

W.P.No.2732 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

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RESERVED ON : 04.04.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 2732 of 2021
and
W.M.P.No.3065 of 2021

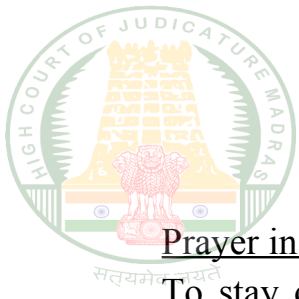
B.Komarapalayam Primary Agricultural
Co-op. Credit Society,
Rep. by the President,
B.Kumarapalayam,
Thiruchengodu Taluk,
Namakal District.Petitioner

Vs.

V.Muthusamy,
Son of Varadhan,
No.1/153, Kotta Medu, Kallangattu Valasu Post,
B.Komarapalayam, Thiruchengodu Taluk,
Namakkal District. ...Respondent

Prayer in WP

To issue a writ of certiorari or any other appropriate writ, order or direction in the nature of writ calling for entire records in connection with the impugned order passed in CP No.4 of 2014, dated 13.03.2018, by the Labour Court at Salem and to pass such any other order as this court may deem fit and proper in the circumstances of the case.



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Prayer in W.M.P.

To stay on all further proceedings by the respondent in connection with the impugned order passed by the 1st respondent in C.P.No.4/2014 dated 13.03.2018.

Appearance of Parties:

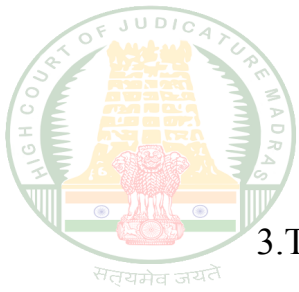
For Petitioner : Mr.Ma.Pa.Thangavel, Advocate
For M/s. Ma.P.Thangavel, B.Devagi Thangavel,
M.Lokesh, and D.Rajendran, Advocates

For Respondent : Mr.S.V.Navin Prabhu, Advocate
For M/s.K.V.Shanmuganathan,V.Vaijayanthimala,
R.Md.BNasrullah, D.Thangapandy, S.V.Navin Prabhu,
and M.Infant Subash, Advocates

J U D G M E N T

Heard.

2.The petitioner is a Primary Agricultural Co-operative Society. In the present writ petition, the petitioner challenges the order dated 13.03.2018 passed by the Labour Court, Salem in C.P. No. 4 of 2014, by which a sum of Rs.10,51,740/- was computed as payable to the respondent, along with interest at the rate of 9% per annum until the date of payment, failing which the amount would carry interest at 12% per annum. As per the endorsement on the certified copy, the order was delivered to the petitioner-society on 16.04.2018.



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3.The petitioner initially filed the present writ petition on 27.08.2018.

However, as the impugned order annexed to the petition was illegible, the Registry returned the papers, granting ten days' time for compliance. The petitioner, however, re-presented the papers along with a compliance memo only on 08.02.2021, resulting in a delay of 867 days. To regularize the delay, the petitioner filed W.M.P. No. 2769 of 2021 seeking condonation. By order dated 05.02.2021, this Court condoned the delay on the condition that the petitioner deposit a sum of Rs.1,000/- to the Chief Justice's Relief Fund. Following compliance, the writ petition was numbered and admitted on 08.02.2021. An interim stay was also granted. Upon service of notice, the respondent entered appearance through counsel.

4.Learned counsel for the workman submitted that the management is guilty of delay and laches in approaching this Court, having filed the writ petition nearly three years after the impugned order. It was argued that the writ petition is liable to be dismissed on this ground alone. In support of this contention, reliance was placed on the decision of the Hon'ble Supreme Court in **Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu, reported in (2014) 4 SCC 108**, with particular emphasis on the following passage in paragraph 16:—



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“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

Although the above passage aptly supports the rejection of the petitioner’s case on the ground of delay, the issue cannot be revisited, as this Court has already condoned the delay upon imposing a cost of Rs.1,000/-.

5. When the matter was taken up on 23.04.2024, this Court directed that it be placed before the National Lok Adalat scheduled for 08.06.2024. However, as no settlement was reached, the matter was returned for regular adjudication. The petitioner’s case is that the respondent was engaged as a Clerk in the



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society with effect from 01.08.1973, though his initial entry into service was allegedly irregular. Nevertheless, he was promoted as Secretary of the society on 29.09.1990 and attained the age of superannuation on 31.08.2009.

