

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.2.2011

C O R A M :

THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P.Nos.3979, 3984, 3985, 3988, 5601,
10734, 19543 and 19545 of 2007

and

M.P.No.2 of 2007, M.P.No.1 of 2007 (2 Nos)

M.P.No.2 of 2007, M.P.No.1 of 2007 and

M.P.No.1 of 2007 respectively

N.ChinnavanPetitioner in WP.No.3979/2007
P.PeriyasamyPetitioner in WP.No.3984/2007
M.SivanPetitioner in WP.No.3985/2007
P.MunusamyPetitioner in WP.No.3988/2007
K.RajagopalPetitioner in WP.No.5601/2007
V.RathinaveluPetitioner in WP.No.10734/2007
S.AnnajiPetitioner in WP.No.19543/2007
R.KrishnarajPetitioner in WP.No.19545/2007

-vs-

1. The Management,
Dharmapuri District Central
Co-operative Bank Ltd.
Dharmapuri.
2. The Presiding Officer,
Labour Court, Salem. Respondents in all the Writ Petitions

W.P.Nos.3979, 3984, 3985, 3988, 5601, 10734, 19543 and 19545 of 2007: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records relating to the Award dated 28.6.2006 made in C.P.No.362, 360, 402, 361, 540, 403, 487 of 2005 and CP2/2006 respectively, on the file of the Labour Court, Salem and quash the same and consequently direct the first respondent to pay all the arrears as claimed in the claim petition with interest at the rate of 12% p.a.

For petitioners :: Mr.Pitty Parthasarathy in all the petitions

For respondents :: Mr.M.R.Raghavan for R1 in all the petitions
R2- Court

O R D E R

The respective petitioners in all these writ petitions were all Branch Managers working in the first respondent - Dharmapuri District Central Co-operative Bank Limited, Dharmapuri. They had filed Claim Petitions before the second respondent - Labour Court at Salem under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter will be referred to as 'the Act' for short) claiming salary, dearness allowance, house rent allowance, provident fund, leave salary and gratuity varying different amounts. The Labour Court numbered those claim petitions with various claim petition numbers and issued notice to the first respondent management.

2. The first respondent management filed a common counter affidavit stating that the petitioners do not have any right to file claim petitions under Section 33C(2) of the Act inasmuch as they were all working as managers in the various branches of the bank and they are not "workmen" within the meaning of Section 2(s) of the Act and hence, the petitions under Section 33C(2) of the Act is not maintainable.

3. It was also claimed that the petitioners do not have any enforceable right for claiming such amounts. As per the proceedings of the bank, 61 workmen were promoted as Junior Inspectors and on promotion their wages were fixed. But in so far as the petitioners are concerned, they cannot claim any wages on par with those persons on the basis of equal pay for equal work. A further contention was also raised that the claim petitions are filed nearly 25 years after the cause of action arose and, therefore, the same is not maintainable. The Government Order referred to by them, viz., G.O.Ms.No.985, dated 19.9.1981 will apply for fixing of pay on the basis of which, the senior is entitled to draw more pay than the juniors and that G.O. will not apply to the Co-operative Department and as it is based upon F.R.22B, it will apply only to Government servants and, therefore, the petitioner cannot rely upon the said Government Order.

4. Before the Labour Court, on behalf of the petitioners, common evidence was let in and several documents were filed on the side of the first respondent bank. One Kumarasamy was examined as R.W.1 and 10 documents were filed as Exs.R.1 to R.10. The Labour Court on an appreciation of the evidence (oral and documentary) held that the petitioners are not workmen within the meaning of Section 2 (s) of the Act and, therefore, they are not entitled to file the claim petitions. The Labour Court, on a perusal of Ex.R.10, a booklet which speaks about the duties and responsibilities of the Branch Managers of the Bank, whereby the branch managers were informed about their sole responsibility for running the branch management and since they are controlling, supervising the work of

their subordinates, they also have the power to grant casual leave. The petitioners did not deny the existence of Ex.R.10 but claimed that they are excluded by the exception found under Section 2(s) of the Act.

