

(2009) 11 MAD CK 0167

In the Madras High Court

Case No : Writ Petition No's. 2069 of 2005 and 2364 of 2009 and M.P. No. 1 of 2009

C. Kuttiappan and Others

APPELLANT

Vs

The Appellate Authority under Payment of Gratuity Act, 1972,
Joint Commissioner, The Controlling Authority under PG Act,
1972/Asst. Commissioner of Labour and The Management of
Erode Dist. Central Co-op. Bank
The Management,
Erode District Central Co-operative Bank Ltd. Vs The
Appellate Authority under Payment of Gratuity Act, 1972/
Joint Commissioner and Others

RESPONDENT

Date of Decision : 25-11-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1), 19, 19(2)

Citation : (2009) 11 MAD CK 0167

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : K.V. Shanmuganathan, in W.P. No. 2069/2005 and M.R. Raghavan, in W.P. No. 2364 of 2009, for the Appellant; K.V. Shanmuganathan, for Respondents 3, 4, 5 and 9 in W.P. No. 2364 of 2009, M.R. Raghavan, for 3rd Respondent in W.P. No. 2069/2005, Malarvizhi Udayakumar, Special Government Pleader for Respondents 1 and 2 in W.P. No. 2069/2005 and R. Syed Mustafa, for 7th Respondent in W.P. No. 2364 of 2009, for the Respondent

Judgement

Chitra Venkataraman, J.—These two writ petitions arise out of the order passed by the appellate authority under the payment of Gratuity Act, 1972. Writ Petition No. 2069 of 2005 is at the instance of the Workmen and Writ Petition No. 2364 of 2009 is at the instance of the Management. For easy reference, the workmen are referred to as petitioners and the Management is referred to as respondent.

2. The Petitioners herein were working under the respondent. The length of service of the petitioners is for more than three decades. The respondent was covered by the payment of Gratuity Act. In the year 1994, the Government had appointed a Streamlining Committee for making recommendations for revision in

pay scales and conditions of service for the Central Co-operative Bank Employees in G.O.(2D) No. 71 dated 07.10.1994 under the chairmanship of Thiru. D. Murugaraj, IAS, the then Special Officer/Managing Director, Tamil Nadu State Co-operative Bank Limited, Chennai. After elaborate and detailed discussions with the various representatives of the Management and the workmen, the Committee submitted a report to the Government. Based on the recommendations of the Committee, by G.O.Ms. No. 161, Co-operation, Food and Consumer dated 5.9.1996, the Government issued a Government Order. By proceedings dated 15.10.1996, the Registrar of Co-operative Societies endorsed the Government Order and issued guidelines to the Management to arrive at a settlement with the employees Unions concerned.

3. The petitioners states that not satisfied of the recommendations made by the Streamlining Committee, as accepted by the Government, the Government made representations to the Government, who, in turn, released revised order under G.O.Ms. No. 6, Co-operation, Food and Consumer Department dated 08.01.1997. Pursuant to the endorsement by the Registrar dated 09.01.1997, the Management and the employees of the Bank arrived at a settlement u/s 18(1) of the Industrial Disputes Act, 1947 (herein after referred to as "the Act") on 15.3.1997. The settlement thus reached noted the satisfaction as regards the Government order passed in G.O.Ms. No. 161 Co-operation, Food and Consumer dated 5.9.1996. However, subsequently, the Government passed an order on 20.11.2001 cancelling Serial No. 1 of Part E under Chapter 6 in the Annexure to G.O.Ms. No. 161, Cooperation, Food and Consumer Protection, dated 5.9.1996. The relevant portion of the said order reads as follows:

The following existing 2nd para in Sl.No.1 of Part E under Chapter 6 in the Annexure to G.O.Ms. No. 161, Co-operation, Food and Consumer Protection, dated 5-9-1996 is hereby cancelled:

The Committee recommends that for purpose of calculation of gratuity 26 days will be reckoned as a month not only for arriving at pay but also for calculation of length of service.