6.The respondent was initially suspended on 05.07.1995 by the Deputy Registrar of Cooperative Societies, Namakkal, on the allegation that he had caused a loss of Rs.5,09,305.45 to the society. However, the newly elected Board of Directors subsequently reinstated him, treating the period of suspension as a punishment, without awarding back wages. He was also demoted from the post of Salesman to Clerk with effect from 09.11.1996. Thereafter, on 04.06.1997, the Joint Registrar once again placed him under suspension, citing the irregularity in his initial appointment, and proceeded to dissolve the Board of Management.

7.After a lapse of three years, the respondent filed W.P. No. 18140 of 2000, challenging the suspension order dated 04.06.1997, and obtained an interim stay. He continued to keep the writ petition pending until he attained the age of superannuation. Meanwhile, on 20.06.1998, a criminal case was registered against him by the CCIW wing of the police. Additionally, surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act



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WEB.COM were initiated against the respondent and two other employees, culminating in an order directing them to pay a sum of Rs.18,20,813.61, after adjusting amounts already recovered from them. However, the appeal filed by the respondent against the surcharge order was allowed by the Cooperative Tribunal (Principal District Judge, Namakkal) by judgment dated 19.03.2010 in C.M.A. C.S. No. 34 of 2002. In contrast, the appeal filed by one of the other surcharged employees, S. Kathirvel, in C.M.A. C.S. No. 33 of 2002, was dismissed by the Tribunal, and his subsequent challenge before this Court in W.P. No. 14161 of 2011 was also dismissed by order dated 17.03.2020.

8.The respondent filed a claim petition before the Labour Court, Salem on 02.01.2014 under Section 33C(2) of the Industrial Disputes Act, seeking back wages to the tune of Rs.10,51,740/- for the period from 01.07.1997 to 31.08.2009. The petition was taken on file as C.P. No. 4 of 2014, and notice was issued to the petitioner-society. In response, the society filed a counter statement dated 20.04.2015. During the enquiry before the Labour Court, the respondent did not examine himself as a witness but filed six documents, which were marked as Exs. P1 to P6. On behalf of the petitioner-society, one S. Prabakaran was examined as RW1, and five documents were filed and marked



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as Exs. R1 to R5.

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9.The defence put forth by the petitioner-society was that the amounts due to the respondent had already been settled through a compromise recorded before the Lok Adalat in C.P. No. 119 of 2009 on 23.11.2013, marked as Ex.P6, and therefore, the respondent was not entitled to claim any further amount. However, the Labour Court held that the amount received under C.P. No. 119 of 2009 pertained solely to the claim raised in that particular petition, and the settlement was confined to the subject matter of that case. There was no averment or clause in the order indicating that the respondent had waived or settled all future claims. As such, the principle of estoppel could not be invoked to defeat the respondent's present claim.

10.The petitioner-society also raised the plea that the respondent had been surcharged by the Deputy Registrar, Namakkal. However, the Labour Court noted that the respondent's appeal in C.M.A. C.S. No. 34 of 2002 was allowed by the Cooperative Tribunal on 13.09.2010, and the judgment of the Tribunal was produced as Ex.P5. The Labour Court further observed that the respondent had challenged his suspension by filing W.P. No. 18141 of 2000 before this Court and had obtained an interim stay, pursuant to which he was



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reinstated as Clerk with effect from 08.12.2000. It was also found that when a vacancy arose and no substitute was available as of 18.05.2005, the respondent was appointed as Secretary in-charge. The Labour Court concluded that the interim stay granted by this Court continued to remain in force until the respondent attained superannuation on 31.08.2009.

11.The Labour Court further held that the terms of the settlement dated 28.07.1999 under Section 12(3) of the Industrial Disputes Act (marked as Ex.P2 = Ex.R3) were applicable to the respondent. The Court also referred to the admission made by RW1, the society's witness, who confirmed that the settlement was based on G.O. Ms. No. 131 and G.O. Ms. No. 258 issued by the Co-operative Department. Although the settlement terms were applicable to all employees, RW1 admitted that arrears were not paid at the relevant time. He further acknowledged that while the respondent was under suspension when the settlement was implemented, the arrears were subsequently paid to all employees under a later settlement dated 08.05.2010, executed under Section 18(1) of the Act and marked as Ex.R4.

