

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.146 of 2016
and
CMP.No.1961 of 2016

1. The Joint Registrar of
Co-operative Societies,
Villupuram Region,
Villupuram, Villupuram District.
2. The President,
Villupuram District Central
Co-operative Bank Ltd.,
No.2, Hospital Road,
Villupuram. Appellants/Respondents
1 & 3

Vs.

1. R.Prabakaran 1st Respondent/Petitioner
2. The Assistant Commissioner of Labour/
Competent Authority for Payment
of Gratuity Act, Teynampet,
Chennai-600 006. 2nd Respondent/2nd
Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 24.03.2015 and made in W.P.No.3058 of 2015 by the learned Judge of this Court.

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus, directing the respondents 1 and 3 to disburse gratuity together with interest as well as Earned Leave salary benefits to the Petitioner under Section 79 of Tamilnadu Co-operative Societies Act.

For Appellants : Mr.R.Arumugam

For Respondent-1 : Mr.C.Prakasam

J U D G E M E N T

[Judgment of the Court was made by M.VENUGOPAL, J.]

The Appellants/Respondents 1 & 3 have preferred the instant intra-Court appeal before this Court as against the order dated 24.03.2015 in W.P.No.3058 of 2015 passed by the Learned Single Judge.

2.The learned Single Judge while passing the impugned order in W.P.No.3058 of 2015 (filed by the First Respondent/Petitioner) at paragraph 6 had observed the following:

"6.There is no dispute that as on today, there are no proceedings pending against the petitioner so as to disentitle him from claiming Gratuity and other related statutory benefits. It is also a matter of record that the order passed by the first respondent, pursuant to the surcharge proceedings, has become final, in view of the dismissal of the writ petition by this Court vide order dated 24.07.2014 in W.P.No.27168 of 2009. The alleged action to be taken by the third respondent to file a writ appeal against the order dated 24.07.2014 in W.P.No.27168 of 2009 cannot be a reason to deny payment of statutory benefits to the petitioner. I am therefore of the view that the petitioner should be given statutory benefits forthwith."

and consequently, directed the Second Appellant/Third Respondent to disburse the entire statutory benefits to the First Respondent/Petitioner including Gratuity and Earned Leave Salary as expeditiously as possible in any case, within a period of four weeks from the date of receipt of a copy of this order and accordingly, disposed of the Writ Petition without costs.

3.Challenging the impugned order dated 24.03.2015 in W.P.No.3058 of 2015 passed by the Learned Single Judge, the Appellants/Respondents 1 & 3 have filed the instant Writ Appeal before this Court primarily contending that the Learned Single Judge had erroneously held that the First Respondent/Petitioner is entitled to receive the Gratuity and other related statutory benefits.

4.According to the Learned counsel for the Appellants, the Learned Single Judge had failed to appreciate that the criminal proceedings in C.C.Nos.E/2005, 13/2011 and 27/2011 are pending before the Learned Judicial Magistrate-II,

Tindivanam.

5.The Learned counsel for the Appellants projects an argument that the First Respondent/Petitioner approached the Second Respondent/Assistant Commissioner of Labour/Competent Authority for Payment of Gratuity (under Gratuity Act) by filing an application for Payment of Gratuity and the said application is pending. Also that it is the stand of the Appellants that without withdrawing the application/petition before the Second Respondent/Competent Authority, the First Respondent/Petitioner initiated parallel proceedings by filing the present writ petition before this Court.

6.It is represented on behalf of the Appellants that the Learned Single Judge had failed to note that the Surcharge Proceedings against the First Respondent/Petitioner are yet to be completed and that the writ petition filed by the First Respondent/Petitioner is not maintainable either in Law or on Facts.

7.Per contra, it is the submission of the Learned counsel for the First Respondent/Petitioner that "Surcharge proceedings" had attained finality and inspite of the same, the Appellants/Respondents 1 and 3 had not taken any positive action to disburse him the statutory benefits.

