

**The Management and anr. Vs. the Controlling Authority and ors.**

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**Court :** Chennai

**Decided On :** Dec-20-2011

**Judge :** K.Chandru, J.

**Acts :** Industrial Disputes Act - Sections 9-A, 12(3); Payment of Gratuity Act

**Appeal No. :** W.P.(MD)No.1438 of 2009 and W.P.(MD)No.9241 of 2004

**Appellant :** The Management and anr.

**Respondent :** The Controlling Authority and ors.

**Advocate for Def. :** Mr.K.Mahesh Raja, Adv.

**Advocate for Pet/Ap. :** Mr.S.Seenivasagam, Adv.

**Judgement :**

In W.P.(MD)No.9241 of 2004, the petitioner is a trade union seeking to challenge a notice issued under Section 9-A of the Industrial Disputes Act, dated 28.08.2003 issued by the second respondent co-operative society. In the notice issued under Section 9-A, it was informed that the settlement under Section 12(3) entered into by the then board of directors without prior permission dated 17.08.1999 cannot be implemented in view of the illegality in entering into the settlement and that the society was recurring heavy losses during the relevant period. Already steps were taken by the Provident Fund Department through distraint proceedings. Dues are to be paid to the ESIC also. Therefore, since the settlement was signed without

prior permission and it was terminated with effect from 31.08.2003. The workers were informed that the amounts will be paid with effect from 01.09.2003 only as per earlier settlement dated 15.05.1992.

2.The petitioner union filed a writ petition before the Principal Bench stating that the settlement under Section 12(3) cannot be revoked by a notice under Section 9-A and such an action taken by the society was illegal. Reliance was also placed upon the judgment of the Supreme Court in Life Insurance Corporation of India Vs.D.J.Bahadur reported in 1981 (1) LLJ 1. Further, reliance was also placed upon the judgment of the Division Bench of this Court in Thiruchirappali Hirudayapuram Co-operative Bank Employees Union Etc. Vs.Joint Registrar of Co-operative Societies, Thiruchirapalli reported in (1992) 1 LLJ 747.

3.That writ petition was admitted on 06.04.2004. Pending the writ petition, this Court granted an interim stay. Despite notice, no steps were taken to get the stay vacated or disposal of the main writ petition.

4.In the mean while, one of the workers by name Shanmugam who was the member of the union and also employee of the society filed an application for gratuity before the Assistant Commissioner of Labour under the provisions of Payment of Gratuity Act claiming gratuity having retired from service on 31.03.2004. His claim was that he was employed for 43 years, 2 months and 25 days and his last drawn wages was Rs.6000/- per month. It was on that basis he claimed gratuity of Rs.1,48, 846/-.

5.The controlling authority registered the case as P.G.Case No.51 of 2004. After notice to the management he computed a sum of Rs.1,48,846/- and directed the management to pay the amount together with interest.

6.Instead of filing an appeal against the said order before the appellate authority under Section 7(7) of the Payment of Gratuity Act, the petitioner filed the writ petition. In the affidavit filed in support of the writ petition, it was claimed that the salary claimed by the workman on the basis of settlement under Section 12(3) of the Industrial Disputes Act, dated 17.08.1999 which was revoked by Section 9(A) notice. Since the Principal Bench of this Court had granted stay, no other order

can be passed by the appellate authority. Therefore, they had bypassed the remedy by way of filing of appeal and filed the writ petition in W.P.(MD)No.1435 of 2009.

7. When the writ petition came up for hearing 25.02.2009 notice of admission was ordered and a stay order on condition that they should deposit 50% of the award amount within four weeks was ordered by this Court. It is now stated by the learned counsel for the workman, the amount has not been deposited till date.

8. But however, Mr. Seenivasagam, learned counsel for the management of the society contended that unless the matter pending before the Principal Bench is disposed of, this writ petition cannot be decided. Therefore, this Court on 29.10.2011, directed the Registry to get permission from the Hon'ble The Chief Justice to transfer the matter which is pending before the Principal Bench so as to be heard along with this writ petition. Accordingly, the Hon'ble The Chief Justice vide order, dated 09.11.2011 directed the matter to be transferred from the Principal Bench of this Court to this Bench to be heard along with this writ petition. Hence, both the writ petitions were taken together.

9. In W.P(MD).No.9241 of 2004, the challenge by the trade union is to the notice issued under Section 9-A by a co-operative society is clearly not maintainable in the light of the Larger Bench decision of this Court reported in 2006 (4) CTC 689 (K.Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal - 636 001 and another). On the short ground, the above writ petition is liable to be rejected.

10. In any event, even before the K.Marappan's case, a Division Bench of this Court in L.Justine Vs. Registrar of Co-operative Societies and others reported in 2002 (4) CTC 385 has also held that the service condition will have to be determined only by the Rules framed under 149(1) of the Co-operative Society Rules and any action taken by the board of directors can be cancelled only by the Registrar and in such circumstances, the workmen cannot plead their rights based upon any right created through settlement under the Industrial Disputes Act or any other provision.

