

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2015

CORAM

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.10007 of 2015

A.Kannan

... Petitioner

Vs.

1. The Joint Registrar of Co-op Societies
Villupuram Region, Villupuram, Villupuram District

2. The President
Villupuram District Central Co-op. Bank
No.2, Hospital Road,
Villupuram

... Respondents

* * *

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus to disburse gratuity together with interest as well as earned leave salary benefits to the petitioner under Section 79 of Tamil Nadu Co-operative Societies Act.

* * *

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.L.P.Shanmuga Sundar, Spl.G.P

ORDER

With the consent of both sides, this writ petition itself is taken up for final disposal.

2. The petitioner was appointed as Assistant in the 2nd respondent Co-operative bank on 07.10.1996. He was suspended from service on certain allegation. He was to retire on 31.12.2011, but was not permitted to retire. According to the petitioner he is not in Government service. There is no rule permitting the Co-operative Society to retain him in service and to keep him in suspension on reaching the age of superannuation. According to the petitioner, he shall be paid gratuity as per Section 79 of TN co-operative Societies Act likewise he is also entitled to earn leave encashment benefits as per the rules of the society. Since those benefits are not given, he has filed the present writ petition seeking a direction to disburse gratuity with interest.

3. This court on 07.04.2015 passed the following order:

The petitioner was appointed as Assistant in the second respondent Co-operative Bank on 07.10.1996. He was suspended from service on certain allegations. His date of superannuation fell on 31.12.2011, but he was not allowed to retire from service.

2. On reaching the age of superannuation, the petitioner is deemed to have been retired from service and he cannot be retained in service as in the case of Government servant, who are governed by Fundamental rules and Tamil Nadu Pension rules. The petitioner is not entitled to pension. He is an industrial workman, whose service will get terminated on attaining the age of superannuation. Thereafter, no employer-employee relationship subsists between the Co-operative Society and the petitioner.

3. the Petitioner was relieved from service on 31.12.2011. But, he is not paid gratuity as provided under Section 79 of the Tamil Nadu Co-operative Societies Act.

4. The learned counsel for the petitioner submitted that gratuity under Section 79 of the Act could not be deprived for any reason whatsoever since the same is property under Article 300-A of the Constitution of India and the same could be deprived only in the manner known to law.

5. The learned counsel for the respondents seeks time to get instructions.

6. Post 'for orders' on 13.04.2015.

4. Learned counsel for respondents has heavily relied on para 9 of the counter affidavit. It is submitted that Payment of Gratuity Act is self-contained code. Similarly leave encashment is provided under Tamilnadu Shops and Establishment Act, and the same is also a self-contained one, hence he could not seek remedy under Article 226 of the Constitution.

5. Learned counsel has also submitted that I passed an order on 07.04.2015 in W.P.No.9976/2015 directing the concerned employee to approach the appropriate authority under Section 153 of the Tamil

Nadu Co-operative Societies Act for interest on the belated payment of the terminal benefits. Hence, the learned counsel for the respondents has sought for dismissal of the writ petition.

6. In this case, on reaching the age of superannuation, after rendering 15 years of service, the petitioner is not settled with the gratuity. It is non pensionable service. He is not a government servant, he is not governed by Fundamental Rules and Tamil Nadu Pension Rules. On reaching the superannuation, no employer-employee relationship subsists between the Co-operative Society and the petitioner.

7. Learned counsel for the respondent is not able to show the Rule or any statutory provision that would prove the employer-employee relationship subsisting even after the employee reached the age of superannuation. As per section 79 of the Gratuity Act, the 2nd respondent is bound to pay the gratuity on reaching the age of superannuation. Even assuming the 2nd respondent is not governed by payment of Gratuity Act, the employee is entitled to get gratuity as per section 79 of the Tamil Nadu Co-operative Societies Act. If he is covered by the Payment of Gratuity Act, he is entitled to receive gratuity under the said Act.

8. It is not known as to whether the petitioner is governed by Payment of Gratuity Act or not. Assuming that the petitioner is governed by the Payment of Gratuity Act, the 2nd respondent cannot take a plea that the writ petition is not maintainable in view of the remedy available under the Payment of Gratuity Act. It would be a different case, if there is a dispute over the amount of gratuity or the matter is relating to interest on the gratuity. Here in this case, no amount is paid towards gratuity payable to the employee.

9. In my view, non payment of gratuity to a workman who is not in pensionable service is violative of Article 21 of the constitution. It is well settled that for enforcement of fundamental rights a writ petition under Article 226 is maintainable. Reference could be had to the case reported in Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Other, (1998) 8 SCC 1. Hence the plea raised by the 2nd respondent that workman shall approach the authority under Payment of Gratuity Act under the Tamilnadu Shops and Establishment Act is rejected.

10. The other plea is that I passed an order dated 07.04.2015 in W.P.No.9976/2015 directing the petitioner therein to approach the appropriate authority under Section 153 of the Tamil Nadu Co-operative Societies Act, when there was a claim made by the workman for interest on the belated payment of terminal benefits. In my view, the said judgment cannot be of any use to the 2nd respondent. Even surcharge proceeding or any criminal proceeding is pending against the employee of the co-operative society, the same cannot be a ground

to deprive gratuity in view of Section 14 of payment of Gratuity Act. Unless the workman is dismissed and there is an order of forfeiture of gratuity passed under Payment of Gratuity Act, the payment of gratuity cannot be taken away by the employer. Even here, if the petitioner was paid the gratuity amount and the petitioner seeks for interest, I could have directed him to approach the concerned authority relating to payment of interest. In this case after retirement, no amount is paid to workmen. Workmen is entitled only to gratuity, provident fund and earn leave encashment. None of the amounts are paid to the workmen. Now, the 2nd respondent cannot take a technical plea of non maintainability of writ petition on the ground of availability of alternative remedy. Hence, writ petition is allowed, a direction is issued to the 2nd respondent to pay gratuity and leave encashment within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

kpr

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Joint Registrar of Co-op Societies
Villupuram Region, Villupuram, Villupuram District
2. The President
Villupuram District Central Co-op. Bank
No.2, Hospital Road,
Villupuram

+ 1 cc to Mr.L.P.Shanmugasundaram, Advocate SR 23653

+ 1 cc to Mr.C.Prakasam, Advocate SR 23416

+ 1 cc to Govt.Pleader SR 23323

ssi(co)
prk14/5

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