



W.P. No.25252-25253/2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
25.03.2025	01.04.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NOS.25252 & 25253 OF 2018
AND
W.M.P. NOS. 29363 & 29364 OF 2018**

Tamil Nadu Co-operative State
Agricultural & Rural Development Bank Ltd.
181, Luz Church Road, Mylapore
Chennai 600 004, rep. By its
Addl. Registrar/Managing Director

.. Petitioner in both WPs

- Vs -

1. G.Santha .. R-1 in WP 25252/2018
2. M.Ramamoorthy .. R-1 in WP 25253/2018
3. The Presiding Officer
2nd Addl. Labour Court
Chennai 600 104. .. R-2 in both petitions

Writ Petitions filed under Article 226 of the Constitution of India praying
this Court to issue a writ of certiorari calling for the records of the 2nd respondent,
namely, the Hon'ble 2nd Addl. Labour Court, Chennai 600 104 pertaining to the



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order dated 28.04.2017 passed in C.P. Nos.522 and 523 of 2015 and quash the same.

For Petitioner : Mr.Karthik Rajan for
M/s.Menon Karthik Mukundan

For Respondents : Mr. R.Marudhachalamurthy for
R-1 in both petitions

COMMON ORDER

The award in and by which fixation of pay of the respective 1st respondent has been made by the Labour Court with a further direction to the petitioner herein to pay the said amount claimed by the respective 1st respondent in a petition filed u/s 33-C (2) is sought to be assailed by the petitioner by filing the present petitions.

2. It is the case of the petitioner that the respective 1st respondent in the writ petitions were appointed as Office Assistant on 15.2.1999 on compassionate Grounds. On 8.3.201 a Memorandum of Settlement (for short 'MoS') was entered into between the petitioner and recognized Trade Unions u/s 12 (3) of the Industrial Disputes Act applicable for the period from 1.7.1999 to 30.6.2004



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providing time scale of pay. The respective 1st respondent in the writ petition was moved to Selection Grade in the post of Office Assistant on successful completion of 10 years of service and fixed in the time scale of pay as per the above MoS.

3. Thereafter, the respective 1st respondent was promoted as Assistant after they attaining the qualifying and eligibility criteria for Assistants on 1.2.2010. The respective 1st respondent was also on probation for a period of one year as the promotion was from menial service to ministerial service.

4. Thereafter, on 19.10.2011, a new MoS was entered into, replacing the old MoS, which was to be in force from 1.1.2006 to 31.12.2011. As per the new MoS, the scale of Office Assistants, which had been previously fixed at Rs.1980-45-2070-55-3055 was abolished and replaced with the Pay Band of Rs.4000-150000. Similarly time scale of pay of Assistants which had been previously fixed at Rs.2960-110-4720-130-5240 was abolished and replaced with Pay Band of Rs.6000-21000. The MoS also provided the methodology to be adopted for determining and fixing the basic pay as on 31.12.2005 and the consequential notional revisions of basic pay.



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5. It is the further averment of the petitioner that the respective 1st respondents did not express any grievance when they were given the benefit of the new pay structure and they received the pay, but after keeping silent, for the first time, on 5.9.2014, the respective 1st respondent raised the contention that the basic pay of the respective 1st respondent ought to have been fixed at Rs.8580/- and not Rs.8130/- as on 1.2.2010. It is the further averment of the petitioner that the said claim of the respective 1st respondent is erroneous inasmuch as the MoS dated 19.10.2011 provides for application of Pay Band, which is to be fixed as per Basic Pay drawn on 31.12.2005. The representation of the respective 1st respondent was rejected by the petitioner on 24.9.2014 against which on 10.09.2015, the 1st respondent filed representation before the Registrar of Co-operative Societies, which was also rejected vide order dated 20.09.2015.

6. Aggrieved by the said order, the respective 1st respondent filed claim petition u/s 33-C (2) of the Act before the Labour Court seeking fixation of pay at Rs.8580/- as on 1.2.2010, vis., the date of promotion of the respective 1st



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respondent to the post of Assistant and, consequently, to pay the arrears of Rs.78,597/- with interest at 2%.

7. Before the Labour Court, the respective 1st respondent examined two witnesses, as W.W.s 1 and 2 and marked Exs.W-1 and W-2. On the side of the petitioner herein, R.W.1 was examined and marked Exs.R-1 to R-11. Based on the oral and documentary evidence, the Labour Court allowed the claim made by the respective 1st respondent and directed the petitioner to pay the amount claimed along with interest, aggrieved by which the present writ petitions have been filed.

8. Learned counsel appearing for the petitioner submits that the impugned order passed by the 2nd respondent suffers from non-application of mind and it is beyond the scope of the authority and without jurisdiction, as there is no pre-existing right either recognized by the petitioner or adjudicated by the competent court entitling the 1st respondent to a monthly pay of Rs.8580/- as on 1.2.2010.

9. It is the further submission of the learned counsel that the Labour Court exceeded its jurisdiction in determining the entitlement of the 1st respondent to a



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monthly pay of Rs.8,580/-, which is beyond the scope and purport of Section 33-C (2) of the Act.

10. It is the further submission of the learned counsel that the Labour Court, in a petition u/s 33-C (2) of the Act merely acts as an executing Court to enforce only pre-existing right and it is not clothed with any power to adjudicate the issues. However, in the present case, the Labour Court had taken upon itself the functions of the Tribunal and adjudicated the claim of the 1st respondent for receiving the monthly pay, which is beyond the scope of Section 33-C (2) of the Act.

