(2006) 10 MAD CK 0170

In the Madras High Court

Case No : Writ Petition No''s. 169 and 170 of 2001

The Superintending Engineer, Tamil Nadu Electricity Board — APPELLANT

Vs

The Presiding Officer, Labour Court, K. Gurusamy and R. Arumuga Nadar — RESPONDENT

Date of Decision : 16-10-2006

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 33C(2)
Tamil Nadu Electricity Board Contributory Provident Fund Regulations — Regulation 37, 38, 39

Citation : (2006) 10 MAD CK 0170

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : V. Yamunadevi, for the Appellant; No appearance, for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J.—Tamil Nadu Electricity Board seeks Writ of Certiorari to quash the Award of the Labour Court, Salem in C.P. Nos. 34 and 41 of 1998 dated 08.03.1999 and 28.12.1998 respectively.

2. Background facts which led to the filing of the Writ Petitions are as follows - The second Respondent [s] entered service in Tamil Nadu Electricity Board in 1964 and 1972 respectively. The second Respondent [s] have retired on superannuation on 31.01.1989 and 28.02.1995. According to the employees, as per Regulation 37 of Tamil Nadu Electricity Board Contributory Provident Fund Regulations framed as per I.D. Act, 1965, they are entitled to Special Contribution at the rate of 15 days salary per year of service. Referring to the Supreme Court judgment dated 10.05.1989 SC @ 1388 [Kathija Be v. T.N.E.B.], the second Respondent [s] filed Claim Petition u/s 33C(2) of I.D. Act before the Labour Court, Salem.

3. The Claim Petition was resisted by Tamil Nadu Electricity Board referring to the

pensionable scheme and non pensionable scheme. According to the Department, the second Respondent [s] received all terminal benefits available to them under pensionable service and they have received the amount standing to their credit in the General Provident Fund account with interest and the second Respondent [s] are not entitled to claim special contribution fund.

4. Observing that some of the employees covered under the pension scheme were granted special contribution, the labour Court passed the Award ordering payment of special contribution to the second Respondent [s] [Rs.22,405/- and Rs. 23,089.50] with subsequent interest at the rate of 12% p.a. Challenging the same, these Writ Petitions have been filed by the Electricity Board.

5. Submitting that the Labour Court has misconstrued the two schemes - Pensionable Scheme and non-pensionable scheme, the learned Counsel for the Tamil Nadu Electricity Board inter-alia raised the following contentions:

The second Respondent [s] are now getting pension benefits and availed retiral benefits and also the G.P.F. and cannot claim benefit under the special Contribution Scheme;

The Supreme Court Judgment cited in the Petition refers to non-pensionable cadre and not for pensionable scheme.

6.The second Respondent [s] were served. Notice sent to the second Respondent [s] have been returned unserved as ''no such addressee''. Names of the second Respondent [s] have been printed in the Cause List. Though the second Respondent [s] have not entered appearance, I have carefully gone through the averments in the Claim Petitions and the contentions raised onbehalf of the second Respondent [s] in the Labour Court.

7. Section 33C(2) of I.D. Act is analogous to the execution proceedings. Where a case involves investigation or determination of applicant''s right to relief of the corresponding liability, if at all of the employer, such an investigation is impermissible in Application u/s 33C(2) of the Act. Compulsory contribution to the second Respondent [s] has been seriously disputed by the Electricity Board. But the Labour Court has proceeded on the premise that the second Respondent [s] are not entitled to the special contribution. The Court has not adverted to the two categories of employees - one coming under pensionable scheme and the other coming under non pensionable scheme. The second Respondent [s] all along were under the pensionable scheme.

8. There were two categories of retirement benefits in Tamil Nadu Electricity Board viz., pension scheme linked with GPF Scheme and the Contributory Provident Fund Scheme. Generally, employees under pensionable scheme comprises of Officers, Clerical Staff and other categories like Junior Engineers, Store Keepers, Droughtsman, who are termed as ''Provisional Cadre'', who claim benefits under the GPF Scheme and others were termed as ''Regular Work Establishment'' and were governed by Contributory Provident Fund Scheme. The

benefits available to the employees under the pensionable scheme are -

(a) Pension and General Provident Fund.

(b) Death-cum-Retirement Gratuity.

(c) Family Pension to the family of the deceased employees.

(d) Benefits under the TNEB Employees Family Benefit Fund Rules, 1974.

(e) Benefits under the TNEB Subsidiary Scheme, 1986 and;

(f) Benefits under the TNEB Employees Special Provident Fund cum Gratuity Scheme.

The other category of employees come under Non-pensionable scheme. The benefits admissible to the employees under the Contributory Provident Fund are-

(a) Contributory Provident Fund [Subscription and Contribution].

