

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 22-02-2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.26104 OF 2014

The Special Officer,
Chennai Central Co-operative Bank Ltd.,
215, Prakasam Salai,
Chennai-600 108

... Petitioner

-vs-

1. Controlling Authority under the
Payment of Gratuity Act, 1972,
(Assistant Commissioner of Labour I/C)
O/o. The Deputy Commissioner of Labour-I,
Chennai-600 006.

2. M. Palaniyandi

... Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari to call for the records in P.G.I.A.No.440 of 2013 in P.G.No.78 of 2013, on the file of the Controlling Authority under the Payment of Gratuity Act, 1972, (Assistant Commissioner of Labour I/C), O/o. The Deputy Commissioner of Labour-I, Chennai-600 006, first respondent herein, and quash the order, dated 05.09.2014.

For petitioner : Mr.M.R.Raghavan,

For respondent 1 : Mr.R.Rajeswaran,
Spl.Govt.Pleader.

For respondent 2 : Mr.T.Sundaresan

O R D E R

Heard Mr.M.R.Raghavan, learned counsel for the petitioner; Mr.R.Rajeswaran, learned Special Government Pleader, for first respondent; and Mr.T.Sundaresan, learned counsel for second respondent.

2. Second respondent retired from the service of the petitioner on 31.12.2006. He approached the first respondent and filed an application to compute the interest payable on the

belated payment of gratuity of Rs.1,46,902/-. The petitioner management filed a counter statement on 27.05.2013, and, thereafter, filed a memo before the authority, raising two contentions, firstly, contending that the petition was not maintainable before the authority, inasmuch as the claim was based upon a settlement under Section 18 (1) of the Industrial Disputes Act, 1947, entered into between the bank and its employees, and not based on the provisions of Payment of Gratuity Act, 1972. Second contention was, whether the authority constituted under the Payment of Gratuity Act would have jurisdiction to adjudicate the claim made on the basis of a settlement arrived at in accordance with Section 18 (1) of the Industrial Disputes Act, especially, when the claimant was not a party to the said settlement ?

3. In fact, both the above issues are interlinked. The contention of the management was that the claim made by the petitioner cannot be a gratuity claim, and it is a claim under the settlement, and, therefore, the authority cannot exercise such jurisdiction and hold that amount has to be paid together with interest. Secondly, it is contended that the question of payment of interest would arise only in respect of the gratuity, which shall be payable under the provisions of the Payment of Gratuity Act to an employee, after he has rendered continuous service of not less than five years, on his retirement.

4. Referring to Section 4 of Payment of Gratuity Act, it is submitted by the learned counsel for the petitioner, that the expression used in Payment of Gratuity Act is "payable", and, therefore, the amount becomes payable on retirement and unless and until the amount is payable under the Act, the question of granting interest in terms of Section 8 of the Payment of Gratuity Act does not arise.

5. Referring to Rule 7 of the Tamil Nadu Payment of Gratuity Rules, 1973, it is further submitted by the learned counsel for the petitioner, that an employee who is eligible for payment of gratuity under the Act or any other person authorised in writing to act on his behalf, shall ordinarily within thirty days from the date gratuity becomes payable in Form I to the employee. Therefore, it is submitted that even in Rule 7 of the Rules, the expression used is, "payable", and, in the instant case, gratuity was settled by the management and nothing was payable to the second respondent on the date of application, and, as such, the grant of interest by the authority was erroneous. It is also submitted that it is no doubt true that under the statute, if the employer does not pay gratuity within the time stipulated, it shall be paid along with compound interest, but the said interest is payable only when the claim

is for payment of gratuity under the Act, but not in cases like that of the present case, where it is a claim, arising under Section 18 (1) Settlement.

6. The first respondent took into consideration the preliminary objection and, by a reasoned order, dated 05.09.2014, dismissed the contentions, raised by the management. Challenging the same, the management is before this Court.

7. The undisputed facts are that the second respondent retired from service of the petitioner management on 31.12.2006, and, after his retirement, there was a settlement between the employees of the petitioner management and the management on 30.08.2010 and the said settlement was entered into under Section 18 (1) of the Industrial Disputes Act, 1947. The effective date of settlement was from 01.01.2006 to 31.12.2010. The settlement pertained to revision of wages and other emoluments to both serving and retired employees.

8. In terms of Clause XIV of the Settlement, which deals with implementation of the wage revision, both parties mutually agreed to the date of effect from 01.01.2006 for the purpose of monetary benefits. Therefore, the second respondent, having retired subsequent to the said date is entitled for the benefit of the said settlement. For payment of arrears of basic pay, personal pay, D.A., and stagnation increments, the date was fixed as 01.01.2007. In respect of other payments, such as HRA, CCA, the date was fixed as 16.11.2009, and for all other allowances, it was fixed as from the date of settlement. The claim made by the second respondent would fall under the third category of other allowances and would become payable from the date of settlement i.e., 30.08.2010. Further, the settlement states that the terminal benefits in respect of staff members who have retired during the year 2006 shall be paid based on the revised scale of pay applicable on the date of retirement. Thus, by virtue of the settlement, basic pay, personal pay etc., should be revised and consequently, the salary of the second respondent had to be notionally arrived at the relevant point of time and for the differential amount, consequent upon the revision of wages, there was an increase in the component of quantum of gratuity payable. This was rightly computed by the management and a sum of Rs.1,46,902/- was paid to the second respondent. The second respondent does not dispute the said amount, but, his claim is for interest at 10% p.a., since there was a delay of 190 days in payment. In terms of Section 4 of the Payment of Gratuity Act, gratuity is payable to the second respondent, which is not disputed by the management. For recovery of gratuity, the procedure under Section 8 has to be followed and if the employer has not paid gratuity within the time prescribed, the Controlling authority shall, on an application made by the aggrieved person, issue a certificate

for the amount to the Collector, who shall recover the same together with compound interest thereon. The said provision provides for the Controlling Authority to not only recover gratuity, but also with interest, when there has been a delay. The cause of action for the second respondent arose for claiming difference of gratuity only on the date of settlement in terms of the clause in the settlement and on the relevant date i.e., 30.08.2010. However, within the period of thirty days, the management has not paid the difference in gratuity. Therefore, the second respondent was entitled to claim interest for the belated payment and such application could be filed by an employee ordinarily within thirty days from the date the gratuity becomes payable. Such date cannot be the date of superannuation of the second respondent, but, such date can only be the date, on which settlement is entered into, since, as per the terms of settlement, allowances such as gratuity becomes payable from the date of settlement. Hence, if there is a delay in payment, obviously, the management is bound to pay interest. As such, there is no error apparent in the order passed by the first respondent.

9. Writ Petition is dismissed accordingly. No costs. Consequently, the connected M.P.No.1 of 2014 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. Controlling Authority under the
Payment of Gratuity Act, 1972,
(Assistant Commissioner of Labour I/C)
O/o. The Deputy Commissioner of Labour-I,
Chennai-600 006.

+1cc to Mr.M.T.Raghavan, Advocate, S.R.No.11299
+2cc to Mr.T.Sundaresan, Advocate, S.R.No.10962
+1cc to the Government Pleader, S.R.No.11066

W.P.No.26104 OF 2014

kji (CO)
srg (08/03/2016)