4. The grievance of the petitioners herein is that once the settlement was reached u/s 18(1) of the Act on 15.2.1997, the petitioners are entitled to have the benefit of the settlement u/s 18(1) of the Act. The period of agreement was for five years from 01.07.1994 to 30.6.1999. Clause 21 of the settlement reached provided that for the purpose of calculation of gratuity, 26 days would be reckoned as a month not only for arriving pay but also for calculation of the length of service. The respondent paid the gratuity to the petitioners as per the provisions of the payment of Gratuity Act and derived the benefit of settlement to treat 26 days as a month.

5. Aggrieved by the same, the petitioners have preferred applications before the second respondent seeking a direction to the third respondent to pay difference in the Gratuity amount as payable under 18(1) settlement. After considering the

rival contentions, the second respondent arrived at a conclusion that the employees of the Bank were entitled to seek gratuity as the Section 18(1) settlement, but however, as far as the petitioners were concerned, the claim was rejected on the ground that the petitioners had failed to prove that they were the members of the trade union, which had entered into the settlement with the management.

6. Aggrieved by the same, the Petitioners have preferred an appeal to the appellate authority in AGA Nos. 11 to 20, 22, 25, 26, 29 and 35 of 2002. By an order dated 29.1.2004, the appellate authority confirmed the earlier order. Aggrieved by the same, the petitioners are before this Court.

7. The Management is concerned also challenged the very same order on the ground that the settlement reached u/s 18(1) of the Act had undergone a change by reason of a subsequent Government Order issued withdrawing G.O.Ms. No. 161 with reference to Serial No. 1 of Part E under Chapter 6. The respondent being a Cooperative Society, is bound by the instructions of the Registrar and the orders passed by the authorities are against the express provisions of the Tamil Nadu Cooperative Societies Act.

8. Learned Counsel for the petitioners submitted that the authorities below failed to consider the fact that they were members of the union, as such, the settlement u/s 18(1) applied to them too. Learned Counsel further pointed out that since the payment of union subscription, deducted by the Bank would stand as a proof as to the membership of the petitioner in the signatory union and having regard to the fact that the subscription amount has been regularly deducted, the view of the appellate authority that the petitioners have not produced necessary membership register and hence, would not be entitled to the benefit of the settlement is totally unsustainable. He further pointed out that considering the scope of Section 18(1) of the Act, the benefit of settlement reached as per G.O.Ms. No. 161 Co-operation, Food and Consumer dated 5.9.1996, hence, has to be extended to the petitioners too. The Government cannot defeat the settlement reached, under a letter addressed on 20.11.2001 deleting the Clause in G.O.Ms. No. 161 Co-operation, Food and Consumer dated 5.9.1996. In the circumstances, he submitted that if the Management wanted the benefit of the Government letter addressed on 20.11.2001, which has the effect of amending G.O.Ms. No. 161 Co-operation, Food and Consumer dated 5.9.1996, then the Management should have acted in accordance with Section 19 of the Industrial Disputes Act. Till such action is taken, the settlement reached earlier stands as it is.

9. In this connection, he placed reliance on the decisions reported in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, ; Shukla Manseta Industries Private Ltd. Vs. The Workmen Employed under it, and (2009) 2 MLJ 479 (H.T. Natarajan and Ors. v. Joint Registrar of Co-operative Societies, Nilgiris District and Anr.), holding that once settlement is effected, it shall continue to remain in force, till notice was issued to terminate the settlement as required u/s

19(2) of the Act. In the background of the said decisions, an unilateral rejection of the agreement does not result in the termination of agreement.

10. Per contra, learned Counsel for the respondent/petitioner in W.P. No. 2364 of 2009 submitted that the petitioners have not proved through necessary evidence as regards their membership in the union to have the benefit of the settlement. In any event, having regard to the communication from the Government as regards the withdrawal of cancellation of Serial No. 1 of Part E under Chapter 6, under G.O.Ms. No. 161 Co-operation, Food and Consumer dated 5.9.1996, the petitioners are not entitled to the relief. He pointed out that as was the practice in vogue, the Bank deducted the subscription amount at the request of the union and it was not necessary to verify whether every employee is a member or not in the Union. In the circumstances, the salary registers cannot be taken as a good evidence.

11. Heard the learned Counsel appearing for the petitioners/workmen and the learned Counsel appearing for the respondent/management and perused the records placed before this Court.