12.Based on the above factual findings, the Labour Court proceeded to compute the amount due and payable to the respondent, as already noted. In



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opposing the claim, learned counsel for the petitioner relied on the decision of

the Supreme Court in **Commissioner of Income Tax, Bombay v. T.P.**

Kumaran, reported in (1996) 10 SCC 561. It was contended that, in light of the Lok Adalat award dated 23.11.2013 in C.P. No. 119 of 2009, the respondent was barred from making any further monetary claims. In support of this submission, reliance was placed on the following passage from paragraph 4 of the judgment:—

“The Tribunal has committed a gross error of law in directing the payment. The claim is barred by constructive res judicata under Section 11, Explanation IV, [CPC](#) which envisages that any matter which might and ought to have been made ground of defence or attack in a former suit, shall be deemed to have been a matter directly and substantially in issue in a subsequent suit. Hence when the claim was made on earlier occasion, he should have or might have sought and secured decree for interest. He did not seek so and, therefore, it operates as res judicata. Even otherwise, when he filed a suit and specifically did not claim the same, Order 2, Rule 2, [CPC](#) prohibits the petitioner to seek the remedy separately. In either event, the OA is not sustainable”

13.Counsel also placed reliance on another decision of the Supreme Court in **State of U.P. v. Nawab Hussain, reported in (1977) 2 SCC 806**, which reiterated the principle of constructive res judicata. Particular emphasis was laid on the following passage from paragraph 8 of the judgment:—

“.... As is obvious, the High Court went wrong in taking that



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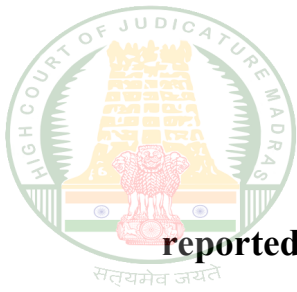


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view because the law in regard to the applicability of the principle of constructive res judicata having been clearly laid down in the decision in Devilal Modi's case (supra), .it was not necessary to reiterate it in Gulabchand's case (supra) as it did not arise for consideration there. The clarificatory observation of this Court in Gulabchand's case (supra) was thus misunderstood by the High Court in observing that the matter had been "left open" by this Court.

It is not in controversy before us that the respondent did not raise the plea, in the writ petition which had been filed in the High Court, that by virtue of clause (1) of article 311 of the Constitution he (1) [1962] 1 S.C.R. 574. (2) [1963] Supp. 1 S.C.R.172 could not be dismissed by the Deputy Inspector General of Police as he had been appointed by the Inspector General of Police. It is also not in controversy that that was an important plea which was within the knowledge of the respondent and could well have been taken in the writ petition, but he contented himself by raising the other pleas that he was not afforded a reasonable opportunity to meet the Case against him in the departmental inquiry and that the action taken against him was mala fide. It was therefore not permissible for him to challenge his dismissal, in the subsequent suit, on the other ground that 'he had been dismissed by an authority subordinate to that by which he was appointed. That was clearly barred by the principle constructive res judicata and the High Court erred in taking a contrary view.”

14.To reinforce the same principle, learned counsel further relied on the judgment of the Hon’ble Supreme Court in **Chairman and Managing Director, Fertilisers and Chemicals Travancore Limited v. General Secretary, Fertilisers and Chemicals Travancore Employees Association,**



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reported in (2019) 11 SCC 323. Attention was drawn to paragraphs 30 and 31

of the judgment, which read as follows:—

“30. In our opinion, no judicial forum at the instance of any party to the Lis had jurisdiction to try these issues again on its merits. It was barred for being tried again by virtue of principles of res judicata contained in [Section 11](#) of the Code, which has also application to the labour/industrial proceedings.

31. In our opinion, the State had, therefore, no jurisdiction to make a reference(s) to the Labour Court under [Section 10](#) of the ID Act to reexamine the question of age reduction made by the appellant(PSU). A fortiori, the Labour Court had no jurisdiction to entertain the reference(s) to adjudicate the question(s) referred in the reference(s).”