8.It is not in dispute that the First Respondent/Petitioner was appointed as Sub Staff of Villupuram District Central Co-operative Bank on 17.01.1974 and later, he was promoted to the post of Field Supervisor and retired from service on 31.05.2012.As a matter of fact, the First Respondent /Petitioner projected CMA.No.27 of 2008 on the file of Co-operative Tribunal (District Judge) whereby and whereunder, he had questioned the initiation of proceedings against him under Section 87 of the Tamil Nadu Co-operative Societies Act, 1881. The Tribunal allowed the CMA.No.27 of 2008 on 26.10.2009.

9.It is to be pointed out that W.P.No.27168 of 2009 filed by the Second Appellant/Third Respondent (against the judgment in CMA.27 of 2008) was dismissed by this Court on 24.07.2014. Indeed, the Learned Single Judge in the impugned order passed in the Writ Petition had opined that Writ Appeal preferred against the order dated 24.07.2014 in W.P.No.27168 of 2009 by the Second Appellant/Third Respondent would not be a reason to deny Payment of Statutory benefits to the First Respondent/Petitioner and ultimately, observed that he should be given the statutory benefits forthwith and disposed the writ petition by issuing necessary directions.

10.It is to be borne in mind that Payment of Gratuity Act, 1972, is a complete code containing detailed provisions covering all the salient features of the scheme for Payment of Gratuity. The Act confers the right to Payment of Gratuity, indicates when the right will accrue, and prescribes

the principles for qualification of the Gratuity. To put it precisely, for recovery of the amount when there is a delay in regard to payment to be made, there is a provision for payment of compound interest at such specified rates.

11.It is true that Section 7 of the Payment of Gratuity Act speaks of "Determination of the amount of gratuity:- A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to be employer, within such time and in such form, as may be prescribed, for payment of such gratuity." It is an employer's duty to determine the amount of gratuity. In fact, the importance of Gratuity legislation lies in the acceptance of 'Principle of Gratuity' as a 'Compulsory, Statutory retiral benefit' as per decision Lalappa Lingappa and others V. Laxmi Vishnu Textile Mills Ltd., Sholapur in 58 FJR 150.

12.As far as the present case is concerned, even though, the First Respondent/Petitioner had not withdrawn his application (claiming Gratuity under Payment of Gratuity Act) before the Second Respondent, the filing of W.P.No.3058 of 2015 cannot be said as not maintainable in Law. In reality, the First Respondent/Petitioner had filed W.P.No.3058 of 2015 before this Court seeking the relief of Mandamus in directing the Appellants 1 & 3 and the Second Respondent to disburse Gratuity together with Interest as well as Earned Leave Salary benefits to him in terms of Section 79 of the Tamil Nadu Co-operative Societies Act. However, this Court, on going through the impugned order dated 24.03.2015 in W.P.No.3058 of 2015 passed by the Learned Single Judge in directing the Second Appellant/Third Respondent to disburse the statutory benefits to the First Respondent/Petitioner (including Gratuity and Earned Leave Salary) as expeditiously as possible and in any case, within a period of four weeks from the date of receipt of a copy of this order, is of the considered view that the said order does not suffer from any material irregularities or patent illegalities in the eye of Law. Consequently, the Writ Appeal fails.

12.In the result, the Writ Appeal is dismissed leaving the parties to bear their own costs. Therefore, the impugned order passed by the Learned Single Judge in W.P.No.3058 of 2015 dated 24.03.2015 is affirmed by this Court for the reasons ascribed in this Appeal. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS V)

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To

1. The Joint Registrar of
Co-operative Societies,
Villupuram Region,
Villupuram, Villupuram District.
2. The President,
Villupuram District Central
Co-operative Bank Ltd.,
No.2, Hospital Road,
Villupuram.
3. The Assistant Commissioner of Labour/
Competent Authority for Payment
of Gratuity Act, Teynampet,
Chennai-600 006.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.9254
+1cc to Mr.R.Arumugam, Advocate, S.R.No.8758

W.A.No.146 of 2016
and
CMP.No.1961 of 2016

SR(CO)
CA(25/02/2016)



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