12. I agree with the submissions made by the learned Counsel for the petitioners/workmen that in the light of the decisions of the Apex Court, unless and until the earlier settlement is upset in the manner known to law by reference to Section 19 of the Act, the settlement made once in terms of Section 18(1) of the Act stands to the benefit of the petitioners. It is no doubt true that the settlement itself is consequent on the approval of G.O.Ms. No. 161, Co-operation, Food and Consumer dated 5.9.1996. By the proceedings of the Secretary to Government, the communication from the Government as regards the cancellation came only on 20.11.2001. Hence, even going by the argument of the respondent/management, the settlement which was reached as early as 1997, hence, would stand to the benefit of the petitioners/workmen subject to the fact that they are shown as members of the Union. It is not denied by the respondent that consequent on the G.O.Ms. No. 161 Co-operation, Food and Consumer dated 5.9.1996, the Registrar of Co-operative Societies had also passed an order endorsing the same. It is also true that the communication dated 20.11.2001 was endorsed subsequently by the Registrar. However, with the settlement reached u/s 18(1) of the Act dated 15.3.1997 standing as it is, as held by the Apex Court, the mere unilateral decision cancelling automatically Serial No. 1 of Part E under Chapter 6, under G.O.Ms. No. 161 Co-operation, Food and Consumer dated 5.9.1996, thereby, bringing about the change in the settlement reached, cannot be accepted.

13. Given the fact that unless and until the settlement reached as early as 1997 undergoes change through a further settlement, the terms of settlement would stand binding on the third respondent herein. Consequently, the modification that has been given under letter dated 20.11.2001 does not have any legal impact on the settlement reached by the authorities concerned or for that matter the settlement goes automatic change particularly with reference to Serial No. 1 of

Part E under Chapter 6 under G.O.Ms. No. 161 Co-operation, Food and Consumer dated 5.9.1996. The reliance placed on the decisions of the Apex Court by the petitioners thus supports the case of the petitioners, I have no hesitation in accepting the same.

14. As regards the entitlement of the petitioners as members of the Union, learned Counsel for the respondent/management submitted as to the normal practice of any management to deduct the contribution towards subscription by the employee to the union account, the same have been deducted from the salary and that it is not the look out of the Management to verify whether any employee is a member of a union or not. I do not accept the said submission for the simple reason that deduction of an amount from the salary of an employee is not a formal exercise without a purpose. Hence, unless and until there are materials to disprove the claim of the petitioners/workmen whose salary had undergone certain deductions towards membership fee, the evidence produced by the petitioners have to be accepted as a testimony that the petitioners are the members of the Union. It may be noted that in the course of the proceedings before the authorities, particularly, before the appellate authority, the petitioners herein sought for production of documents particularly with reference to list of employees for whom union subscription was deducted in December 1993 Salary as well as in June 1994 salary.

15. An order was passed by the appellate authority dated 25.8.2002 directing the respondent/management to produce the records. The records produced before the appellate authority thus showed deduction of the subscription amount from the salary. The fact that the respondents have not enquired about the fact as to whether the petitioners were in fact members of the union cannot be put against the petitioners. The reasoning that the petitioners have not proved their status as members by bringing the registers from the Trade Union to establish their membership, hence, cannot be accepted as a right view. The proof of the membership is established by the deduction of the subscription amount from the salary, as evident from the monthly statement - Ex.A.6 and there being no other union, except one union, the fact not denied by the respondent/management, I have no hesitation in granting the prayer to the petitioners that Ex.A.6 is a good proof of their membership in the Union, which entitles them to have the benefit of 18(1) settlement.

16. In the light of the above said fact, I have no hesitation in reversing the order of the authorities concerned. I hold that the authorities failed to take note of the significant fact that the respondent/management, directed to produce the membership register from the Trade Union, failed to produce the same to substantiate the disentitlement of the petitioners to have the benefit of the settlement u/s 18(1) of the Act; consequently, on the strength of the subscription of membership fee deducted from the petitioners' salary, the petitioners are entitled to the benefit of the settlement u/s 18(1) of the Act. The Writ Petition filed by the workmen in W.P. No. 2069 of 2005 stands allowed and

the Writ Petition filed by the Management in W.P. No. 2364 of 2009 stands dismissed. No costs. Consequently, M.P. No. 1 of 2009 is closed.