

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE R. SURESHKUMAR.

W.P. 14432 of 2003

P. Illango

... Petitioner

-Vs-

1. The Director General & Executive Vice Chairman,
National Council for Co-operative Training,
(National cooperative Union of India),
Jawaharlal Nehru National Co-op complex (3rd floor),
No.3, Siri Institutional Area, August Kranti Marg,
Hauz khas, PB No.2, New Delhi-16.
 2. The Principal, Institute of Co-Operative Management,
Pasumalai, Madurai-4.
 3. The Assistant Labour Commissioner (c) & Authority,
Block B, 2E-3 Curzon Road Barracks,
KG Marg, New Delhi-11.
- ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the third respondent to quash the order dated 15.01.2002 made in Claim No.ALC-II/36/1/2000 and to direct the second respondent to refund the payment of balance of gratuity due of Rs.36,567.75/- with interest @ 24% from 30.06.1993 onwards.

For Petitioner : Mr. V. Santharam

For Respondents

For R1 and R3 : Mr.J.Madanagopal Rao

For R2 : Mrs.Malarvizhiudayakumar

O R D E R

The prayer sought for in this writ petitioner is for a Writ of Certiorarified Mandamus to call for the records on the file of the third respondent to quash the order dated 15.01.2002,

made in Claim No.ALC-II/36/1/2000 and direct the second respondent to refund the payment of balance of gratuity due of Rs.36,567.75/- with interest @ 24% from 30.06.1993 onwards.

2. The short facts which are required to be noticed for disposal of this writ petition are as follows:

The petitioner was working as Principal at the second respondent college from 15.05.1989. With the approval of the superiors and with the consent given by them i.e., the first respondent, the petitioner had conducted HDC Programme, otherwise, called as Higher Diploma in Cooperation, for directly recruited Cooperative Departmental Officers of Tamilnadu from 15.07.1989 to 23.03.1990. After that, on superannuation, the petitioner retired from service on 30.06.1993, after completion of 33 years unblemished service. The petitioner at the time of retirement, was drawing the basic salary of Rs.4,250/-. Thereafter, the petitioner sought for payment of pension and gratuity by his letter dated 22.05.1993, by taking into consideration of the service of nine years from 01.06.1990 to 31.05.1999, before joining the service at the first respondent as Principal of the second respondent college. He has also sought for payment of balance of gratuity amount to an extent of Rs.36,567.75, out of a total sanctioned gratuity amount for which the petitioner is entitled to Rs.70,125/-. The respondent, however, paid the gratuity amount of Rs.36,567.75/- only out of total sanctioned gratuity by withholding a sum of Rs. 36,567.75, stating that the said amount has been withheld to be credited in the second respondent institution's account and the said amount can be recovered from the petitioner, towards excess honorarium paid to the trainers of the HDC programme conducted by him.

3. Since the said amount i.e., the gratuity paid to the petitioner was withheld by the respondents 1 and 2, the petitioner had given repeated requests, but there was no reply for the same. Therefore, the petitioner approached the Assistant Commissioner of Labour, who is the authority under Payment of Gratuity Act 1972, and raised the issue before the said authority i.e., the third respondent herein.

4. The third respondent after having considered the case of the petitioner, has held that, the petitioner is entitled to his payment of gratuity under CCS Rules adopted through the NCCT scheme and not under the Payment of Gratuity Act 1972. Accordingly, the request of the petitioner to pay the withheld or recovered amount of Rs.36,567.75 as an outstanding recovery from the gratuity amount payable to the petitioner, was turned down as not justifiable as per the provision to section 71 of Payment of Gratuity Act 1972, by order dated 15.01.2002. Aggrieved over the said order passed by the third respondent on

15.01.2002, rejecting the plea of the petitioner, to pay back the withheld gratuity amount of Rs.36,567.75, the petitioner has filed this writ petition with the aforesaid prayer.

5. I have heard Mr.V.Santharam, learned counsel appearing for the petitioner and Mrs.Malarvizhi Udayakumar, learned Standing Counsel for the second respondent and Mr.J.Madanagopal Rao, learned Standing Counsel for the respondents 1 & 3.

