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The Management, Vs. 1.The Joint Commissioner of Labour,

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SooperKanoon Citation : sooperkanoon.com/1168433

Court : Chennai

Decided On : Jul-04-2014

Judge : .R.Mahadevan

Appellant : The Management,

Respondent : 1.The Joint Commissioner of Labour,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :04.07.2014 CORAM THE HONOURABLE MR.JUSTICE.R.MAHADEVAN W.P(MD)No.968 of 2010 and M.P.(MD).No.1 of 2010 The Management, Madurai District Central Co-operative Bank Ltd., rep.by its Special Officer, 187, North Veli Street, Madurai. ... Petitioner Vs 1.The Joint Commissioner of Labour, Anna Nagar East, Madurai. 2.The Assistant Commissioner of Labour, Sundaram Theatre Road, K.K.Nagar, Madurai-20. 3.V.Sankaranarayanan ... Respondents This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records relating to the order passed by the first respondent in P.G.A.No.23/2009 dated 21.05.2009 confirming the order passed by the second respondent in P.G.No.39/2005 dated 07.01.2008 and quash the same. !For petitioner : Mr.D.Shanmugaraja Sethupathi ^For R.1&2 : Mr.Ayiram K.Selvakumar Additional Government Pleader For R.3 : Mr.V.O.S.Kalaiselvam ******* :

ORDER

The short facts for disposal of this Writ Petition is set out hereunder:- The Madurai District Central Co-operative Bank is incorporated under the Tamil Nadu Co-operative Societies Act and the Rules made thereunder. The main object of the bank is to provide financial assistance to the primary institutions, besides other banking. The third respondent herein was the employee of the petitioner Bank. He superannuated from his service on 31.05.2002. The third respondent had received the entire gratuity, due to him as per the scheme, namely, Group Gratuity (Cash accumulation) Scheme which is linked with the Life Insurance Corporation of India. Subsequently, the third respondent had filed an application, before the Assistant Commissioner of Labour, the second respondent herein, claiming that he is entitled to receive further amount of gratuity, notwithstanding, the claim made already, as per the settlement, dated 17.02.1997, arrived at under Section 12(3) of the Industrial Disputes Act,1947, which according to the third respondent provides more benefit than the Act.

2. It is further averred in the affidavit that Section 4(A) of the Payment of Gratuity Act mandates every employer is to obtain insurance in the manner prescribed for his liability for payment towards the gratuity under the Act from the Life Insurance Corporation of India. Accordingly, the petitioner Management had framed a Scheme, namely, Group Gratuity Scheme linked with the Life Insurance Corporation of India. As per the Scheme, an employee is entitled to get 15 days wages for every completed year as gratuity, subject to a maximum of the amount equaling to twenty months?. salary. The above-said term emanates from the Scheme in respect of payment of gratuity, which was included in the settlement, dated 17.02.1997, arrived at between the management and various employees union in accordance with Section 12(3) of the Industrial Disputes Act,1947.

3. As per the Scheme, the employee is entitled to get more than the amount i.e.Rs.3,50,000/- which is fixed by the Act, but subject to a maximum of the amount equalling to 20 months salary. As the scheme was more beneficial to the employees than the Act in respect of ceiling, it was agreed to adopt the group gratuity scheme by virtue of the settlement, dated 17.02.1997, arrived at under Section 12(3) of the Industrial Disputes Act,1947. Subsequently, the term was also reiterated by later settlement dated 05.12.2003. The period of settlement dated

17.02.1997 was fixed for five years from 01.07.1994, which expired on 30.06.1999. It is pertinent to mention that during the intervening period, there was no existing settlement covering the field of gratuity.