15. In response, learned counsel for the respondent relied on the judgment of the Hon’ble Supreme Court in **Prem Kishore v. Brahm Prakash**, reported in **2023 SCC OnLine SC 356**, and specifically referred to the following passage from paragraph 34:—

“34. The general principle of res judicata under [Section 11](#) of the CPC contain rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff’s appearance, or on the ground of non-joinder or mis-



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joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be res judicata in a subsequent suit.”

16. Since the claim in the earlier C.P. was confined to a limited period and there was no full and final settlement of all claims made by the respondent, the award passed by the Lok Adalat in C.P. No. 119 of 2009 cannot operate as constructive res judicata, as contended by the petitioner-society. The further argument that the respondent ought to have included all claims in the earlier petition is also untenable, and the principles of Order II Rule 2 of the CPC are not attracted to the present case. There is no legal bar to filing successive claim petitions for distinct periods or causes of action.

17. The Supreme Court, in its recent judgment in **Cuddalore Powergen Corporation Ltd. v. Chemplast Cuddalore Vinyls Limited**, reported in 2025 INSC 73, reviewed the earlier precedents and succinctly summarised the legal



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position under Order II Rule 2 of the Code of Civil Procedure as follows:—

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“47. On a conspectus of the aforesaid discussion, what follows is that:

i. The object of Order II Rule 2 is to prevent the multiplicity of suits and the provision is founded on the principle that a person shall not be vexed twice for one and the same cause.

ii. The mandate of Order II Rule 2 is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit. It must not be misunderstood to mean that all the different causes of action arising from the same transaction must be included in a single suit.

iii. Several definitions have been given to the phrase “cause of action” and it can safely be said to mean – “every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court”. Such a cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief which is prayed for by the plaintiff but refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

iv. Similarly, several tests have been laid out to determine the applicability of Order II Rule 2 to a suit. While it is acknowledged that the same heavily depends on the particular facts and circumstances of each case, it can be said that a correct and reliable test is to determine whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit. Additionally, if the evidence required to support the claims is different, then the causes of action can also be considered to be different. Furthermore, it is necessary for the causes of action in the two suits to be identical in substance and not merely technically identical.



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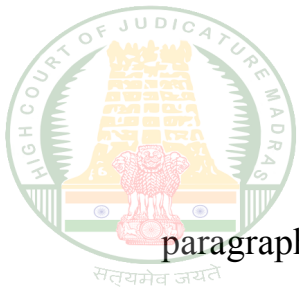
v. The defendant who takes shelter under the bar imposed by Order II Rule 2(3) must establish that (a) the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.

vi. The defendant must also have produced the earlier plaint in evidence in order to establish that there is an identity in the causes of action between both the suits and that there was a deliberate relinquishment of a larger relief on the part of the plaintiff.

vii. Since the plea is a technical bar, it has to be established satisfactorily and cannot be presumed merely on the basis of inferential reasoning.” [Emphasis added]

18.The second principle outlined by the Supreme Court squarely applies to the present case. The earlier claim petition and the subsequent claim petition now under challenge arise from two distinct causes of action. Therefore, the reliance on Order II Rule 2 CPC to reject the present claim, as contended in paragraph 11(f) of the affidavit, is wholly misconceived.

19.Similarly, the plea of estoppel raised by the petitioner is devoid of merit in view of the clarification provided by the Hon’ble Supreme Court in **Baini Prasad v. Durga Devi**, reported in 2023 SCC OnLine SC 101. In



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paragraph 12 of the judgment, the Court observed as follows:—

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“12. Now, what remains to be considered is whether the appellant herein/defendant has pleaded and proved his plea of estoppel. The appellants would contend that non- framing of the question of estoppel as an issue is not fatal in the facts and circumstances as also in view of the evidence available on record, in the case on hand. To buttress the contention, the appellants rely on the decision of this Court in (AIR 1963 SC 884). The relevant recital in the paragraph 5 of [the said decision](#) reads thus:-

“5. ...No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion.”

The position of law revealed from the afore-extracted recital from [the said decision](#) cannot be disputed. In fact, for the very same reason despite the non-framing of the issue of estoppel we are inclined to consider the contentions founded on the principle of estoppel. We may hasten to add that indubitably the position is that to invoke the concept of estoppel the defendant has to specifically plead each and every act or omission, as the case may be, that constitutes representation from the plaintiff. Before delving into the said question it is only appropriate to refer to the enunciation of the settled position in respect of the concept of estoppel.

