

(2008) 11 MAD CK 0182

In the Madras High Court

Case No : Writ Petition No. 2188 of 2003

The Management Tirunelveli District Central Co-operative
Bank Ltd.

APPELLANT

Vs

The Presiding Officer, Labour Court and V. Sundararajan

RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Industrial Disputes Act, 1947 — Section 18, 18(1), 33(C)(2)

Citation : (2008) 11 MAD CK 0182

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : N. Umapathy, for the Appellant; V. Gangatharan, for (R2), for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the second respondent.

2. This writ petition has been filed by the petitioner Bank challenging the order of the first respondent Labour Court, dated 16.9.2002, made in C.P. No. 45 of 1997.

3. It has been stated that the second respondent had joined as a Supervisor in the petitioner Bank, on 14.5.1965. He was dismissed from service based on certain charges which were held to be proved. The second respondent had raised an industrial dispute in I.D. No. 8 of 1975, challenging the order of his dismissal from service. By an award, dated 17.10.1980, the dismissal order had been set aside and he was ordered to be reinstated in service, with continuity of service and without backwages. As per the award of the Labour Court, the second respondent had been reinstated in service, on 20.1.1981, as a Junior Assistant.

4. It has been further stated that the second respondent had made a claim to the petitioner Bank stating that he had completed 10 years of service in the cadre of

Junior Assistant/Supervisor and that he was eligible to be promoted as a Senior Assistant/Senior Supervisor, as per the settlement entered into, in accordance with Section 18(1) of the Industrial Disputes Act, 1947. Accordingly, he had claimed the difference in wages. The second respondent had filed a claim petition in C.P. No. 605 of 1986, claiming a sum of Rs. 38,778/-. The claim petition was allowed, on 12.12.1990, by which the petitioner Bank was directed to pay to the second respondent a sum of Rs. 40,814.01.

5. It has been further stated that the settlement, u/s 18(1) of the Industrial Disputes Act, 1947, had been entered into between the management of the petitioner Bank and the Union of Employees, on 4.8.1971. Under the said settlement, the Supervisors who had completed 10 years of service, would be entitled to be promoted as a Senior Supervisor. The second respondent had filed the claim petition in C.P. No. 45 of 1997, claiming that he should be given the arrears of pay as a Senior Supervisor, calculating from 14.5.1975 for the period from 20.1.1981 to 30.12.1994, amounting to a sum of Rs. 1,71,999.94. However, the management had given the second respondent, the salary of a Senior Supervisor only from 20.1.1981. The first respondent had failed to appreciate the fact that the award in I.D. No. 8 of 1975 had only directed his reinstatement in service, without backwages.

6. It has been further stated that the claim made by the second respondent is highly belated. Further, the settlement, dated 4.8.1971, concluded, u/s 18(1) of the Industrial Disputes Act, 1947, based on which the second respondent had made the claim, was in force only for a period of three years. After the expiry of the settlement the second respondent has no locus standi to base his claim on the said settlement. The second respondent ought to have agitated the matter by way of raising another Industrial Dispute.

7. It has also been stated that the first respondent Labour Court, on an erroneous appreciation of the facts and the law, was pleased to allow the claim petition in C.P. No. 45 of 1997, holding that the petitioner Bank is liable to pay a sum of Rs. 1,71,999.94, with interest at 9% from the date of the filing of the petition till the date of the order and 6% interest thereafter, till the date of the payment, with cost of Rs. 500/-. Aggrieved by the said order, the petitioner Bank has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

8. The learned Counsel appearing on behalf of the petitioner Bank had submitted that the order passed by the first respondent Labour Court, is arbitrary, illegal and violative of Article 14 of the Constitution of India. The claim petition has been filed by the second respondent after an inordinate delay of almost 17 years. There was no reason given for the delay, nor has there been a request for the condonation of the delay. The first respondent Labour Court had failed to note that the settlement, u/s 18 of the Industrial Disputes Act, 1947, dated 4.8.1971, based on which the claim was made, was valid only for three years. The second respondent ought to have raised a separate dispute and he should not have filed

a claim petition, u/s 33(C)(2) of the Industrial Disputes Act, 1947. Since the issues involved in the claim petition were relating to disputed questions of fact and law, the Labour Court, acting as an authority, u/s 33(C)(2) of the Industrial Disputes Act, 1947, has no jurisdiction to decide such disputed questions of fact and law. Thus, the first respondent Labour Court had exceeded its jurisdiction in deciding the claim petition filed by the second respondent.

