) of the Industrial Dispute Act in C.P.No.605 of 1986, and the same was allowed



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on 12.12.1994. In the said C.P., there is a specific finding that the appellant was entitled to the upgradation of the post immediately after the completion of 10 years service from 14.05.1975. As per the order of C.P.No.605 of 1986, the entire amount had been disbursed. Thereafter, due to the bifurcation of Tirunelveli District into Tuticorin District. The Tuticorin District Central Co-operative Society Bank was opened and hence, the employees of the Tirunelveli District Central Cooperative Bank were appointed in the newly opened Tuticorin District Central Cooperative Bank. The appellant at the time, was working as a Assistant Manager. He was transferred as a Assistant Manager in the Tuticorin District Central Coopeartive Bank. In the said circumstances, he retired from service. He filed another petition in C.P.No.45 of 1997. In that petition, he claimed number of reliefs and the same was allowed. Thereafter, he retired from service on 30.06.2000 and the terminal benefit was disbursed. Thereafter, he found that there was no salary disbursement for a particular period. Hence, he filed the petition in C.P.No.9 of 2002, to recover the amount of Rs.2,31,509/- with the interest and also some other wages. The same was contested by the respondent Co-operative Society bank, stating that the dispute without the claim petition is not maintainable, on the ground that he made the



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claim belatedly and there was no obligation on the Tuticorin District Central Co-operative Society bank and also without raising the entitlement of the benefit, the present C.P. petition is not maintainable and hence, he seeks for dismissal of the said petition.

3. The learned labour Court Judge allowed the petition after addressing all the issues in elaborate manner and considering the earlier proceedings by the order of the labour Court in C.P.No.3 of 2003, dated 24.11.2008, which was been challenged before this Court in the writ proceedings in W.P.(MD)No.526 of 2010. The Writ Court allowed the writ petition and dismissed the claim petition filed by the appellant in C.P.No.9 of 2002, holding that the Tuticorin District Central Co-operative Society bank was not a party to the earlier proceedings. The earlier claim petition in C.P.No.45 of 1997 confirmed by this Court will not bind the Tuticorin District Central Cooperative bank at all. Further, no dispute was raised in respect of the entitlement of the appellant for the promotion from 01.05.1997 and also there was no order at all by the labour Court as to whether the appellant is entitled to the promotion from 01.05.1975 on the deemed basis. In the said circumstances, he was not entitled for any reliefs. Challenging the writ Court order, this writ appeal has been filed by the appellant.



4. Appellant joined in the Tirunelveli District cooperative societies on 14.05.1966 as a superintendent. On 04.08.1971, 12(3) settlement was arrived between the Co-operative Society management and the labourers and the workmen. As per the settlement, after the completion of 10 years service from the date of joining, the superintendent is upgraded and entitled to receive the “senior superintendent scale”. The Senior Superintendent scale, as per the 12(3) settlement dated 04.08.1971, due to the appellant was on 14.05.1975. In meantime, he was dismissed from service on 10.10.1973 and the same was set aside in the labour court, in I.D.No.8 of 1978 with the “*continuity of service and all other attendant benefits without back wages*”. Thereafter, he was allowed to join and work as a senior superintendent on 20.01.1981. Subsequently, he filed the claim petition in C.P.No.605 of 1986 to settle the legitimate statutory entitlement from the period of 01.02.1982 to 01.02.1985 and the same was allowed. Subsequently, he filed another C.P.No.45 of 1997 and the same was allowed and finally, he was to retire from service on 06.09.2002. In the meantime, he was retired from service on 30.06.2000. In the interregnum period, Tirunelveli District was bifurcated into Tirunelveli District and Thoothukudi District. The cooperative bank also bifurcated and all the persons including the appellant was allowed to



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work in the Thoothukudi Co-operative Society, namely, the respondent herein. At the time, the appellant was promoted as the assistant manager.

The appellant filed C.P.No.3 of 2003 claiming the benefit for the period from 31.12.1994 to 30.06.2000 to the tune of Rs.2,31,509/- and the same was disputed by the respondent society on the ground that the same was not determined one and hence he ought to have raised an industrial dispute before the labor court and thereafter he is entitled to file the claim petition. Apart from that, his claim was made during his entitlement before the Tirunelveli District Cooperative bank and subsequently, he was not entitled for the same. In the said circumstances, they seek to dismiss the writ appeal.

5. Once the dismissal from service is set aside by the labour court in IDNo.8 of 1978 on 17-10-1980 with continuity of service and all other attendant benefits, the appellant is automatically entitled to the scale of senior superintendent. The same was not properly considered by the writ Court. The counsel also submitted that in C.P.No.605 of 1986 and C.P.No.45 of 1997 and also the I.D.No.190 of 1985 raised by the union regarding the said entitlement of the senior superintendent scale. The writ Court ought not to have allowed the writ petition and dismissed the claim



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petition. The issue is already settled by this court and the entitlement of the appellant as a senior superintendent scale is already decided by the labor court in various orders and same was confirmed by this court, and also in some other case, writ appeal also was dismissed. In the said circumstances, the writ Court was not correct in dismissing the claim petition.

6. The learned counsel for the appellant submitted from the above events, it is clear that once the I.D.No.8 of 1978 was allowed by setting aside the dismissal from service with the continuity of service and all attendant benefits except the back wages, the upgradation scale for the senior superintendent scale is automatically accrued. This is the elementary principle on the service jurisprudence. Once the reinstatement is made with all attendant benefit and the continuity of service, the benefit of the upgradation is automatic. Further, the appellant was reinstated as per the ID order as a senior superintendent. He was recognized as a senior superintendent. Subsequently, he was also promoted to the Assistant Manager. In all circumstances, the entitlement of the appellant is not disputed and same is found expressly and impliedly in all the proceedings and all the documents filed by the Appellant before the labour court.



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7. In the said circumstances, the finding of the learned trial Judge that there was a dispute relating to the entitlement and there was no order in the ID to give the promotion as a senior superintendent is factually not correct and the same is perverse. That apart, the learned trial judge also erroneously found that the Tuticorin Co-operative Society is not a party to the earlier proceedings and hence, claim is not maintainable. Once the Tuticorin Co-operative Society received the service of the appellant, he is duty bound to disburse to all his entitlement. In the said circumstances, he is entitled to receive the benefit.

8. From the records, it is clear that each time workman was driven to file the claim petition to obtain his statutory entitlement which ought to have been disbursed even without his demand as per statutes. Without disposing the same, the workman had been driven to file the number of the petitions and incurred expenditure for the recovery of the Rs.2,31,509/- with interest of 6%. From the assessment of the entire record, it is clear that he was forced to spend the litigation expenses more than his entitlement. This is because of the attitude of the societies and hence this court is inclined to impose exemplary cost of Rs.50,000/-.



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9. In result, the written appeal is allowed in the following terms:-

9.1. The order passed by the writ court in W.P.(MD).No.526 of 2010, dated 09.09.2014, is set aside.

9.2. The order passed by the Labour Court, Tirunelveli, in C.P.No.9 of 2002, dated 24.11.2008, is restored and the claimant is entitled to the award amount passed in the CP number with interest of 6%.

9.3. The Appellant is entitled to the cost of Rs.50,000/- from the first respondent society bank.

**[P.V.J.] & [K.K.R.K.J.,]
23.08.2024**

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

To:

The Presiding Officer,
Labour Court,
Tirunelveli.



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and
K.K. RAMAKRISHNAN. J.,

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