

M. Devadasan Vs. The Management, M/s. Southern Railways Ltd, Kochadai and Others

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Court : Chennai Madurai

Decided On : Sep-29-2016

Judge : M. Sathyanarayanan & The Honourable Ms. Justice V.M. Velumani

Appeal No. : W.A.(MD) Nos. 1100 of 2012 & 231 of 2013 & M.P.(MD).Nos. 2 of 2012 & 1 of 2013

Appellant : M. Devadasan

Respondent : The Management, M/s. Southern Railways Ltd, Kochadai and Others

Judgement :

(Prayer: Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 29.10.2011 made in W.P.(MD).No.1577of 2009.

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 19.10.2010 made in W.P.(MD).No.1592of 2009.)

Common Judgment:

M. Sathyanarayanan, J.

1. Since the issue involved in both the Writ Appeals is similar, by consent, they are taken up together and disposed of, by this common judgment.

2. The appellant herein filed W.P.(MD).No.1577 of 2009 praying for the issuance of a Writ of Certiorari to call for the records relating to the order of the second respondent therein, namely, the Controlling Authority, under the Payment of Gratuity Act, Madurai, to call for the records relating to the order in P.G.Appeal No.34 of 2008 and 49/2008 dated 10.12.2008 and quash the same. Similarly, the appellant had also preferred W.P.(MD).No.1592 of 2009 praying for the issuance of a Writ of Mandamus directing the first respondent to remit the contribution till 23.08.2006 to the second respondent in the name of the petitioner calculating the EPF on par with the other employees of the first respondent therein, namely, the Management, M/s.Southern Roadways Limited, Madurai and direct the second respondent therein, namely, the Regional Provident Fund Commissioner, Employee's Provident Fund Organization, Madurai to pay back the said amount to the appellant and with a further direction to pay the pension eligible to him from 25.10.1986. Both the Writ Petitions came to be dismissed, by a separate order, dated 29.10.2011 and 19.10.2010 respectively, and hence these appeals.

3. The appellant would aver in the affidavit among other things that his father worked under the first respondent for nearly 30 years and he died in harness and therefore, he was given employment on compassionate grounds on 21.02.1972 as Clerk in the Central Accounts Section and his service was confirmed on 05.09.1972. He rendered his unblemished records of service with the utmost satisfaction of his employer.

4. According to the appellant, on 24.10.1986, a letter of resignation was forcibly obtained from him and he was removed from service on the alleged resignation given by him which was accepted by his employer on 25.10.1986. Aggrieved by the same, the appellant raised an industrial dispute before the Labour Court, Madurai, under Section-2A(2) of the Industrial Disputes Act, 1947. The Labour Court, by its Award in I.D.No.80 of 1988, dated 05.03.1993, allowed the petition and directed the Management, M/s.Southern Roadways, Limited, Madurai for reinstatement of the petitioner with continuity of service and with full backwages.

5. Aggrieved over the same, the management preferred W.P.(MD).No.13294 of 1993 and this Court, vide its order dated, 29.11.2000, dismissed the said Writ Petition of the Management. Challenging the legality of the same, W.A.(MD).No.2304 of 2000 was filed and pending disposal of the Writ Appeal, a compromise was reached by the appellant and the Management, on 23.08.2006, wherein, the appellant has received a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) as full and final settlement of his claim and also issued a receipt to that effect. The relevant portion is extracted below:-

..... On receipt of the said payment, I have no further claims whatsoever against the Southern Roadways Limited and this amount is received by me in lieu of my claim of reinstatement and employment and all other benefits under the said Award. You may kindly arrange to withdraw the Writ Appeal No.2304 of 2000 as settled out of Court

6. The Management, based on the said settlement has withdrawn the Writ Appeal. Thereafter, the appellant has approached the Management for settlement of Employees Provident Fund as well as Gratuity and since no positive response is forthcoming, the appellant had approached the Controller of Authority under the Payment of Gratuity Act,1920, who allowed the claim of the appellant. On an appeal, the order of the Controlling Authority was set aside. Against the same, W.P.(MD).No.1577 of 2009 came to be filed insofar as settlement of Provident Fund is concerned, the appellant filed W.P.(MD).No.1592 of 2009.

7. The learned Judge, while disposing of W.P.(MD).No.1592 of 2009 had observed that the appellant through the receipt dated 19.10.2010 has received a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) and all benefits such as settlement of backwages and future wages and any other benefits, whatsoever and also stated that he has no further claim against the Management and the said settlement has attained the finality and as such, the appellant is not entitled to make any claim. The learned Judge has also placed reliance upon a judgment of this Court in W.P.No. 15588 of 1995 (Southern Roadways Limited Vs. Regional Provident Fund Commissioner and Others) and disposed of the Writ Petition vide order, dated 05.07.2002.