11. It is the further submission of the learned counsel that the Labour Court failed to note that the power of interpretation of MoS/Award or service condition cannot be usurped by the Labour Court to adjudicate and determine the right of an employee u/ s 33-C (2) as the power under the said provision is only for enforcing the pre-existing right, which is recognised either by the employer or adjudicated by a judicial forum. Accordingly, learned counsel prays for setting aside the order passed by the Labour Court.



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12. Per contra, learned counsel appearing for the respective 1st respondent submitted that the erroneous fixation of monthly pay is sought to be corrected by the Labour Court by exercising its jurisdiction u/s 33-C (2) as the monthly pay of the respective 1st respondent is their right, which exists on the entering into the MoS and, the right being pre-existing, the Labour Court had directed the payment of the amount to the respective 1st respondent, which is neither arbitrary nor perverse.

13. It is the further submission of the learned counsel that when the MoS prescribes the pay to which the workmen is entitled to, the respective 1st respondent would be entitled to fixation of their pay as per the methodology adopted and erroneous calculation would not in any way take away the pre-existing right of the respective 1st respondent to receive the monthly pay. Rightly appreciating the aforesaid facts and applying the provision of law in proper perspective, the Labour Court has passed the said order, which does not require any interference.



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14. This Court gave its careful consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

15. Section 33-C (2) of the Act pertains to the computation of money to which a workman is entitled to receive from the employer, which is capable of computation. The petitions have been presented before the Labour Court by the respective 1st respondent by invoking Section 33-C (2) of the Act. Therefore, for better appreciation, the same is quoted hereunder :-

“33-C. Recovery of money due from an employer.

* * * * *

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months.”



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16. From the aforesaid provision, it is clearly evident that the first and foremost necessity is as to the entitlement of the workman to receive the benefit and that such benefit is capable of computation in terms of money. From the above, it is clear that entitlement necessitates either a pre-existing right, which has been accepted by the employer or determined by a competent judicial forum and in case of non-payment, the petition could be filed u/s 33-C (2) to execute and obtain the said right.

17. In the present case, it is the case of the respective 1st respondent that they are entitled to receive monthly pay of Rs.8580/- as on 1.2.2010, as per the terms of settlement, which is disputed by the petitioner. From the above, the first limb of Section 33-C (2) does not stand fulfilled, as the petitioner has not recognised the right of the respective 1st respondent to receive the said monthly pay, as according to the petitioner, the methodology provided for in the MoS, which has also been accepted by the respective 1st respondent in their respective petition does not work out to the monthly pay, as demanded by the respective 1st respondent.



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18. Insofar as the second limb of Section 33-C (2) is concerned, based on an order of adjudication, the provisions of Section 33-C (2) could be enforced. However, in the issue before this Court, the respective 1st respondent had not gone before the competent judicial forum to have their issues adjudicated and obtain an order with regard to the monthly pay to which the respective 1st respondent is entitled to. In the absence of any such order of adjudication, the second limb of Section 33-C (2) also does not stand fulfilled.

19. As Section 33-C (2) clearly spells out, it pertains to recovery of money due from an employer, which is a pre-existing right or an order of adjudication. However, both the limbs have not been satisfied and in that scenario, the Labour Court, merely being an executing court, which computes the benefit in terms of money, which is payable by an employer to a workman, cannot act as an adjudication authority and adjudicate the issue with regard to pay fixation.

20. Even a cursory glance of the order passed by the Labour Court reveals that there is not even a semblance of reasoning as to how the Labour Court has arrived at a finding that the monthly pay of the respective 1st respondent ought to



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be fixed at Rs.8580/-. Neither the petition filed u/s 33-C (2) by the workmen nor the order of the Labour Court spells out as to how such a figure of Rs.8580/- as the monthly pay is arrived at and as to how the said sum has been computed on the basis of the methodology agreed as spelt out in the MoS. The order of Labour Court reveals that while the Labour Court has culled out the facts and submissions of the parties with regard to their respective case, immediately after such culling out, has straight-away held that the respective 1st respondent herein are entitled for their monthly pay to be fixed at Rs.8580 as on 1.2.2010. The Labour Court, though has no jurisdiction to adjudicate the present issue, inspite of lack of jurisdiction, has not made any attempt to show as to how the figure has been arrived at. What has been averred in the petition filed by the respective workmen had formed the basis of acceptance by the Labour Court. This clearly reveals that lack of application of mind to the materials by the Labour Court, which clearly vitiates the impugned orders.

21. When the petitions are filed u/s 33-C (2) the only duty of the Courts is to find out whether any pre-existing right exists for the workmen to claim the benefit. Further, the orders which have been passed u/s 33-C (2) have to be



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tested on the touchstone of the provisions of law relating to recovery of money u/s 33-C (2) and the Labour Court cannot go beyond the scope and jurisdiction to adjudicate the issue, as it would be beyond the jurisdiction of the Labour Court in respect of the relief sought for u/s 33-C (2). As stated above, without an iota of doubt, this Court could safely conclude that the orders passed by the Labour Court granting the benefit of computation u/s 33-C (2) of the Act to the respective 1st respondent herein are perverse, arbitrary and unreasonable and the said order cannot be allowed to stand the test of judicial scrutiny any further.

For the reasons aforesaid, both the writ petitions are allowed setting aside the impugned orders passed by the II Addl. Labour Court, Chennai in C.P. Nos.522 and 523/2015. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Index : Yes / No

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To

The Presiding Officer
II Addl. Labour Court
Chennai.



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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
W.P. NOS.25252 & 25253 OF 2018**

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