(b) Special Contribution amount as per Regulation 37, 38 and 39 provided his services are good, efficient and faithful.

(c) Gratuity under the payment of Gratuity Act, 1972.

(d) Family Pension under Employees Family Pension Scheme, 1971.

(e) Benefits under TNEB Employees Family Benefit Fund Rules, 1974.

(f) Benefits under TNEB Family Subsidiary Scheme, 1986.

9. On representation of the Union of workers, Tamil Nadu Electricity Board had obtained necessary exemptions from the Central Government from the provisions of Employee Family Pension Scheme. Pension Scheme linked with GPF was extended to the regular work establishment, as per the order issued in B.P.Ms. [FB] No. 5 (Audit Branch) dated 26.06.1986.

10. In the pension Scheme, which was introduced on and from 01.07.1986, every employee of the Board became eligible to get pension. In so far as this scheme is concerned, it is applicable only to employees who have been transferred from Non-Pensionable Scheme to Pensionable Scheme. The Contributions made towards Contributory Provident fund were transferred to GPF after 01.07.1986 and the workmen in Regular Work Establishment Cadre have been subscribing to GPF. The second Respondent [s] were governed by GPF after 01.07.1986 and all the retirement benefits were paid to them and the amount standing to their credit in the GPF Account with interest to the tune of Rs. 21,416 and Rs. 21,066 were also paid to them. Besides the above, a monthly pension with Dearness Allowance for their qualifying service and an amount payable under the Gratuity Scheme, applicable to the pensionable employees, were also paid. Having received all the retiral terminal benefits available to them under the pensionable scheme, the second Respondent [s] cannot claim Special Contribution Amount, invoking Regulation No. 37. Regulation No. 37 of Tamil

Nadu Electricity Board, Contributory Provident Fund Regulations which regulates payment of Special Contribution stipulates that the special contribution would be paid only to the employees who are under non pensionable scheme. The second Respondent [s] who have served under Pensionable Scheme of the Board cannot claim Special Contribution amount.

11. The decisions cited by the employees in their Petition relate to the employees who belonged to Non-pensionable cadre who were paid the Special Contribution by the Board. Since the second Respondent [s] belong to pensionable service, the rulings have no applicability to them. The second Respondent [s] were subscribers to Board''s GPF in which there is no provision for payment of special contribution. This is all the more so, when the second Respondent [s] have availed all the terminal benefits including the GPF.

12. The second Respondent [s] claim for the Special Contribution was disputed by the Petitioner, as there was no earlier recognition of second Respondent''s claim. It is well settled that a dispute relating to the entitlement is not incidental to the relief claimed and it is outside the scope of proceedings u/s 33C(2).

13. Holding that u/s 33C(2), the Court has no jurisdiction, first to decide the workman''s entitlement and then to proceed to compute the benefits so adjudicated, in 1995 [1] LLJ 395 [Municipal Corporation, Delhi v. Ganesh Razak, the Court has held ::

The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workman to a certain benefit is disputed, there being no earlier adjudication or recognition thereof, by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s 33C(2) of the Act. The labour Court has no jurisdiction to first decide the workman''s entitlement and then proced to compute the benefit so adjudicated on that basis, in exercise of its power u/s 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated upon or recognized by the employer and thereafter, for the purpose of implementation or enforcement thereof, some ambiguity requires interpretation, that the interpretation is treated as incidental to the labour Courts power u/s 33C(2) like that of the executing Court''s power to interpret a decree for the purpose of its execution

14. The second Respondent [s], who retired on superannuation on 31.01.1989 and 28.02.1995, filed application in 1998 u/s 33C(2), claiming that they are entitled to Special Contribution. The same was disputed by the Petitioner on the ground that the Labour Court had no jurisdiction to decide that dispute in a proceeding u/s 33C(2). The Labour Court has committed serious error in adjudicating the entitlement of the second Respondent [s] to the Special Contribution in a Petition filed u/s 33C(2). While reviewing the decisions of the Labour Courts, Jurisdiction of the High Court under Article 227 of the Constitution of India is to be confined to correct the jurisdictional errors. In appropriate cases,

supervisory jurisdiction may be employed to correct errors of jurisdiction and assumption of excessive jurisdiction or irregular exercise of it or the refusal or failure to exercise the same. Going into the question of entitlement of the Special Contribution, in a Petition filed u/s 33C(2) is irregular exercise of jurisdiction. The Labour Court was not justified in adjudicating the dispute as to the entitlement of the Special Contribution of the second Respondent [s] and awarding the Special Contribution and the impugned Award are to be set aside.

15. In the result, the Writ Petitions are allowed and the Award made in C.P. Nos. 34 and 41 of 1998 dated 08.03.1999 and 28.12.1998 respectively are quashed. No costs.