8. Learned Counsel for the appellant would submit that as per the Award of the Labour Court, the appellant should have been awarded with all other attendant benefits including the claim for gratuity and provident fund. However, the appellate authority without proper appreciation of facts and circumstances has erroneously allowed the appeal filed by the Management and insofar as provident fund is concerned, the learned Counsel appearing for the appellant would submit that, it is statutory on the part of the Management to settle the claim.

9. Per contra, the learned Counsel appearing for the Management would submit that but for the compromise arrived at between the Management and the appellant, the appellant would not have received a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) and after receiving the said amount, he cannot turn around and say that he is entitled for payment of gratuity and provident fund. The learned Counsel further urges that on appreciation of facts and on correct application of law, the Writ Petitions filed by the appellant were dismissed and prays for similar order in these Writ Appeals too.

10. In support of his contention, the learned Counsel also placed reliance upon a judgment reported in 2011 III CLR 662, Universal Brakes (P) Ltd., Coimbatore Vs. Presiding Officer and Others.

11. This Court has paid it's anxious attention to the submissions made by the parties and also perused the materials placed before this Court.

12. A perusal of the receipt dated 23.08.2016 executed by the appellant during the pendency of the Writ Appeal would clearly disclose that he was very well aware of the consequences of having received a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only). In the said receipt, it has been clearly indicated the said amount was received by him is in lieu of all benefits including the future backwages and other benefits whatsoever and the appellant gave an undertaking that he has no further claim against the Management and the amount received by him was including all his future benefits. The learned Judge has taken note of the said fact and also found that in similar circumstances, this Court vide its order dated 19.10.2010 has held that the workman is not entitled to make such a claim. The judgment relied upon by the learned Judge in paragraph No.9 of the said order, is extracted below.

9. In identical circumstances, when a similar question arose and the workers of the same Management moved the Provident Fund Department and the Provident Fund wanted to have the Management to remit the statutory contribution, notwithstanding the compromise between the parties, the matter was taken before this Court in W.P.No.15588 of 1995 (Southern Roadways Ltd. Vs. Regional Provident Fund Commissioner and Others) and it came to be disposed of by a judgment dated 05.07.2002. Repelling the contention P.Sathasivam.J (as he then was), in paragraph Nos.9 and 10 gave the following finding:-

9.A perusal of those documents does not show that the amounts were settled towards wages. On the other hand, the payment do not satisfy the definition as defined in Section 2(b) of the Act, consequently, the duty to deposit under Section 6 of the Act does not arise. It is also clear that the petitioner and respondents 3 to 13 entered into an individual settlement under Section 18(1) of the I.D.Act and each of them have been paid full and final settlement of all their claims. The amounts paid under the settlement cannot be termed as basic wages within the meaning of Section 2(b) of the Act.

10. As rightly contended by the learned Senior Counsel for the petitioner, as per Section 2(b) of the Act, basic wages means all emoluments which are earned by an employee while on duty or (on leave or on holidays with wages in either case) etc.,The payment made do not satisfy the definition, consequently, the direction issued by the first respondent cannot be sustained. Further, the first respondent failed to not that when the matters are settled by one time payment, it is impossible to furnish the details as claimed as to how much of the lump sum pertained to the wages or back wages. The Act does not envisages such a Scheme and as rightly contended the impugned order is without jurisdiction.

12.a. The said decision squarely applies to the case of the appellant. The appellant having entered into a compromise and agreed for a settlement, cannot make a further claim resailing from the compromise.

13. Insofar the claim for gratuity is also, it is found that the appellate authority has rightly taken note of the receipt of Rs.10,00,000/- (Rupees Ten Lakhs Only) to the effect that the workman on his own volition, without reserving his right to make any

further claim has accepted the amount and taken note of reasons for dismissal of the appeal filed by the workman. Therefore, in the considered opinion of this Court, the appellant, out of his own volition and without any compulsion or coercion has received a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) in full quit in respect of claims as early as 23.08.2006 and as such, it is not open to him to raise any further claim towards gratuity and provident fund. Therefore, the reasons assigned by the learned Judge in dismissing the Writ Petitions cannot be said to be perverse or error apparent on the face of the record.

14. Therefore, both the Writ Appeals are dismissed confirming the orders of the W.P.(MD).No.1592 of 2009 dated 19.10.2010 and W.P.(MD).No.1577 of 2009 dated 29.10.2011. However, in the facts and circumstances of the case, there shall be no order as to costs.

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