

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.147of 2016
and
CMP.No.1962 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 & 2

Vs.

A.Kannan ... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 27.04.2015 and made in W.P.No.10007 of 2015 by the learned Judge of this Court.

Writ Petition has been filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus do 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 : 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 & 2 have focused the instant Writ Appeal before this Court as against the order dated 27.04.2015 in W.P.No.10007 of 2015 passed by the Learned

Single Judge.

2.The learned Single Judge while passing the impugned order dated 27.04.2015 in W.P.No.10007 of 2015 (filed by the Respondent/Petitioner) at paragraph 10 had observed the following:

"10.The other plea is that I passed an order dated 07.04.2015 in W.P.No.9976 of 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 second 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 second 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 second 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."

and resultantly, allowed the writ petition by directing the Second Appellant/Second Respondent to pay the Gratuity and Earned Leave Salary within a period of eight weeks from the date of receipt of a copy of this order.

3.Challenging the correctness, validity and legality of the impugned order dated 27.04.2015 in W.P.No.10007 of 2015 passed by the Learned Single Judge, the Learned counsel for the Appellants contends that the Learned Single Judge had

committed an error in coming to the conclusion that the Respondent/Petitioner is entitled to receive the Gratuity and other related statutory benefits.

4.The Learned counsel for the Appellants submits that the criminal proceedings in C.C.Nos.3/2005, 13/2011 to 27/2011 are pending against the Respondent/Petitioner before the Learned Judicial Magistrate-II, Tindivanam and these aspects were not considered by the Learned Single Judge while passing the impugned order in the Writ Petition.

5.The Appellants take a stand that when filing an application before the Competent Authority under Payment of Gratuity Act, 1972, the Respondent/Petitioner had initiated proceedings by filing the present writ petition and this vital aspect of the matter was failed to be taken into account by the Learned Single Judge at the time of passing the impugned order.

6.Lastly, it is the submission of the Learned counsel for the Appellants that Surcharge Proceedings against the Respondent/Petitioner are yet to be completed but this was not considered by the Learned Single Judge while passing the impugned order.

7.Per contra, it is the submission of the Learned counsel for the Respondent that the Respondent/Petitioner filed CMA.No.31 of 2008 (being aggrieved against the surcharge order passed against him) before the Co-operative Tribunal (District Judge) and the Civil Miscellaneous Appeal was allowed and as against the said judgment, passed by the Tribunal, the Bramadesam Primary Agricultural Bank filed W.P.No.27172 of 2010 before this Court and the same was dismissed by this Court on 24.07.2014.

8.Furthermore, it is contended on behalf of the Respondent/Petitioner that the Appellants/Respondents 1 & 2 in terms of Section 79 of the Tamil Nadu Co-operative Societies Act are bound to disburse gratuity together with interest as well as Earned Leave Salary benefits to the Respondent/Petitioner and inspite of several representations made in this regard, the Appellants have not paid the terminal benefits.

9.As far as the present case is concerned, the Respondent/Petitioner was appointed as Assistant in the Second Appellant/Second Respondent Bank on 07.10.1996 and that he was suspended from service on certain allegations. In fact, he should have retired on 31.12.2011 but was not permitted to retire. Since the Respondent/Petitioner was not paid the Gratuity along with interest as well as Earned Leave Salary benefits, as per Section 79 of the Tamil Nadu Co-operative

Societies Act, he had filed the Writ Petition before this Court.

10.It is to be borne in mind that Section 14 of the Payment of Gratuity Act, 1972, lays down the provisions of the Act will have overriding effect over other provisions of the subject. It cannot be forgotten that Gratuity Act is a general Act applicable to categories of established following therein. 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.

11.Be that as it may, in the present case, the Respondent/Petitioner was not paid with the Gratuity, Provident Fund and Earned Leave Encashment amount. For not making payments of the aforesaid amounts to the Respondent/Petitioner, it is not open to the Appellants to take a plea of maintainability of the Writ Petition based on the reason of availability of alternate remedy under Payment of Gratuity Act, 1972 in the considered opinion of this Court. In short, this Court is of the considered view that the impugned order dated 27.04.2015 in W.P.10007/2015 passed by the Learned Single Judge in directing the Second Appellant/Second Respondent to pay Gratuity, Earned Leave Encashment benefits to the Respondent etc., does not suffer from any serious material irregularities or patent illegalities in the eye of Law. Consequently, the Writ Appeal fails.

12.In fine, the Writ Appeal is dismissed leaving the parties to bear their own costs and resultantly, the impugned order passed by the Learned Single Judge in W.P.No.10007 of 2015 dated 27.04.2015 is confirmed by this Court for the reasons assigned in this Appeal. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

DP

To

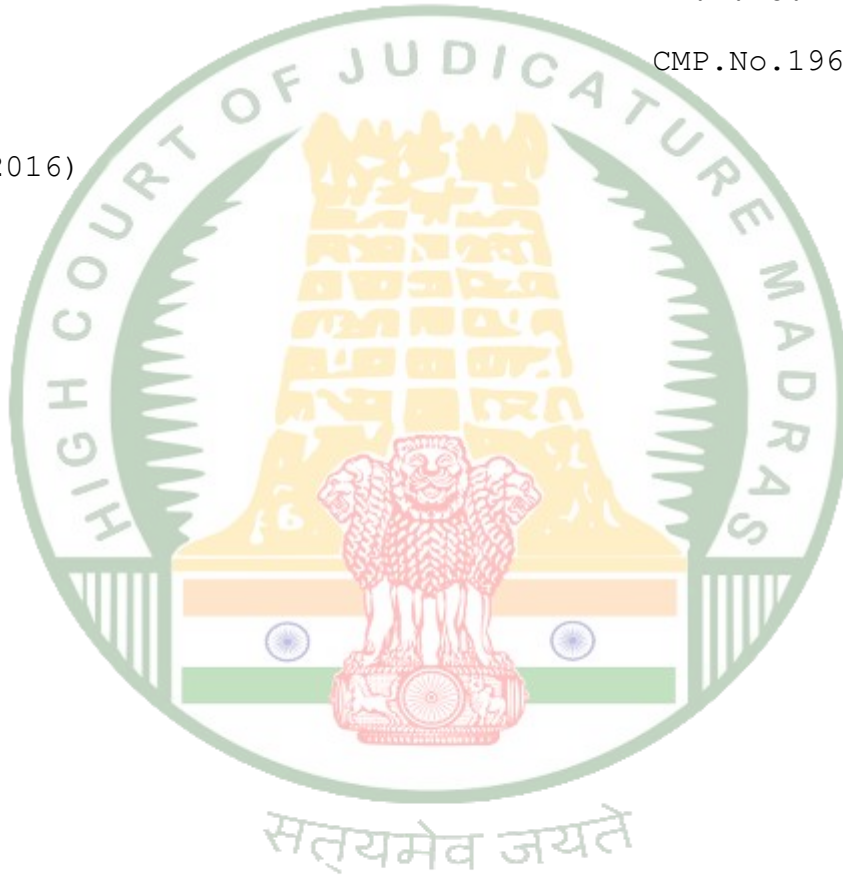
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+1cc to Mr.C.Prakasam, Advocate, S.R.No.9253
+1cc to Mr.R.Arumugam, Advocate, S.R.No.8757

W.A.No.147 of 2016
and
CMP.No.1962 of 2016

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



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