

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.09.2018
CORAM
THE HON'BLE DR.JUSTICE S.VIMALA
W.P.NO.7016 of 2017

1.G.Mani
2.M.Arumugam
3.V.Kalaichelvan
4.P.Kuppusamy
5.A.S.Pandian
6.P.Shanmugam
7.R.Srinivasan
8.K.V.Shanmugam
9.M.Sekar
10.S.Balaraman
11.B.Sivaji
12.S.Sugumar
13.S.Bakthavatchalam
14.A.Usha Rani

... Petitioners

Vs

1. The Director of Agriculture / The Registrar of
Agro Engineering Services
Ezhilagam, Chepauk, Chennai - 600 005.
2. The Deputy Registrar of Co-operative Societies
Agro Engineering Services
Office of the Director of Agriculture / Agro Engineering
Services, Chepauk, Chennai - 600 005.
3. The Chengalput District Cooperative Agro Service
Society, KP (Spl) 173, rep.by Special Officer /
Liquidator, Office of the Assistant Director of
Agriculture, Panjupettai, Kancheepuram - 631 502.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to make payment of the service gratuity of the petitioners payable to them as calculated and ordered by the controlling authority Payment of Gratuity Act, 1972, Chennai 600 018 in his order dated 16.12.2010 made in the batch case Nos.P.G.1/10 to P.G.16/10 along with interest at 10% per annum from the date of retirement of the petitioners within the period that may be stipulated by this honourable court.

For Petitioner : M/s.N.Ishak
For Respondents: Mr.N.Srinivasan - for RR 1 and 2
Mr.T.R.Sundaram - counsel for EPF
Mr.V.Jayaprakash Narayanan - for R3

O R D E R

The petitioners herein have jointly filed the writ petition, seeking writ of mandamus directing the respondents to make payment of service gratuity to the petitioners, as ordered by the controlling authority under the Payment of Gratuity Act, 1972 in the order dated 16.12.2010 in P.G.No.1 of 2010 to P.G.No.16 of 2010.

2. The amount of gratuity was ordered to be paid along with 10% interest per annum from the date of retirement of the petitioners till the date of payment. In the meantime, the third respondent society was ordered to be wound up by way of proceedings dated 29.08.2010 by the Deputy Registrar, Agro Engineering Services. In the proceedings, the Assistant Director of Agriculture, Sirukaveripakkam was appointed as Official Liquidator, to take charge of the assets and liabilities of the society.

3. In the meantime, recovery proceedings has been initiated towards collection of EPF amounts and a sum of Rs.33 lakhs was realised, by selling a portion (3000 sq.ft) of the property belonging to the society. The Assistant Provident Fund Commissioner has filed an affidavit before this Court stating that, in exercise of the powers under Section 14(B) of the EPF Act, the third respondent society was liable to pay penal damages, and the sale proceeds was adjusted against the penal damages and Section 7Q interest payable by the society.

4. The learned counsel for the third respondent / Official Liquidator would submit that the remaining property has been released from attachment and that the property shall be sold and the amount so realised, could be utilised for payment to the petitioners within a stipulated time. Accordingly, the third respondent / Official Liquidator is directed to sell an extent of another 3000 sq.ft in order to pay the dues payable to the petitioners.

4.1. Learned counsel appearing for the employees submitted that interest at 24% p.a. should be paid on the delayed payment of gratuity.

5. Though such a contention is raised, it is to be pointed out that the society, of which the petitioners were employees, is under liquidation and the above petitioners, as secured creditors, would be entitled to gratuity over and above the other unsecured creditors. But, insofar as payment of interest on the gratuity is concerned, unless all the debts of the society are cleared, the petitioners would not be entitled to interest on the delayed payment of gratuity.

6. In the judgment reported 2006 SCC Online Bom 779 "Engineering Workers Association -Vs- Official Liquidator", the Bombay High Court has held as follows,

"39. In my view, considering the nature of the payment and the obligation cast upon the employer, so also the role of Liquidator in winding upon, the payment of interest as contemplated by Section 7(3-a) is no ipso facto covered under the term "all sums due to any workman from the gratuity fund". After the Liquidator determines the gratuity under Section 7 of the Gratuity Act and does not pay the amount within 30 days from the date of determination, interest cannot be claimed under Section 7(3-a), but under general law."

7. The said dictum has been followed in another judgment of the Bombay High Court in Company Petition No.385 of 2002 "Vishwanath Namdeo Patil Vs The Official Liquidator", wherein the learned single Judge has held that,

"76. As far as payment of interest on the amount due is concerned, the Official Liquidator has rightly rejected the same at this stage. The Official Liquidator has taken a stand in the reply that in view of Rule 179 of the Company (Court) Rules, 1959, the claim of interest would arise only if there is a surplus amount available to the credit of the Company after payment of all the admitted claims and that too at a particular rate. "

8. In such view of the matter, this Court holds that while the petitioners would be entitled for payment of gratuity on the property being sold and amount realised, however, they would not be entitled for payment of any interest on the said gratuity amount. As and when all the dues of the society are settled and if there is any excess amount left with the Official Liquidator, the employees/petitioners may be at liberty to approach the Official Liquidator for payment of nominal interest at which point of time, the Official Liquidator shall consider the case of the petitioners for interest, subject to the amount, if any, available with the Official Liquidator.

7. Accordingly, the Official Liquidator is directed to dispose the property through public auction and the amount realised shall be disbursed to the petitioners. The above exercise shall preferably be completed within a period of two months from the date of receipt of a copy of this order. Learned counsel for the petitioners has filed a calculation memo indicating the amounts due to each of the petitioner along with interest.

8. Though the petitioners have claimed interest in the calculation memo, as pointed out above, payment of interest at this point of time cannot be entertained. Accordingly, the calculation memo shall form part of this order only insofar as gratuity amount is concerned and the same shall be paid to the petitioners in accordance with the calculation memo filed by the petitioners and as accepted by both sides before this Court.

9. With the above directions, the writ petition is disposed of. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kst / gln

To

1. The Director of Agriculture / The Registrar of
Agro Engineering Services
Ezhilagam, Chepauk, Chennai - 600 005
2. The Deputy Registrar of Co-operative Societies
Agro Engineering Services
Office of the Director of Agriculture / Agro Engineering
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Society, KP (Spl) 173, rep.by Special Officer /
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Agriculture, Panjupettai, Kancheepuram - 631 502.

+lcc to Government Pleader sr.no.67441
+lcc to M/s.N.Ishak, Advocate sr.no.67000

W.P.No.7016 of 2017

nr 28/11/2018