5. The Labour Court also relied upon the judgment of the Gujarat High Court in Gujarat Industrial Co-operative Bank Limited -vs- D.G.Jopan Putra reported in 2005 LLR 295. In view of the fact that it was held that they are not workmen within the meaning of Section 2(s) of the Act, their claim petitions were rejected. Challenging the same, these writ petitions came to be filed.

6. The learned counsel appearing for the petitioners brought to the notice of this Court the judgment in Management, Chennai Central Co-operative Bank Limited -vs- The Joint Commissioner of Labour (Appellate Authority under the Payment of Gratuity Act, 1972) and others reported in 2007 (2) CTC 604. It is the argument of the learned counsel for the petitioners that in that judgment, the managers were found to be "workmen" within the meaning of the Payment of Gratuity Act and, therefore, the present finding of the Labour Court was erroneous.

7. On the other hand, the judgment cited by the learned counsel for the petitioners is squarely against him. In that case, this Court after referring to Section 2(e) of the Payment of Gratuity Act, which defines the term "employee", held that the persons who are holding the post in the managerial or administrative capacity were also included within the definition. Therefore, this Court after noticing different definitions under the Payment of Gratuity Act as well as under the Industrial Disputes Act, held that in respect of claim for gratuity, the definition found under section 2 (e) of the Payment of Gratuity Act alone will apply and the definition under section 2(s) of the Industrial Disputes Act cannot be pressed into service. The following passage found in paragraph 11 of the said judgment is relevant, which may be usefully reproduced below:-

'11. Section 2(e) of the Payment of Gratuity Act, 1972, defines 'Employee' as follows:-

'Employee' means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oil-field plantation, port, railway company or shop, to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules

providing for payment of gratuity".

From the above referred definition, it is clear that the persons employed in the managerial or administrative cadre are treated as employees and entitled to get gratuity, which is more favourable, either in terms of award, agreement or contract. Section 14 of the Payment of Gratuity Act also states that the provisions of Payment of Gratuity Act or any rule made thereunder shall have a overriding effect notwithstanding anything inconsistent therewith containing in entitlement other than the Payment of Gratuity Act or any instrument or contract. Therefore, the second respondent gave a specific finding that the definition of employee as defined in Section 2(e) of the Payment of Gratuity Act, 1972, alone is applicable and Section 2(s) of the Industrial Disputes Act, 1947, cannot be applied for deciding the dispute regarding the payment of gratuity....."

8. The further argument that their earlier claim petitions were allowed will operate as res judicata also cannot be countenanced. In the matter of deciding as to whether a person is a workman under section 2(s) or not, it is the nature of duties which should be taken into consideration. In the present case, the Labour Court has relied upon the duties and responsibilities entrusted under Ex.R.10. Once the Labour Court is empowered to go into the factual aspect of the Board and render a finding against the petitioners, this Court under Article 226 cannot disagree with the said finding of fact. Therefore, there is no case made out for interfering with the impugned order passed by the Labour Court.

9. Hence all the writ petitions are dismissed. Consequently, the connected miscellaneous petitions are also dismissed. However, there will be no order as to costs.

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Sd/-

Asst. Registrar

//True Copy//

To

Sub Asst. Registrar

1.The Management,
Dharmapuri District Central
Co-operative Bank Ltd.
Dharmapuri.

2.The Presiding Officer,
Labour Court, Salem.

+ 8 ccs to M/s. Pitty Parthasarathy, Advocate SR No.14294, 14292,
14293, 14295, 14291, 14289, 14290, 14288

+ 1 cc to Mr. M.R. Raghavan, Advocate SR No.14471

+ 1 cc to Mr. M. S. Palaniswamy, Advocate SR No.14429

TRM(CO)
SR/16.4.2011

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