

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.28823 to 28828 of 2015 and
M.P.No.1 of 2015 in WP.No.28823 of 2015 and
M.P.Nos.1 to 1/2015 and M.P.Nos.2 to 2/2015 in
WP.Nos.28824 to 28828 of 2015

Rasipuram Co-operative
Urban Bank Limited,
Rep. by its Deputy Registrar/
Managing Director,
No.56, Nagara Vanki Street,
Rasipuram,
Namakkal District. ...Petitioner all W.Ps.No.

V.

1.The Authority under the Payment
of Gratuity Act/Assistant Commissioner
of Labour, Salem. ...Respondent in all the WPs.

2.A.Jayaraman ...2nd Respondent in all 28823/15

D. Mukundakumar ...2nd Respondent in all 28824/15

R. Raju ...2nd Respondent in all 28825/15

G. Sampath Kumar ...2nd Respondent in WP.28826/15

G. Murugesan ...2nd Respondent in WP.28827/15

P. Sooryagopal ...2nd Respondent in WP.28828/15

3.The President,
Rasipuram Co-operative
Urban Bank Limited,
No.56, Nagara Vanki Street,
Rasipuram, Namakkal District. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issue of a writ of Certiorari calling for the records of the orders passed by the 1st respondent in P.G.I.A.No.109 of 2015, 80/15, 79/15, 78/15, 77/15 and 76/05 respectively dated 31.07.2015 and quash the same.

In all WPs.

For Petitioners .. Mr.M.S.Palanisamy

For 1st Respondent .. Mr.R.Bala Ramesh
Addl. Government Pleader

For 2nd Respondent .. Mr.T.Anantha Sekar

COMMON ORDER

Heard the learned counsel for the petitioner; Mr.R.Bala Ramesh, learned Additional Government Pleader for the 1st respondent and Mr.T.Anantha Sekar, learned counsel for the 2nd respondent and with their consent, the writ petition is taken up for final disposal.

2.The petitioner in all these writ petitions is the Rasipuram Co-operative Urban Bank Limited represented by its Deputy Registrar/Managing Director and the challenge is to a common order passed by the 1st respondent, the competent authority under the provisions of the Payment of Gratuity Act, 1972. By the impugned order, the competent authority has condoned the delay in filing the applications by the 2nd respondent in all these cases wherein they have requested the Management to pay the difference in gratuity amount.

3.The learned counsel for the petitioner vehemently contended that the affidavit filed in support of the condone delay applications before the competent authority is bereft of particulars. The 2nd respondent/Employees have not shown sufficient cause for condonation of the delay and these aspects of the matter were not considered by the competent authority and a cryptic order has been passed which calls for interference. In support of his contention, the learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in Basawaraj and another V. Special Land Acquisition Officer reported in (2013) 14 Supreme Court Cases 81.

4.The learned counsel appearing for the 2nd respondent/Employees, referring to the counter affidavit filed, submitted that the difference in gratuity claim arose on account of a Settlement entered into between the Management and the Employees under Section 12(3) of the Industrial Disputes Act, 1947. By virtue of which, there was a revision of wages and the period covered by the settlement is from 01.01.2012 to 31.12.2016. In pursuant to the Settlement, the difference in wages were paid as arrears to the employees in two instalments on 26.03.2014 and 17.10.2014. However, the difference in gratuity have not been paid inspite of representations, the 2nd

respondent/Employees had approached the competent authority for computation and payment of the difference in gratuity amount and the limitation had been computed from the date of superannuation, they had filed an application for condonation of delay, which has been considered by the authority and taking note of the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition Anantnag and another V. Mst.Katiji and others reported in 1987 (1) L.L.J. 500, the applications have been allowed and there is no error in the impugned order.

5.The learned Additional Government Pleader appearing for the 1st respondent/competent authority supports the impugned order and states that the reasons assigned by the authority are perfectly valid and proper.

6.The short issue which falls for consideration is as to whether the 1st respondent was justified in exercising its discretion and condoning the delay. Rule 10 of the Payment of Gratuity (Central) Rules, 1972 deals with application to be filed before the Controlling Authority. In terms of sub-rule (1) of Rule 10, an application is required to be filed in Form 'N' to the Controlling Authority within a period of 90 days of the occurrence of the cause for the application. In terms of the proviso under Rule 10(1) of the Rules, the Controlling Authority may accept any application under the said sub-rule, on sufficient cause being shown by the applicant, after the expiry of the periods specified. Thus, the starting point of limitation would have to be computed 'from the date of occurrence of the cause for the application'.