4. The second respondent being the controlling authority under Section 7(4) of the Payment of Gratuity Act, after condoning the delay in filing the application, took the application on file and assigned the claim with a number P.G.No.39/05. The petitioner herein filed its counter resisting the claim of the third respondent. The second respondent after conducting a detailed enquiry passed an order, dated 07.01.2008 allowing the claim of the third respondent, without considering the merits of the case in proper perspective. Being aggrieved over the order passed by the second respondent, the petitioner filed an appeal before the appellate authority, namely, the Joint Commissioner of Labour, the first respondent herein, under Section 7(7) of the Payment of Gratuity Act. The appeal was taken on the file of the first respondent as P.G.A.No.23/2009. After hearing both parties, the first respondent had passed the impugned order dated 21.05.2009 dismissing the above appeal filed by the petitioner confirming the order of the second respondent. As against the same, the management of the Madurai District Central Co-operative Bank had filed this Writ Petition before this Court inter alia contending that there is no existing settlement between the employer and employee during the relevant period, because the settlement in question was already expired. Further, the order passed by the first and the second respondent is without jurisdiction.

5. The learned counsel appearing for the petitioner submits that the Controlling authority and the Appellate Authority under the Payment of Gratuity Act ought to have considered the fact that the period of settlement in question dated 17.02.1997 is for a period of five years from 01.07.1994 to 30.06.1999 and the subsequent settlement commences from 05.12.2003. The third respondent retired from service by superannuation in the year 2002. During the intervening period, there was no existing settlement covering the field of gratuity. Hence, the above settlement is not applicable to the third respondent. In the absence of any existing agreement between the employer and employee in respect of payment of gratuity, the third respondent cannot have better terms of gratuity. Even if it is applicable, he is not entitled to claim any amount exceeding 20 months salary. The first part of

the term in settlement makes it abundantly clear that the employees are entitled to claim the gratuity irrespective of the upper limit fixed by the Act, but subject to the Group Gratuity Scheme. Apart from that, the first and the second respondent do not have jurisdiction to entertain a dispute in question. Therefore, the petitioner has come forward with this Writ Petition under Article 226 of the Constitution of India.

6. The learned counsel for the third respondent through his counter affidavit submits that the third respondent had joined into the services of the petitioner in the year 1964 and retired on 31.05.2002. The last drawn wages of the third respondent was Rs.4,660/- as basic pay and Rs.11,551/- as dearness allowance, totally, it works out to Rs.16,221/-. As per the services rendered by the third respondent, he is entitled to receive Rs.3,55,395/-. However, on the date of retirement, he was paid Rs.3,24,220/-, on 24.01.2003. Therefore, he sent a letter, dated 05.05.2003, requesting the balance amount of Rs.31,175/- along with 10% interest from 24.01.2003, as per Section 7(3)(A) of the Payment of Gratuity Act. Since the said amount was not paid, he filed a petition before the second respondent, who passed orders in PG.No.39/2005, dated 07.01.2008 directing the petitioner herein to pay the amount of Rs.31,175/- with 10% interest from the date of retirement of the third respondent. The petitioner filed an appeal before the first respondent, who confirmed the order of the second respondent by the order in P.G.A.23/2009, dated 21.05.2009. Notwithstanding the fact that the orders of the first and the second respondents stood in favour of the petitioner, similarly placed employees based on the similar order paid gratuity exceeding the ceiling limit and the said orders were immediately complied with and the entire gratuity amount, as per the order of the second respondent was paid. It is the case of discrimination amongst the workers community. He specifically emphasis Section 4(5) of the Payment of Gratuity Act, which reads as follows: ?.Section 4(5).- Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer?..

7. Apart from that the settlements similar to that of the petitioner bank was entered into by the District Central Co-operative Banks of all over the Tamil Nadu, as per the Government Order and in pursuant to it, as per the circular of the Registrar of

Co-operative Societies and they were fully implemented in its pith and substance and gratuity without any ceiling was paid to the retired employees. Even in the petitioner bank, the same procedure is followed. However, there is nepotism in the bank and a set of employees affiliated to particular union alone are not paid as per the settlement.