12.1 In the decision in R.S. Madanappa v. Chandramma (AIR 1965 SC 1812), this court considered the object of estoppel. It was held



that its object is to prevent fraud and secure justice between the parties by promotion of honesty and good faith. It was therefore, further held that when one party makes a representation to the other about a fact he would not be shut out by the rule of estoppel if that other person knew the true state of facts and must consequently not have been misled by the misrepresentation.

12.2 In the decision in [Pratima Chowdhury v. Kalpana Mukherjee](#) (AIR 2014 SC 1304) , while considering [Section 115](#) of the Evidence Act, this Court held that four salient conditions are to be satisfied before invoking the rule of estoppel. Firstly, one party should make a factual representation to the other party. Secondly, the other party should accept and rely upon the aforesaid factual representation. Thirdly, having relied on the aforesaid factual representation, the second party should alter his position. Fourthly, the instant altering a position, should be such, that it would be iniquitous to require him to revert back to the original position. After holding so, it was further held that the doctrine of estoppel would apply only when, based on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position.

12.3. In the decision in B.L. Sreedhar v. K.M. Munireddy (AIR 2003 SC 578), this Court held that when rights are invoked estoppel may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights. The appellant relies on this decision, more particularly paragraph 30 of [the said decision](#) and it reads thus :-

“30. If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question the legality of the act he had



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sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.”

It is to be noted that in [the said decision](#) this Court clarified that a legal status expressly denied by a statute could not be conferred on the basis of estoppel.”

20. Once the technical objections raised by the petitioner-management is rejected, the only issue that remains to be determined is whether the respondent had a pre-existing right warranting computation of dues by the Labour Court under Section 33C(2) of the Industrial Disputes Act. The management contended that the settlement under Section 12(3) was superseded by a subsequent settlement under Section 18(1) of the Act. However, in so far as the respondent workman is concerned, he continued to be governed by the terms of the Section 12(3) settlement—an aspect that was admitted by MW1 during his testimony. Even if the said settlement had lapsed, its terms would still bind the parties as a matter of contractual obligation. In support of this position, learned counsel for the respondent placed reliance on the decision of this Court in **Thanthai Periyar Pokkuvarathu Kazhagha Oozhiyar Sangam v. Management of Tamil Nadu State Transport Corporation, reported in 2005 (2) LLN 860 (Mad)**, wherein at paragraph 10, the Court referred to a judgment of the Karnataka High Court and applied the same principle. The relevant



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portion reads as follows:—

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“10. The judgment in [1999-1-LLJ-849 \(Kant\)](#) (supra), is relevant and is extracted hereunder at p. 859:

"16. It has also to be kept in view that even assuming that settlement of 1988 had thereby come to an end, its binding effect as contractual obligation continued till it was replaced by other settlement as ruled by this Court in the [Life Insurance Corporation of India v. D.J. Bahadur and Ors.](#) (supra). It is also difficult to appreciate how the case of check-off facility is not termed as condition of service as by the said facility the management has agreed to deduct from the wages of the employees the requisite amount to be paid to the Union by way of subscription of the employees. Such permissible deduction from the wages cannot but be treated as condition of service. The contention that from September 21, 1993 check-off facility has been given up by the Corporation cannot be of any assistance to the Corporation for the simple reason that it would amount to violation of a binding settlement by the Corporation which as per [Section 29](#) of the Industrial Disputes Act would be penal.”

21. Learned counsel for the respondent further contended that a settlement continues to remain binding unless it is expressly replaced by a subsequent settlement. In support of this proposition, reliance was placed on the Division Bench judgment of this Court in **C. Paranthaman v. The Appellate Authority, in W.A. No. 2697 of 2012 dated 28.06.2022**. The Labour Court, having taken into account these settled principles and having assessed the evidence on



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record, rightly concluded that the respondent workman was entitled to the computed amount. The impugned order, having been passed on a sound appreciation of facts and law, does not warrant interference by this Court on the grounds urged by the petitioner-society. Accordingly, the writ petition stands dismissed. The connected miscellaneous petition is closed. However, there shall be no order as to costs.

29.05.2025

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NCC : Yes / No

Index : Yes / No

Speaking Order / Non-speaking Order

To

The Presiding Officer,
Labour Court
Salem.



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
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and
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29.05.2025