

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3/10/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.2155 of 2018
and
CMP No.16686 of 2018

The President/Management
Elavadi Primary Agricultural Co-operative
Credit Society
Moongilpadi Post
Chinnasalem Taluk
Villupuram District. ... Appellant

Vs

1. The Controlling Authority
(Under Payment of Gratuity Act 1972)
O/o. Deputy Commissioner of Labour
Vellore 1.
2. S.Arunachalam. Respondents

Writ Appeal filed under Clause 15 of Letters Patent against
the order dated 11/10/2017, made in W.P.No.26492 of 2017.

WP No.26492 of 2017 : Petition praying to issue a writ of
certiorarified mandamus, calling for the records pertaining to
the order of the 1st respondent in P.G.I.A. No.1/2017 dated
27.03.2017 and quash the same and consequently directing the 1st
respondent to reopen the P.G. case and decide after giving full
opportunities to the petitioner.

For appellant Mr.P.Narayanamoorthy

J U D G M E N T

(Judgment of the Court was delivered by Subramonium Prasad, J)

Instant writ appeal has been filed, to set aside the order,
made in W.P.No.26492 of 2017, dated 11/10/2017.

2. Short facts leading to the appeal are as follows:-

Second respondent, joined the appellant Society, on 14/3/1972. He became the Secretary of the appellant Society, on 14/2/1978 the then South Arcot Central Co-op Bank Ltd., Cuddalore. While he was working as Secretary in the said Bank, charges were levelled against him and he was dismissed from service, on 24/8/1992. Dismissal order was challenged by the second respondent, before the Labour Court, Cuddalore, which ordered reinstatement with full backwages and other benefits.

3. Second respondent filed C.P.No.15 of 2001, before the labour Court, claiming that he was paid back wages, at the rate of Rs.2,571/- p.m., instead of Rs.13,954/- p.m. Respondent No.2 attained superannuation, on 31/1/2008. Respondent No.2 filed a petition, before the Controlling Authority, under the Payment of Gratuity Act, 1972, and claimed an amount of Rs.2,41,510/- towards gratuity. An ex parte order, dated 18/12/2015, was passed against the appellant. An Application was filed to set aside the ex parte order. The Deputy Commissioner of Labour Office, Vellore, after going through the entire material found that the appellant had to pay a sum of Rs.2,41,512/-, as gratuity and further held that the second respondent was right in his submission that his salary was much more than Rs.2,500/-. It was found that one Mr.Solaimuthu, who was junior to the second respondent, was receiving Rs.17,000/- p.m. The Tribunal, therefore, calculated gratuity, on the basis of Rs.13,954/-, as claimed by the second respondent herein which is lesser than Rs.17,000/- p.m. being paid to Mr.Solaimuthu. Order of the Tribunal was challenged, in W.P.No.26492 of 2017. Vide order, dated 11/10/2017, a learned Single Judge, upheld the order of the labour Court, resulting in the instant Writ Appeal.

4. Mr.P.Narayanamoorthy, learned counsel for the appellant contended that second respondent was paid only Rs.2,571/-, as salary, which was accepted by him. He further contended that a sum of Rs.13,954/-, as claimed by the second respondent could not have been granted. He further submitted that the issue as to what was the salary of the second respondent is pending consideration, in C.P.No.15 of 2001, before the labour Court, Cuddalore, and therefore, gratuity could not have been calculated, fixing the salary, at Rs.13,954/-.

5. Heard Mr.P.Narayanamoorthy, learned counsel for the appellant Society.

6. We cannot accept the contention of the learned counsel. Admittedly, Mr.Solaimuthu who is junior of the second respondent, was receiving Rs.17,000/- p.m., as salary, which is

more than the amount claimed by the second respondent herein. The authority under the Payment of Gratuity Act, was therefore, justified in calculating the gratuity on the salary, as claimed by the second respondent herein. The appellant herein has not produced any material to show what was the salary, which was given to the employees, who were working in the same position, as second respondent herein. Facts of the case clearly prove that the appellant has not been fair to the second respondent.

7. In the facts and circumstances of the case, this Court is of the considered view that there is no error apparent on the finding of the learned Single Judge. Accordingly, the Writ Appeal is dismissed. Appellant is directed to make payment to the second respondent, within a period of four weeks, from the date of receipt of a copy of this order. This order is therefore, without prejudice to the rights of the parties, in C.P.No.15 of 2001, which is pending consideration, before Cuddalore Labour Court, which has been filed by the second respondent for fixing the salary for calculating backwages. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

To

The Controlling Authority
(Under Payment of Gratuity Act 1972)
O/o. Deputy Commissioner of Labour
Vellore 1.

+1cc to Mr.P.Narayanamurthy, Advocate SR.No.68292

Writ Appeal No. 2155 of 2018

SAI(CO)
GMY(14/12/2018)