7.Therefore, the issue to be considered in this case is as to when the occurrence of the cause for application arose. Admittedly, the 2nd respondent/Employees were extended the benefit of the Settlement under Section 12(3) of the Industrial Disputes Act, 1947 which had been entered into on 03.03.2014. Since the settlement covered the period from 01.01.2012, during which period the 2nd respondent/Employees were in employment, they have been given the arrears of salary in two instalments and the second of such instalment having been paid on 17.10.2014. Therefore, the employees were entitled to claim the difference in gratuity only after 17.10.2014 when the arrears were disbursed. The employees have submitted representations on 13.11.2014 and 14.11.2014 which is not disputed by the petitioner. However, these representations did not evoke any response which compelled the Employees to approach the competent authority by filing an application in Form N. Therefore, the authority might not be correct in computing the period of limitation from the date of retirement, but, it should be computed only after December 2014, since the representations given by the employees were not considered as it is only then the cause of action arose to file the application. If such date

is reckoned, then the applications are not inordinately delayed, since the applications were submitted on 13.04.2015. In fact, if the petitioner/Managing Director had considered the representations immediately and passed an order, it would averted the petitioner from approaching the competent authority. Therefore, after giving a reasonable time for the petitioner to linger on the representation, they have approached the authority in April, which cannot be considered as a highly belated application.

8.The Hon'ble Supreme Court in the case of Basawaraj referred to supra, summarises the decisions rendered by the Hon'ble Supreme Court interpreting the expression 'Sufficient Cause', taking note of the decisions in the case of Madanlal V. Shyamlal reported in (2002) 1 SCC 535 and Ram Nath Sao V. Gobardhan Sao reported in (2002) 3 SCC 195. The Hon'ble Supreme Court pointed out that there can be no straitjacket formula in such cases and each case has to be decided on its facts. Therefore, to throw out an application on the ground of limitation, it has to be established that there was gross negligence, inaction or lack of bona fides and unless any one of these factors are established, an application cannot be rejected on the ground of limitation.

9.The law of limitation has been founded on public policy and not intended to destroy the rights of the parties. The facts stated in the preceding paragraphs will clearly show that no negligence can be attributed to the Employees nor there is any lack of bona fides. In fact, the employees having been granted arrears of salary pursuant to the Settlement under Section 12(3) of the Industrial Disputes Act, it goes without saying that the gratuity needs to be recomputed taking into consideration the revised basic pay. Therefore, there is no error in the order passed by the 1st respondent in exercising discretion and condoning the delay.

10.In the light of the above, all these Writ Petitions are dismissed and the 1st respondent is directed to number the application and proceed to decide the same in accordance with law, preferably within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Sgl

To

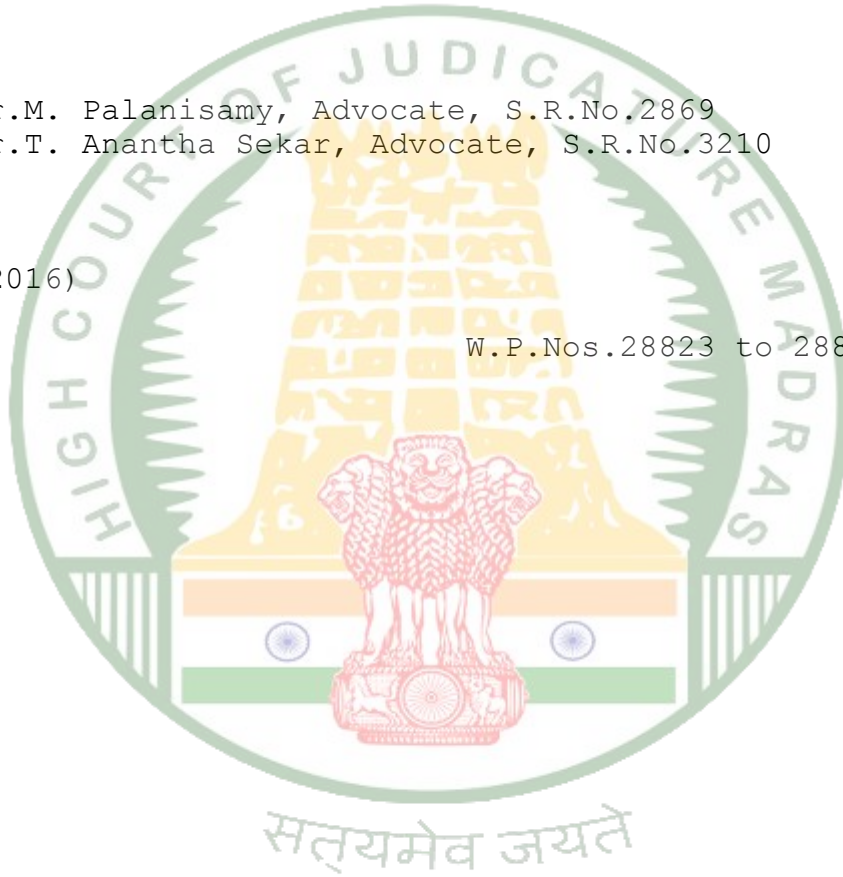
1. The Authority under the Payment
of Gratuity Act/Assistant Commissioner
of Labour, Salem.

2. The President, Rasipuram Co-operatives Urban Bank Ltd.,
Rasipuram, Namalakkal.

+1cc to Mr.M. Palanisamy, Advocate, S.R.No.2869
+1cc to Mr.T. Anantha Sekar, Advocate, S.R.No.3210

KSJ(CO)
EU(27/01/2016)

W.P.Nos.28823 to 28828 of 2015



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