

(2003) 09 MAD CK 0107

In the Madras High Court

Case No : Writ Petition No. 11189 of 2000

Management, The Madurai District Central Co-operative Bank
Ltd.

APPELLANT

Vs

The Joint Commissioner of Labour, Appellate Authority under
Payment of Gratuity Act, 1972, The Assistant Commissioner
of Labour and C. Viswanathan

RESPONDENT

Date of Decision : 18-09-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3)

Citation : (2004) 1 LLJ 774

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

**Advocate : S. Silambanan, for the Appellant; P.L. Narayanan, for 3rd
respondent, for the Respondent**

Judgement

A.K. Rajan, J.—This writ petition has been filed for the issue of a writ of mandamus calling for the records of the first respondent dated

12.05.2000 pertaining to P.G.A.82/99 and to quash the same.

2. The brief facts of the case for the disposal of the writ petition are as follows:-

The third respondent was working as a General Manager. Against him certain charges were framed and subsequently all the charges were

withdrawn after full enquiry. Since he has not received the service benefits, he filed a writ petition in W.P. No. 6699 of 1999. According to the

petitioner, by order of this Court all the service benefits due to the third respondent was settled. In the meanwhile, there was a settlement u/s 12(3)

of the Industrial Disputes Act, (hereinafter called "the Act") between the petitioner herein and the Union which also includes Officers. In that

settlement, there are various agreements u/s 12(3) of the Act with respect to the

Payment of Gratuity Act. There is a change in the settlement u/s 12(3), to the benefit of the employee. The third respondent claims gratuity settled u/s 12(3) of the Act. Thereafter he filed a petition before the authority under Payment of Gratuity Act, viz., original authority, Assistant Commissioner, who dismissed the claim of the third respondent. Against which he filed an appeal to the Joint Commissioner of Labour, Madurai, who has passed the order which is now impugned in this writ petition. In the meanwhile, the petitioner herein raised a dispute as to whether the third respondent is entitled to the benefits under the settlements. That was referred to the Government by the petitioner as a dispute before the Labour Court, Madurai, which is now pending in I.D. No. 115 of 1999.

3. Learned counsel appearing for the petitioner has submitted that the same issue was raised as to whether the third respondent is entitled to the benefits of the settlement arrived at under Settlement 12(3) of the Act, is pending in I.D. No. 115 of 1999 on the reference made by the Government. It has also been brought to the notice of the Government by way of filing counter before the Joint Commissioner. But the Joint Commissioner instead of awaiting verdict in I.D. No. 115 of 1999, has decided the same issue as to whether the third respondent is entitled to the benefits of the gratuity as found in the settlement u/s 12(3) of the Act and he has also decided in favour of the third respondent. This is not legally sustainable inasmuch as the same issue is pending before the Labour Court in I.D. No. 115 of 1999.

4. Mr. P.L. Narayanan, learned counsel for the third respondent has submitted that the impugned order of the Government is valid and the gratuity was paid even to the managerial staff i.e. to the persons who are holding the managerial post in accordance with settlement u/s 12(3) of the Act. Therefore, the petitioner had accepted settlement u/s 12(3) of the Act. It is an oral agreement which was acted upon by the petitioner. The benefits due under the settlement u/s 12(3) of the Act is also extended to the third respondent. Therefore, there is nothing illegal in the order passed by the Joint Commissioner in the impugned order.

5. Considering that the petitioner is an organisation, the Madurai District Central Co-operative Bank, there cannot be any oral agreement between the petitioner and any other person whether its own manager or any other

individual.

6. Counsel for the third respondent by way of reply states, that benefits have been given to some other persons and at this point this Court cannot

go into the details on merits. The benefits due u/s 12(3) of the Act is available to the persons like third respondent.

7. When the same is pending verdict under the reference made by the Government in I.D. No. 115 of 1999 before the Labour Court, the Joint

Commissioner should not have decided and he should have waited for the verdict of the lower Court in I.D. No. 115 of 1999 and pass orders

subsequent to the verdict given by the lower court. In the circumstances, impugned order is set aside as the Joint Commissioner had no authority to

decide the issue pending before the Labour Court. He should await for the verdict in I.D. No. 115 of 1999. Therefore, the matter is remitted back

to the Joint Commissioner. The Joint Commissioner shall wait for the verdict in I.D. No. 115 of 1999 by the Labour Court and pass appropriate

orders thereafter. Considering the fact that the I.D. is of the year 1999, it may be disposed of expeditiously inasmuch as the third respondent has

already retired, the Labour Court is directed to dispose of the I.D. within a period of three months from the date of receipt of a copy of this order.