8. Heard both sides and perused the materials available on record.

9. The facts and figures relating to the claim are not disputed. After perusing the records, this Court feels that issue of jurisdiction has to be taken up before deciding the binding nature of the 12(3) settlement and its terms as against the limit of 20 months under the scheme.

10. Under similar circumstances while deciding the question of jurisdiction in the writ petition filed by the Management of Virudhunagar District Central Co-Operative Bank filed W.P.(MD).No.9327 of 2009, this Court, by its order, dated 27.09.2012, following the earlier order of this Court in W.P (MD) No11896 to 11898 of 2008 had allowed the Writ Petition by holding that the controlling authority under the Payment of Gratuity Act, has no jurisdiction to decide the dispute and accordingly, the common order passed by the first respondent, the appellate authority were set aside. The learned counsel appearing for the respondents cited that the review application is still pending. When the learned counsel was directed to prefer an application for early hearing of the review application, nothing is forthcoming. Hence, there is no justifiable reason to keep this Writ Petition pending.

11. In view of the fact that the issue regarding jurisdiction has been set at rest by earlier decisions of this Court, this Court in line with the principle of judicial discipline holds that the 1st and 2nd respondent ought not to have entertained the claim of the 3rd respondents as the claim was outside the purview of the Payment of Gratuity Act.

12. Section 4(5) of the Payment of Gratuity Act (supra) only enables the employee to receive better terms of gratuity but does not confer jurisdiction on the statutory authorities to adjudicate a claim falling under an agreement or contract. Only the

provisions of Industrial Disputes Act, 1947 has to be invoked to making any claim arising under the Settlement entered into under Section 12 (3) of the Industrial Disputes Act.

13. Now, we shall consider the question of overriding effect of 12(3) settlement on the limit of 20 months under the scheme.

14. In W.A No 909/2007 and W.P No 22697/2007, relied upon by the counsel for the 3rd respondent, the issue was regarding the cadre of employees to whom the Gratuity Act, can be applied and whether it was right to reckon 26 days as a month for computing the gratuity payable was right. The findings in the above decisions are not in dispute and the above decisions are not applicable to the present facts of the case.

15. In the judgments relied upon by the 3rd respondent in W.A Nos 1200 to 1202 of 2010, the Division Bench upheld the common order in W.P No 38830/2003,5546 and 5547/2004 wherein similar orders of the 1st and 2nd respondents conferring higher gratuity as per the settlement, was upheld. The SLP preferred by the Management therein was also dismissed.

16. On the applicability of the 12 (3) settlement over the limit provided under the scheme, the Division Bench of this Court in W.A.(MD).No.675 of 2007 elaborately considered the issue when an appeal was filed by the very same petitioner and after referring to the various judgments of this Court as well as the Supreme Court as well as the settlement in question, has ultimately decided that the quantum of payment shall not exceed more than twenty months.

17. In all the above judgments regarding the applicability of 12 (3) Settlement, there is no extensive discussion regarding the jurisdiction of the 1st respondent to decide a claim falling outside the purview of the Gratuity Act.

18. In view of the fact that this Court has already held that the 1st and 2nd respondents have no jurisdiction to entertain the claim of higher gratuity as per the settlement, this Court is not inclined to go into the merits of the claim.

19. For the above said reasons, the impugned order is quashed and the Writ Petition is allowed. The 3rd respondent is permitted to approach the appropriate forum within 4 weeks from the date of this order and the Labour Court shall decide the same on merits without reference to the limitation. Consequently, the connected miscellaneous petition is closed. No costs. Index :Yes/No 04.07.2014 Internet :Yes/No ssm R.MAHADEVAN,J.

ssm To 1.The Special Officer, The Management, Madurai District Central Co-operative Bank Ltd., 187, North Veli Street, Madurai. 2.The Joint Commissioner of Labour, Anna Nagar East, Madurai. 3.The Assistant Commissioner of Labour, Sundaram Theatre Road, K.K.Nagar, Madurai-20. W.P(MD)No.968 of 2010 and M.P.(MD).No.1 of 2010 04.07.2014

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