



W.P(MD)No.11047 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2026

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.11047 of 2023
and W.M.P(MD)No.9671 of 2023

The Co-Operative Sub Registrar / Managing Director,
4268, Manapparai Agricultural Producers
Co-operative Marketing Society Ltd.,
Manapparai Town, Manapparai - 621 306.

... Petitioner

Vs

1.The Appellate Authority,
Under Payment of Gratuity Act 1972,
Trichirappalli – 20.

2.The Assistant Commissioner of Labour,
(Controlling Authority Under Payment of Gratuity Act, 1972),
Trichirappalli – 20.

3.A.Gopalakrishnan

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent in P.G.Appeal.No.31/2018 on 17.12.2018 and subsequent order in P.G.No.60/2017 dated 08.11.2017



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passed by the second respondent and quash the same on the ground that the same is arbitrary, illegal and without any legal basis.

For Petitioner : Mr.M.Sridharan

For Respondents : Ms.K.R.Shiva Shankari (R1 & R2)
Counsel for State

: Mr.K.Prabhakar (R3)

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent in P.G.Appeal No.31 of 2018, dated 17.12.2018.

2.The learned counsel appearing for the petitioner submitted that the petitioner is a Co-operative Society registered under the provisions of the Tamil Nadu Co-operative Societies Act and is governed by its bye-laws. The third respondent, while serving under the petitioner Society, is alleged to have caused a loss of Rs.26,94,166/- to the Society by acts of misappropriation and other irregularities. Consequently, the petitioner lodged a criminal complaint against the third respondent, which was registered in Crime No.453 of 2007 on the file of the Manapparai Police



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Station. Simultaneously, disciplinary proceedings were initiated against the third respondent, culminating in an order of dismissal.

3.It is further submitted that, challenging the order of dismissal, the third respondent preferred an appeal before the Deputy Commissioner of Labour, Tiruchirappalli, in T.N.S.E. Appeal No.4 of 2017, and by order dated 22.09.2017, the order of dismissal came to be set aside. Thereafter, the third respondent, who had attained the age of superannuation on 30.06.2011, filed an application in P.G.No.60 of 2017 before the second respondent under the Payment of Gratuity Act seeking payment of gratuity for the period from 15.09.1973 to 30.06.2011. The second respondent/Controlling Authority dismissed the claim, vide order dated 08.11.2017. Aggrieved by the same, the third respondent preferred P.G.Appeal No.31 of 2018 before the first respondent. The Appellate Authority, by order dated 17.12.2018, directed the petitioner Society to pay a sum of Rs.4,42,758/- together with interest. Challenging the same, the present Writ Petition has been filed.



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4.The learned counsel appearing for the petitioner further submitted that, in respect of the loss allegedly caused by the third respondent, surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, were initiated and an order was passed against him. Challenging the same, the third respondent preferred C.M.A (CS) No. 593 of 2011 before the Co-operative Tribunal-cum-Principal District Court, Tiruchirappalli. According to the learned counsel, when the issue relating to the alleged loss sustained by the Society was pending adjudication, the authorities under the Payment of Gratuity Act ought not to have directed payment of gratuity. It is therefore contended that the impugned orders are contrary to Section 4(6) of the Payment of Gratuity Act, 1972, and are liable to be set aside.

5.Per contra, the learned counsel appearing for the third respondent submitted that though surcharge proceedings had been initiated against the third respondent, the order passed therein was challenged before the Co-operative Tribunal and the matter was remanded for fresh



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consideration. It is further submitted that the criminal case registered against the third respondent ended in acquittal by judgment dated 15.12.2016. The learned counsel further submitted that, under Section 4(6) of the Payment of Gratuity Act, 1972, gratuity can be forfeited only to the extent of the loss caused and only upon a valid order of forfeiture passed in accordance with law. Admittedly, no order forfeiting the gratuity payable to the third respondent has been passed by the petitioner Society. Therefore, the authorities under the Payment of Gratuity Act were fully justified in directing payment of gratuity. Accordingly, he prayed for dismissal of the Writ Petition.

6.Heard the learned counsel appearing on either side and perused the materials available on record.

7.The facts are not in dispute. It is the specific case of the petitioner that the third respondent had caused financial loss to the Society and that surcharge proceedings as well as criminal proceedings were



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initiated against him. However, it is equally not in dispute that the criminal proceedings culminated in an order of acquittal and that the surcharge proceedings have not attained finality. More importantly, no order forfeiting the gratuity payable to the third respondent under Section 4(6) of the Payment of Gratuity Act, 1972, has been passed by the competent authority.

8. Section 4(6) of the Payment of Gratuity Act empowers the employer to forfeit gratuity only in the contingencies contemplated therein and only to the extent permissible under law. Mere pendency of surcharge proceedings or allegations of misconduct cannot, by themselves, deprive an employee of his statutory right to gratuity. In the absence of any order of forfeiture passed in accordance with Section 4(6) of the Act, the petitioner cannot withhold the gratuity payable to the third respondent. Therefore, this Court finds no infirmity in the findings rendered by the Appellate Authority directing payment of gratuity.



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9.However, insofar as the rate of interest is concerned, this Court is of the view that the interest awarded at 10% per annum requires slight modification. In the facts and circumstances of the case, interest at the rate of 8.5% per annum would meet the ends of justice.

10.Accordingly, the Writ Petition stands dismissed. The order passed by the first respondent in P.G. Appeal No.31 of 2018, dated 17.12.2018, is upheld, subject to the modification that the third respondent shall be entitled to interest at the rate of 8.5% per annum, instead of 10% per annum, on the gratuity amount from the date on which it became payable till the date of actual payment. The petitioner Society is directed to pay the gratuity amount together with the modified interest, if not already paid, within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes / No
Index : Yes / No

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M.DHANDAPANI, J.

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