



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.4562 of 2016

and

WMP (MD) Nos.4130 & 4131 of 2016

The Management,
Thoothukudi District Central
Co-operative Bank Ltd,
Rep.by its Managing Director/
Joint Registrar,
Ettayapuram Road, Thoothukudi.

... Petitioner

Vs.

1.The Appellate Authority,
Under Payment of Gratuity Act,
(The Joint Commissioner of Labour),
Madurai.

2.The Assistant Commissioner of
Labour,
The Controlling Authority,
Under Payment of Gratuity Act,
Tirunelveli.

3.Ramasubbu

... Respondents

Prayer: This writ petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the impugned order passed by the second respondent in P.G.No.160/2013 dated 30.01.2014 and consequential appellate order passed by the first respondent in P.G.A.No.3 of 2014 dated 20.06.2015 and quash the same.

For petitioner	: Mr.D.Shanmugaraja Sethupathi
For Respondents	: Mr.M.Jeyakumar,
	Addl.Government Pleader
	for R1 and R2.
	Mrs.M.Maria Vinola
	for Mrs.D.Geetha for R3

ORDER

The petitioner is a co-operative bank. The third respondent was employed under the petitioner bank and he retired from service on 31.03.2011. Since his gratuity dues were not settled, he moved the controlling authority. The controlling authority allowed the



application filed by the third respondent and directed the petitioner bank to pay a sum of Rs.10.00 lakhs with interest. The said order was confirmed by the appellate authority also. Questioning the same, the bank/management has come before this Court.

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2.The stand of the petitioner bank is that the third respondent has to pay a sum of Rs.4,81,901/- and that the said amount has been adjusted and set off against the gratuity dues. The approach of the writ petitioner cannot be countenanced. Section 4(6)(a) of the Payment of Gratuity Act, 1972 enables the employer to withhold the gratuity amount payable to the employee if his services have been terminated for the reasons set out in the statutory provision itself.

3.In this case, the third respondent is not a terminated employee. No contemporaneous order has been passed against the third respondent providing for setting of the gratuity amount against the dues payable to the third respondent. Therefore, the act of withholding by the management cannot be sustained with reference to any provisions of law set out under the Payment of Gratuity Act, 1972. In this view of the matter, the orders passed by the respondents 1 and 2 are clearly sustainable.

4.There is no merit in this writ petition. It stands dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1.The Joint Commissioner of Labour,
The Appellate Authority,
Under Payment of Gratuity Act, Madurai.
- 2.The Assistant Commissioner of Labour,
The Controlling Authority,
Under Payment of Gratuity Act,
Tirunelveli.

+1cc to Special Government Pleader, SR.No. 46705

+1cc to M/S.D.Shanmugaraja Sethupathi, Advocate SR.No. 46744

+1cc to M/S.D.Geetha, Advocate SR.No. 46672

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