11.The said judgment on appeal was also confirmed by the Supreme Court in A.Umarani Vs. Registrar of Co-operative Societies reported in 2004 (7) SCC 112.

12.The reliance placed upon to the judgment in Thiruchirapalli Hiruthayapuram Co-operative Bank Employees Union Vs.Joint Registrar of Co- operative Societies reported in (1992) 1 LLJ 747 was inappropriate. The said decision came to be considered subsequently by another Division Bench in Tamil Nadu Vatta Kooturavu Veetu Vasathi Sangangalin Anaithu Paniyalargal Madya Sangam represented by its General Secretary, R.Raghavendran Vs. Deputy Registrar of Co- operative Societies (Housing) Cuddalore Circle and others reported in 2008 (2) L.L.N.236 wherein the earlier Division Bench order was disapproved. In paragraphs 15 and 16, it was held as follows:

“15.By no stretch of imagination, the said Rule can be said to be either conflicting with the provisions of I.D.Act or introduced with any other ulterior motive to defeat the lawful rights of the employees of any of the registered societies. The purport of the Rule is to ensure that a registered society does not become defunct or unwieldy and any of the registered societies should not be allowed to be closed due to dearth of funds by mismanagement. Therefore, the constitution of the committee for formulating the common wage structure for the employees of the registered co-operative societies by G.O.Ms.No.289, dated 18 December 1998, and the subsequent G.O.Ms.No.166, dated 16 August 2000, were all in furtherance of the fulfilment of the above objective of the State Government.

16.In the light of the above factors, we are convinced that the orders impugned in the writ petitions issued by the first respondent directing the respective co-operative societies to cancel the settlements which came to be arrived in contravention of the directions issued by the Registrar of the Co- operative Societies, dated 16 October 1997, issued under S.181 of the Act 1983 by invoking S.166 of the Act 1983 are perfectly justified. We are also convinced that the division Bench decision in Tiruchirappalli Hiruthayapuram Co-opearive, Bank Employees Union V. Joint Registrar of Co-operative Societies, Tiruchirapalli (vide supra), upon which heavy reliance was pieced upon by the appellant does not in any way support the stand of the appellant. On the other hand, we can only state

that the subsequent direction issued by the Registrar of Co-operative Societies, dated 16 October 1997, by invoking the powers vested in him under S.181 of the Act 1983 was validly made and the impugned orders, dated 12 March 1999 and 8 April 1999, passed in pursuance of the said directions of the Registrar, dated 16 October 1997, as well as by applying S.166 of the Act 1983 were all in tune with the observations made in the above referred to Division Bench decision and therefore, we do not find any scope to interfere with the impugned orders. Moreover, so long as the directions issued by the Registrar, dated 16 October 1997, under S.181 of the Act 1983 remains in force, the subsequent directions and the impugned orders issued by the first respondent by invoking S.166 of the Act 1983 were all within the powers and jurisdiction of the first respondent”.

Hence, W.P.(MD)No.9241 of 2004 is liable to be rejected.

13.The writ petition filed by the management on the ground that only writ petition will lie and they need not avail the remedy of an appeal under Section 7(7) cannot be countenanced by this Court. When a statutory right was created by an enactment, there is no reason for the petitioner to deviate from moving the appellate authority. Though at this point of time, the learned counsel for the management stated that it requires prior deposit, that cannot be a reason to by pass the remedy of appeal. In fact even as condition precedent for entertaining the writ petition, this Court itself had given a direction to deposit 50% of the award amount. That was not deposited the amount as directed by this Court. It must be noted that the question of Payment of Gratuity Act is a special law and not only creates right in favour of the workman to receive gratuity under certain contingencies but also provides for hierarchy of forums such as a controlling authority and an appellate authority. Therefore, it is incumbent upon the management to move an appellate authority. Under such circumstances, this Court is not inclined to entertain the writ petition.

14.Mr.S.Seenivasagam, learned counsel for he petitioner society states that since the order was passed which is impugned in the writ petition as early as 06.08.2007, they must be given an opportunity to move the appellate authority. But against the order order dated 06.08.2007, the society has filed the writ petition

only after two years which is clearly beyond the limitation prescribed under the Payment of Gratuity Act in terms of Section 7(7). Therefore, this Court is not willing to condone the delay by giving a right for him to move the appellate authority as a matter of course. The Act itself provides for a maximum period of 60 days for filing an appeal with a further 60 days for condoning the delay.

15. Since the writ petition itself came to be filed after two years, the request made by the management cannot be countenanced by this Court. If for any reason, the management pays the amount in favour of the contesting respondent Shanmugam and it is made clear that it will not disentitle them from claiming amounts due to the society. In case of any other claim it will be determined on its own merits and this order cannot be cited as a precedent as this Court had dismissed the case both on merits and on the alternative remedy thereby giving a go-by to the limitation prescribed under the Act.

16. Hence, both the writ petitions will stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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