9. It has been further stated that the first respondent Labour Court had failed to consider the fact that the second respondent had joined in the service of the petitioner Bank, on 14.5.1965 and he had completed 10 years of service as a Junior Supervisor, on 16.5.1975. Since he had been dismissed from service, on 10.10.1973 and reinstated in service as a Supervisor, on 20.1.1981, he is not eligible to get the benefit of the settlement concluded, u/s 18(1) of the Industrial Disputes Act, 1947. The award of the Labour Court in I.D. No. 8 of 1975, had directed the reinstatement of the second respondent, with continuity of service and without backwages. Therefore, the first respondent Labour Court ought not to have passed the order in the claim petition in favour of the second respondent.

10. It has been further stated that the second respondent ought to have been in continuous service for a period of 10 years as a Supervisor to be promoted as a Senior Supervisor to get the benefit under the settlement. Since the second respondent had not completed 10 years of continuous service, in accordance with the settlement, he is not eligible for the benefit claimed by him. Further, the second respondent had been working as a Supervisor and he was discharging his duties in a managerial capacity. Therefore, he would not come under the definition of 'Workman', under the provisions of the Industrial Disputes Act, 1947. Break in service due to the punishment imposed on the second respondent would not be counted for the purpose of continuous service of 10 years, as specified in the settlement. Further, the Registrar of Co-operative Societies ought to have permitted the promotion of the second respondent. In the absence of such a permission, he would not be eligible for any benefit arising out of the promotion granted to him. In such circumstances, the order passed by the first respondent Labour Court, in C.P. No. 45 of 1997, is liable to be set aside.

11. Per contra, the learned Counsel appearing on behalf of the second respondent had submitted that the order of the first respondent Labour Court, dated 16.9.2002, made in C.P. No. 45 of 1997, is in accordance with law and therefore, valid. The first respondent Labour Court had taken into consideration the evidence available on record before coming to its conclusions. The first respondent Labour Court had found that the second respondent was eligible for the benefit of promotion under the settlement concluded in accordance with Section 18(1) of the Industrial Disputes Act, 1947. Since the Labour Court had reinstated the second respondent in service, with continuity of service, he would be deemed to have been in service, without any break, due to the order of dismissal passed against him. The order passed by the first respondent Labour Court, in C.P. No. 45 of 1997, is valid, both on facts and in law.

12. In view of the submissions made by the learned Counsels appearing on behalf of the petitioner, as well as the second respondent, this Court is of the considered view that the petitioner Bank has not shown sufficient cause or reason for this Court to interfere with the order of the Labour Court, dated 16.9.2002, made in C.P. No. 45 of 1997.

13. The first respondent Labour Court had taken into consideration all the relevant factors to come to its conclusions in passing the order, dated 16.9.2002, in favour of the second respondent. The first respondent Labour Court had considered the evidence on record to hold that the settlement concluded u/s 18(1) of the Industrial Disputes Act, 1947, was applicable to the second respondent and that he would get the benefits, in accordance with the said settlement. Sufficient reasons have been given by the first respondent Labour Court to come to the conclusion that the petitioner Bank is liable to pay the amount claimed by the second respondent, in accordance with the settlement. Even though the second respondent is said to have been performing his duties, which were managerial in nature, the said contention could not be proved by the petitioner Bank to the satisfaction of the first respondent Labour Court. The petitioner Bank has not been in a position to show that the claim petition filed by the second respondent workman had been filed, belatedly, without sufficient cause or reason. In such circumstances, this Court is not inclined to set aside the order of the first respondent Labour Court, dated 16.9.2002, made in C.P. No. 45 of 1997, since it has not been shown by the petitioner Bank that the order of the first respondent Labour Court is perverse, or based on no evidence or that it is arbitrary and capricious in nature. Hence, the writ petition stands dismissed. No costs.