

**(2008) 11 MAD CK 0051**

**In the Madras High Court**

**Case No : Writ Petition No. 2104 of 2003**

The Management Tirunelveli District Central Co-operative  
Bank Ltd.

**APPELLANT**

**Vs**

The Presiding Officer, Labour Court and C. Sankaran

**RESPONDENT**

**Date of Decision : 19-11-2008**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

Industrial Disputes Act, 1947 — Section 12(3), 2, 33(C)(2)

**Citation : (2008) 11 MAD CK 0051**

**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 petition has been filed by the petitioner Bank, challenging the order of the first respondent Labour Court, dated 23.8.2002, made in C.P.

No. 55 of 1997.

3. It has been stated that the petitioner is a registered Co-operative Bank, registered under the Tamilnadu Co-operative Societies Act and the rules

made thereunder, having its own bye-laws and special bye-laws relating to the service conditions of its employees. It has been further stated that

the second respondent was working in the petitioner Bank as a Manager in the Palayamkottai Branch. While so, he had sanctioned and issued

overdraft loans to the tune of Rs. 9.98 lakhs to 201 persons, without following the procedures prescribed for such sanction of overdraft loans.

Thus, the second respondent had violated the instructions of the Bank. Therefore, he was placed under suspension, with effect from 27.9.90.

Disciplinary action had been initiated against him and a charge memo, dated 11.11.90, had been issued to him. The second respondent had not

participated in the enquiry and therefore, the enquiry was conducted ex-parte. Thereafter, a second show cause notice had been issued to him.

Later, he was dismissed from service by an order, dated 15.5.1991, with effect from 27.9.90. Aggrieved by the order of dismissal, the second

respondent had filed a civil suit in O.S. No. 336 of 1991, praying for a declaratory injunction. The suit had been decreed in his favour. Based on

the declaratory injunction, the second respondent had submitted representations, on 23.5.94 and 3.6.94, wherein he had given an undertaking that

if he was reinstated in service, he would collect the overdraft loans issued by him. Further, he had stated that if he was not able to collect the loan

amounts, he would deposit his subsistence allowance in the Bank, in lieu of the overdraft loans and that he would abide by the punishment that may

be awarded to him, pursuant to the disciplinary action that may be initiated against him. Accordingly, he had joined in service, on 3.6.94. After he

had joined in service, disciplinary action had been initiated against him. Based on the disciplinary action, he was imposed with the punishment of

stoppage of increment. Later, the second respondent had retired from service, on 31.10.96, receiving all the retirement benefits. After his

retirement, the second respondent had filed the Claim Petition No. 55 of 1997, before the first respondent Labour Court, claiming arrears of

salary, as per the settlement arrived at, u/s 12(3) of the Industrial Disputes Act, 1947, dated 3.2.97, at the rate of 10% increase of arrears of

salary and House Rent Allowance. Further, he had claimed arrears of gratuity and arrears of surrender pay to the tune of Rs. 42,344/-. Further, he

had claimed a sum of Rs. 1,33,460.55, as subsistence allowance.

4. The petitioner Bank had contested the claim petition contending that the second respondent was not entitled to the amount claimed by him and

that the second respondent was not a workman and therefore, he cannot file the claim petition, under the provisions of the Industrial Disputes Act,

1947. However, the first respondent Labour Court, by an order, dated 23.8.2002, was pleased to allow the Claim Petition No. 55 of 1997,

directing the petitioner Bank to pay as sum of Rs. 42,344/-, for the period from July 1994 to October 1996, with interest thereon at 9% per

annum from the date of the filing, till the date of the order and the interest at the rate of 6% till the date of payment and had awarded a cost of Rs.

500/-. Aggrieved by the said order, dated 23.8.2002, passed by the first respondent Labour Court, the petitioner has preferred the present writ

petition before this Court, under Article 226 of the Constitution of India.