6. The learned counsel appearing for the petitioner has produced a communication dated 05.05.1995, issued by the first respondent addressed to the petitioner, which reads thus:-

"Subject: Releasing the with hold gratuity -
regarding.

Dear Sir,

I am directed to refer to your letter dated 12.04.1995 on the above subject and to inform that your representation was considered by Director General/EVC and decided to place the case before the A&F Sub-Committee meeting.

Yours faithfully,

(V.P. Bhatia)

Audit Officer

for Director General /EVC"

7. By relying upon the said communication issued by the first respondent, the learned counsel appearing for the petitioner would submit that, even though the request of the petitioner to release the withheld amount of gratuity to the petitioner had been referred for decision before the A & F Sub Committee of the first respondent as reflected in the letter dated 05.05.1995, thereafter, nothing has been communicated to the petitioner, with regard to the decision taken by the A&F Sub Committee.

8. On coming to note these facts, this Court, by order dated 21.08.2018, gave a direction to the respondents as to whether any decision was taken by the respondents on the request made by the petitioner. However, since no response was forthcoming from the respondents, the learned counsel for the Respondents requested further time. Hence on 29.08.2018, this Court passed the following order:

"2. However, when the case is taken up for hearing, Mr.R.Madhanagopal Rao, learned Senior Central Government Standing Counsel appearing for the respondents 1 & 3 would submit that, inspite of best efforts taken

by him, there was no response form the respondents and no communications to that effect has been received by him from the respondents. Therefore, he expressed his inability to get on with the case, as the information sought for by this court, could not be received from the respondents.

3. When a direction is given by this Court to get certain details, as the subject matter of the writ petition was taken place some decades back, unless, the necessary documents are filed and the stand of the respondents is made known to this Court with clarity, the court cannot presume certain things and pass order, it is unfortunate that the learned standing counsel seeks further time to make efforts to get the particulars sought for by this court as per the order dated 21.05.2018.

4. Considering the said request, two weeks time is granted to comply with the orders of this court dated 21.08.2018 and post the matter on 12.09.2018.

5. It is made clear that on the next hearing date if the respondents have not responded to the query raised by this court, through the learned Senior Central Government Standing counsel appearing for them, this Court will take further course of action including summoning the head of the institution of the first and third respondents."

9. Pursuant to the aforesaid order passed by this Court dated 29.08.2018, today Mr.J.Madanagopal Rao, learned Senior Standing Counsel appearing for the first respondent has produced a communication dated 27.04.1998, which reads thus :-

" Sir,
I am directed to refer to your letter dated 18.03.1998 on the subject mentioned above. In this connection, it is to inform that you that the NCCT vide letter of even number 27.05.1994 sanctioned gratuity amounting to Rs.51,000.00 Again consequent upon counting of your past service, an additional amount of gratuity of Rs.19,125/- was sanctioned vide this office letter of even number dated

06.04.1995. Hence, the total gratuity amounting to Rs. 70,125/- was sanctioned by the Council. The above amount of gratuity has been paid as per details below:

1. vide order No.6-4/93-Pension dated 27.05.1994	:Rs. 8,714.00
2. Vide letter No.2-3/94-Audit dated 7.9.94	:Rs. 57,18.25
3. Vide letter No.6-4/93- Pension dated 6.4.95	:Rs. 19,125.00
4. Vide order No.2-3/94 dated 7.9.94 (Recovery of individual honorarium)	:Rs. 36,567.75
Total	:Rs. 70,125.00

10. Also Mrs.Malarvizhi Udayakumar, learned Senior Standing Counsel appearing for the second respondent, on instructions from the second respondent, has produced a communication dated 05.05.1994, issued by the first respondent, following which, the further direction given to the second respondent taken through its communication dated 25.05.1995 has also been filed.

11. In the communication dated 25.05.1995, the second respondent institution has made a request to the first respondent in the following terms.

"Hence we request the council to reconsider the representation of Sh.N.Kanagasabai, Sh.R. Narayanasamy, and Sh.S.Sundarajan, if it reviews the case of payment of honorarium to Sh.P.Ilango."

12. These are all the communications issued by both the first and second respondents, in respect of the request made by the petitioner to release the withheld amount of Rs.36,567.75, which was the part of the gratuity amount payable to the petitioner.

