

(2013) 10 MAD CK 0122

In the Madras High Court

Case No : W.A. No. 1220 of 2010 and M.P. No's. 1 and 1 of 2010

The Management of Erode District, Central Co-operative Bank	APPELLANT
Vs	
C. Kuttiappan and Others	RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0122

Hon'ble Judges : R. Mahadevan, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : S. Saravanan, for the Appellant; K.V. Shanmuganathan for Respondents-1 to 15 and Shri. R. Ravichandran, Special Government Pleader for Respondents-16 and 17 in W.A. No. 1220 of 2010 and 1 and 2 in W.A. No. 1221 of 2010, Shri. K.V. Shanmuganathan for Respondents-3, 4, 5 and 9 in W.A. No. 1221 of 2010, for the Respondent

Final Decision : Dismissed

Judgement

R. Mahadevan, J.—The appeal in W.A. No. 1220 of 2010 is preferred against the order allowing the Writ Petition in W.P. No. 2069 of 2005 filed by the employees and the appeal in W.A. No. 1221 of 2010 is against the order dismissing the Writ Petition in W.P. No. 2364 of 2009 filed by the Management by a common order of passed by the learned single Judge dated 25.11.2009. With regard to calculation and payment of gratuity, the Government of Tamil Nadu through Co-operation, Food and Consumer Department, accepting the recommendations of the streamlining Committee, issued G.O.Ms. No. 161, dated 05.09.1996, by which, as per Chapter-6 Part-E-1, directed as follows:

Every Central Coop. Bank shall make arrangements for introduction of a Gratuity linked insurance scheme in collaboration with LIC of India as in TNSC Bank, South Arcot and Tirunelveli District Central Coop. Banks.

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.

2. The Government Order was also accepted and endorsed by the Registrar of Co-operatives, who issued guidelines to the Management to arrive at a Settlement with the employees concerned. In the meantime, several Clauses in the recommendations were objected and therefore revised order under G.O.Ms. No. 6, dated 08.01.1997 was issued by the Co-operation, Food and Consumer Protection Department. The revised Government Order was directed to be followed by all the Management, by the Registrar of Co-operative Societies on 09.01.1997. Employees directly or through the Union, after discussions with the Management of Central Bank, entered into Settlement u/s 18(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") with the Union and by another agreement directly with the Employees on 15.03.1997. The period of Settlement was given effect to from 01.07.1994 to 30.06.1999. As per Clause 21, it was agreed that 26 days would be reckoned, not only for pay, but also for calculation of length of service. The terms of the settlement was being implemented without demur.

3. The Government issued a letter on 20.11.2001 cancelling the second para in Part E-1, Chapter-6, which speaks about the number of days to be considered for calculation of pay and length of service. However, no Government Order was issued cancelling the above Clause. Since no fresh agreement was entered into by the appellant without following the procedures as per 19(1) and (2) of the Act, the agreement continued to be binding on the Management and the employees, unless it is altered in the manner known to law.

4. In the meantime, the writ petitioners in W.P. Nos. 2069 of 2005 were denied the benefits conferred under the Settlement u/s 18(1) of the Act, on 15.03.1997 and gratuity was paid only as per the provisions of the Gratuity Act. Their grievance was that the benefit of gratuity agreed under the 18(1) settlement was denied, as the same was cancelled by Government letter dated 20.11.2001 and the writ petitioners 4 and 15 were not considered as members of the Union and therefore the agreement was held not applicable. The employees filed an appeal before the Controlling Authority and further appeal before the Appellate Authority under the Payment of Gratuity Act, 1972, who confirmed the view of the Management. Hence they filed the above Writ Petition before this Court.

5. With regard to certain other employees shown as respondents 3 to 12 in W.P. No. 2364 of 2009, the benefits were mainly denied as a new 12(3) Settlement was arrived at with effect from 15.3.1997 to correct Clause 30 and the respondent employees failed to prove that they were members of the Union to be entitled to the benefit. In this case, both the Controlling Authority and the Appellate Authority decided the issue in favour of the employees. Aggrieved by the same, the Management filed the Writ Petition.

6. Both the Writ Petitions were taken together for hearing by the learned single judge and by a common order dated 25.11.2009, the Writ Petition filed by the

employees was allowed, and the other Writ Petition filed by the Management was dismissed.

7. We heard both sides.

8. The learned counsel for the appellant/Management argued that the respondents in W.P. No. 2364 of 2009 were not members of the Union and mere deduction of subscription from their salary cannot confer membership on them. He further contended that by a letter dated 20.11.2001, the particular Clause relating to gratuity was cancelled, and that the settlement became invalid, contrary to the provisions of the Gratuity Act.

9. Per contra, the learned counsel for the employees contented that a right once conferred and accrued, cannot be taken away unilaterally. The employees in question had already retired before new agreement was entered into with retrospective effect, and that similar grounds taken by the Management of Coimbatore District Central Co-operative Bank was dismissed and the SLP filed was also dismissed on 29.07.2011.

10. Upon perusing the facts and circumstances and the documents produced before this Court, we concur with the view of the learned single Judge that a Settlement u/s 18(1) of the Act, can be superseded only by another agreement by following the provisions of Section 19 of the Act, as held by the Hon''ble Apex Court in the cases 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 The Workmen and Others Vs. Hindustan Lever Ltd., .

11. Therefore, the subsequent agreement entered on 27.11.2003, revising Clause 30 of the earlier agreement will not affect the employees in question as they had retired from October 1994 to May 2002. It is pertinent to mention here that the Management had entered into the agreement with the then employees during pendency of the appeal before the Controlling Authority only to overcome the liability under the earlier settlement. Similarly, neither the Registrar nor the Government can override the directions issued under the Government Order, which had already given effect to and acted upon by issuing a letter.

12. Now comes the question as to whether the respondent employees are members of the Union or not? Admittedly, the membership fees of the Union is deducted from the salary of the employees. If the employees are not members, there is no question of such deduction. In fact, such deduction was proved before the Appellate Authority after directions to the Management to produce the records. Though the monthly statements were produced reflecting the salary disbursement and deduction of subscription fee, the membership register from the Trade Union was not produced. Having deducted subscription fee, the respondent cannot claim that disbursement is made to thousands of employees and therefore every payment cannot be verified. Having been entrusted the duty to handle public money, the appellant cannot raise such defence.

13. Therefore, we concur with the view of the learned single Judge that the proof of membership is established by deduction of subscription amount from the salary of the employees, and no further proof is necessary to confer the benefits to the employees concerned. Hence the petitioners in W.P. No. 2069 of 2005 are eligible for the benefits accrued under 18(1) Settlement.

14. The other issue that the agreement is against the express provisions of the Payment of Gratuity Act was also considered and negated by the Controlling Authority and Appellate Authority. Nevertheless, such an issue was not raised before the learned single Judge. However, from the orders of the Appellate Authority, it can be seen that referring to Sub-section 5 of Section 4 of the Payment of Gratuity Act, which provides that nothing in Section 4 shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer, the argument of the Management was negated. This finding was accepted and not challenged. We find no merit in this argument also. Upon considering that various Division Benches of this Court had dismissed similar appeals filed by other Managements seeking to vary the terms of 18(1) and 12(3) Settlements pursuant to G.O.Ms. No. 161, we find no merits in the present appeals and the same are dismissed. The appellant is directed to calculate the arrears with interest @ 10 % and disburse the same, within three months from the date of receipt of a copy of this order. There shall be no orders as to costs. Consequently connected miscellaneous petitions are closed.