5. 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 first respondent Labour Court had erred in holding that the second

respondent was a workman under the Industrial Disputes Act, 1947. The first respondent Labour Court ought to have seen that the second

respondent was working as a Manager of the Palayamkottai Branch and that he was employed mainly in a managerial capacity and therefore, he

had ceased to be a workman, as defined under the provisions of the Industrial Disputes Act, 1947. It was also submitted that the first respondent

Labour Court had failed to take note of the fact that the second respondent was not entitled to the claim since he had been awarded the

punishment of increment cut. The Civil Court had granted only a declaratory relief, declaring the order of dismissal, dated 15.5.91, as illegal and

invalid. The question regarding the arrears of salary and other consequential benefits were not the subject matter before the Civil Court. The first

respondent Labour Court had no jurisdiction to hear the petition, u/s 33(C)(C)(2) of the Industrial Disputes Act, 1947, relating to disputed

questions of fact and law. The second respondent Labour Court has no locus standi to claim the deposited amount and the arrears of salary, under

a settlement concluded in accordance with Section 12(3) of the Industrial Disputes Act, 1947. If there were arrears of amounts due to be paid to

the second respondent, he could have invoked the provisions of the Payment of Wages Act. However, it was not open to the second respondent

to file a claim petition before the first respondent Labour Court.

6. The learned Counsel for the petitioner had further submitted that the second respondent had retired from service, on 31.10.96, and that the

settlement, u/s 12(3) of the Industrial Disputes Act, 1947, had been concluded

only, on 3.2.97. In spite of the specific issue raised by the petitioner Bank, the first respondent Labour Court had not given any finding on the said issue. Further, since the second respondent was working as a Manager at the relevant point of time, he cannot be considered as a workman, u/s 2(s) of the Industrial Disputes Act, 1947. From Ex.M-3, marked on behalf of the petitioner Bank, it would be clear that the second respondent was carrying on managerial and supervisory functions and therefore, he cannot be considered to be a workman in accordance with the provisions of the Industrial Disputes Act, 1947. The first respondent Labour Court had erred in holding that Ex.M.3 is only a Circular containing certain guidelines and that it cannot be construed to be of a binding nature. In fact the second respondent had approached the Civil Court seeking to set aside the order of dismissal passed against him, only due to the reason that he was not a workman. Further, the first respondent Labour Court is not empowered to decide a dispute relating to the applicability of the settlement and as to whether the second respondent was a workman or not.

7. Per contra the learned Counsel appearing on behalf of the second respondent had submitted that the settlement concluded on 3.2.97, is to be effective from 1.7.94. Further, the first respondent Labour Court by its order, dated 17.2.2000, made in Claim Petition No. 35 of 1996, while dealing with the non-payment of subsistence allowance to the second respondent by the petitioner Bank, had decided the issue in favour of the second respondent workman. The petitioner Bank had not filed any appeal against the said order and therefore, the findings therein had become final. Since the second respondent is a workman, u/s 2(s) of the Industrial Disputes Act, 1947, the first respondent Labour Court had rightly entertained the claim petition filed against the petitioner Bank by the second respondent workman. The settlement, dated 3.2.97, is applicable to the second respondent as he had retired only, on 31.10.96, and the said settlement was given effect to from 1.7.94. In such circumstances, the writ petition is liable to be dismissed, as having no merits.

8. In view of the submissions made by the learned Counsels appearing on behalf of the petitioner Bank, as well as the second respondent, this Court is of the considered view that the petitioner has not shown sufficient cause

or reason for this Court to interfere with the order of the first respondent Labour Court, dated 23.8.2002, made in C.P. No. 55 of 1997.

9. The first respondent Labour Court had given sufficient reasons for deciding the claim petition in favour of the second respondent. The Labour

Court had also considered the fact that it had passed an earlier order, dated 17.2.2000, in Claim Petition No. 35 of 1996, directing the petitioner

Bank to pay subsistence allowance to the second respondent. Since the first respondent Labour Court had already held that the second

respondent was a workman according to Section 2(s) of the Industrial Disputes Act, 1947, and as the said order had become final, a different

view cannot be taken in Claim Petition No. 55 of 1997. Further, the first respondent Labour Court had held that Ex.M-3, dated 23.12.94,

marked in favour of the petitioner Bank cannot be said to be mandatory in nature, as it is only a circular. Even though the second respondent is

said to have retired from service, on 31.10.96, on his attaining the age of superannuation, the settlement, dated 3.2.97, concluded u/s 12(3) of the

Industrial Disputes Act, 1947, was to be applicable, with effect from 1.7.94. Further, it has been stated that the settlement would continue to be in

existence even after 30.6.99, till such time it was altered or revised by yet another settlement or award. The period of the settlement was shown to

be five years, from 1.7.94 to 30.6.99. Since the petitioner Bank has not been in a position to show that the order passed by the first respondent

Labour court is perverse or based on no evidence, or arbitrary or capricious this Court is not persuaded to interfere with the order, dated

23.8.2002, made in C.P. No. 55 of 1997. Hence, the writ petition stands dismissed. No costs.