13. I have heard the learned counsel for the parties and perused the aforesaid materials placed before this Court.

14. It is seen that the petitioner was working as the Principal of the second respondent institute which is the cooperative training institute located in Madurai, Tamil Nadu.

The main object of the institution is to give training to the cooperative staffs. In this regard, as has been stated by the learned counsel for the petitioner, the institute during the time of the petitioner, who was the Principal of the institute, had given training to the newly recruited officials of the Tamil Nadu cooperative department, which is called as HDC programme otherwise, called as Higher Diploma in Cooperation programme. The said training programme was approved one as has been approved by the first respondent. Therefore, in order to meet out of the expenses including honorarium paid to the faculties, amount had been spent by the second respondent institution and only in this regard, it is the stand of the first and second respondents that, out of the amount paid by the institute through the petitioner, who was the then Principal, as honorarium to the faculties, they stated that, there has been excess honorarium amounting to Rs.42,286/- plus interest which had to be recovered from the petitioner, who was the Principal at that time. Only pursuant to the said decision, of course, pursuant to the audit objection, the first respondent decided to give the direction to the second respondent to recover the said sum from the Principal and others.

15. In this regard, the petitioner had given a request, stating that since his position was a Principal of the Institute he had given honorarium to the faculties, who had given training to the cooperative officials, who were newly recruited in the Tamil Nadu Cooperative Department. The training programme has also been done with the approval of the first respondent, who is the competent authority.

16. When that being the position, on what basis, the first respondent, decided to recover the honorarium from the faculties, who had been pressed in to service only for the successful conduction of the training programme, is not known.

17. Merely because of an audit objection the first respondent ought not have taken any decision to recover the honorarium paid by the institute to the faculties.

18. It is not the case of the first and second respondents that, the petitioner had misappropriated the money for his personal gain. The first respondent had agreed that the payment of honorarium to the trainers/faculties is necessary and without that, the training programme could not be conducted successfully and after successful conducting of the training programme, they cannot turn around now and state that, the honorarium paid to the trainers/faculties to be recovered from the Principal. The Principal being the head of the institution, had conducted training programme as per the sanctioned/approved training programme of the first respondent, wherein training has been

given only to the newly recruited officials of the Tamilnadu Cooperatives Department and in fact, these kind of training is the prime object of the second respondent institution and only for such purpose, the institution has been functioning. The training conducted by the petitioner and the honorarium paid thereon, of course with the sanction of the first respondent, cannot be considered to be an event of excess payment of honorarium.

19. When that being the position, the recovery made by the respondents that too from the gratuity amount payable to the petitioner, who had rendered 33 years of unblemished service cannot be accepted. Probably, considering these aspects from this angle, when the petitioner gave request to review or reconsider the issue, the first respondent had given a communication dated 05.05.1995, stating that the same issue having been considered by the Director General/EVC was decided to place it before A&F Sub Committee meeting. Therefore, whether any decision has been taken by the A&F Sub Committee and any such proceedings issued in this regard has not been filed before this Court. In respect of the representation of the petitioner nothing has been communicated by the respondents.

20. Moreover the second respondent also on their part, by communication dated 25.05.1995, had made recommendation that while making re-consideration of the requests of the petitioner, similar reconsideration can be made in respect of the representations given by some other erstwhile employees or faculties of the second respondent institute. Therefore, it become obvious that, both first and second respondents in principle had agreed to reconsider the issue in proper perspective, by taking in account the situation under which, the said honorarium was paid by the institution under the principal-ship of the petitioner for successful completion of the training programme, in which, the government officials of Tamil Nadu Cooperative Department, who were newly recruited, were trained.

21. When that being the position, the stand taken by the respondents 1 and 2 as has been reflected in the impugned proceedings herein above, for recovery of an amount of Rs.36,567.75 as excess honorarium, allegedly paid by the petitioner to the trainers/faculties, in the opinion of this Court, cannot be supported by any materials to come to the conclusion that, the said amount paid by the petitioner is without any sanction. The reason being that, when the training programme itself is a sanctioned one, there can be no quarrel to come to the conclusion that, the honorarium paid by the petitioner is not excessive.

22. It is not the case of the respondents 1 and 2, that the petitioner has spent the money for his personal gain or he misappropriated the said money. The audit objection could not have been accepted by respondents 1 and 2 and in this regard, the decision taken mechanically by the first respondent, in giving direction to the second respondent to recover the said amount from the gratuity of the petitioner can not be approved by this Court. However, these aspects have not been properly considered by the third respondent. In his impugned order, the third respondent has taken a different view on the legal position on the issue and ultimately, rejected the request of the petitioner through the impugned order. Therefore, the impugned order of the third respondent cannot be said to be sustainable one and hence, it requires interference.

23. For all these reasons stated above and the discussions made herein above, this Court is inclined to pass the following orders :-

(i) The impugned order is set aside and the respondents 1 and 2 are hereby directed to release the said amount of Rs.36,567.75 with 6 % interest per annum, and pay the same to the petitioner as the said amount is part of the gratuity payable to the petitioner for his unblemished service for 33 years.

(ii) Such payment shall be made to the petitioner within a period of eight weeks, from the date of receipt of a copy of this order.

With these directions, this writ petition is allowed. No order as to costs.

jrs/rts

Sd/-

Assistant Registrar(CS VIII)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

To

1. The Director General & Executive Vice Chairman,
National Council for Co-operative Training,
(National cooperative Union of India),
Jawaharlal Nehru National Co-op complex (3rd floor),
No.3, Siri Institutional Area, August Kranti Marg,
Hauz khas, PB No.2, New Delhi-16.

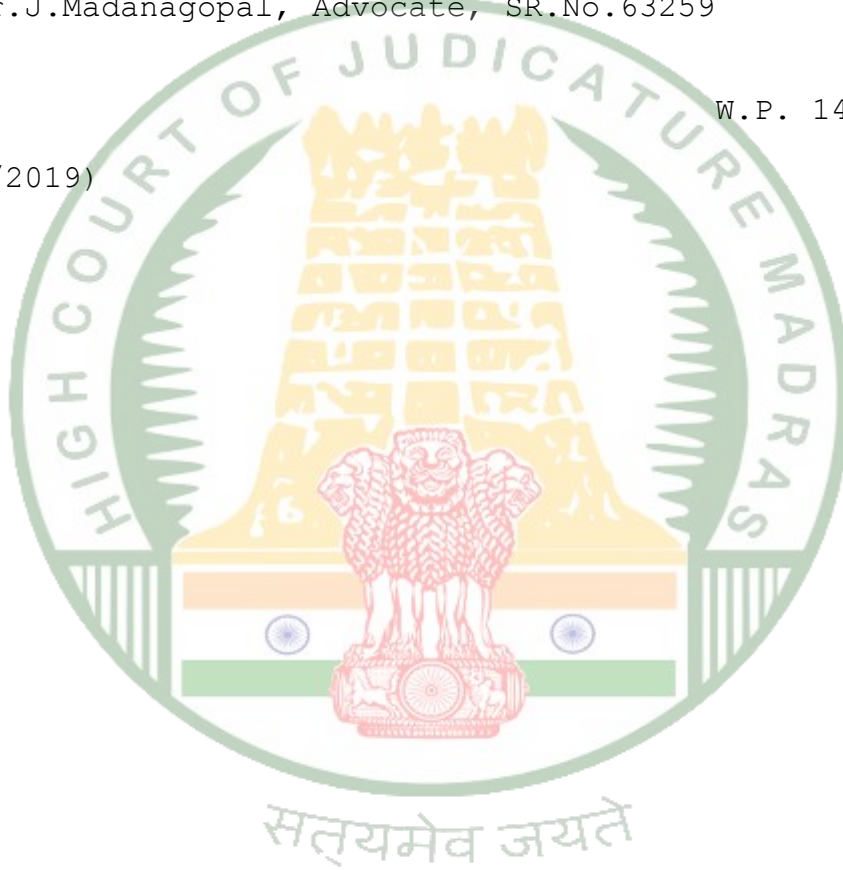
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Block B, 2E-3 Curzon Road Barracks,
KG Marg, New Delhi-11.

+1cc to Mr.J.Madanagopal, Advocate, SR.No.63259

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Kak (27/07/2019)



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