



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.1132 of 2013
and
M.P (MD) No.1 of 2013
against
WP (MD) No.8578 of 2011

Thiruchirappalli City Co-operative
Bank Ltd., No.1050,
Rep. by its General Manager,
Puthur, Trichy - 17.

.. Appellant/Petitioner

Vs.

1.The Appellate Authority (Gratuity),
(Joint Commissioner of Labour),
Trichy.

2.The Assistant Commissioner of
Labour (Gratuity),
Trichy - 20.

3.K.Sekkizar

4.The Regional Manager,
Life Insurance Corporation of India,
Southern Zonal Office,
L.I.C. Buildings,
Anna Salai, Chennai.

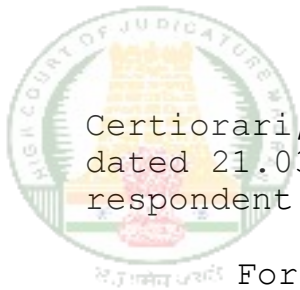
5.The Senior Manager,
Life Insurance Corporation of India,
Jeevan Prakash,
Gandhiji Road,
Thanjavur.

.. Respondents/Respondents

PRAYER: Appeal is filed under Clause 15 of the Letters Patent, to
set aside the order passed by this Court in W.P.(MD)No.8578 of 2011,
dated 22.08.2013.

Prayer in WP(MD). 8578/ 2011 :

<https://hcservices.ecourts.gov.in/hcservices/> Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of



Certiorari, calling for the records pertaining to the impugned order dated 21.03.2011 passed in P.G.Appeal No.319/2010 on the file of 1st respondent and quash the same.

For Appellant : Mr.R.Subramanian
For Respondents : Mr.V.R.Shanmuganathan,
Special Government Pleader for R.1 & R.2
Mr.S.Arunachalam for R.3
Mr.G.Prabhu Rajadurai for R.4 & R.5
* * * * *

JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.R.Subramanian, learned Counsel appearing for the appellant society, Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for respondents 1 & 2, Mr.S.Arunachalam, learned Counsel appearing for the third respondent and Mr.G.Prabhu Rajadurai, learned Counsel appearing for respondents 4 & 5.

2. This appeal is directed against the order in W.P.(MD) No.8578 of 2011 dated 22.08.2013 filed by the Appellant Co-operative Society, challenging the order passed by the first respondent dated 21.03.2011 in P.G.Appeal No.319 of 2010. The said appeal was preferred by the appellant herein challenging the order passed by the second respondent in P.G.Case No.39 of 2006 dated 01.04.2010. The said petition was filed by the third respondent herein, claiming gratuity. The case was heard by the controlling authority and by the said order dated 01.04.2010, it was held that the third respondent is entitled to gratuity.

3. The appellant herein preferred appeal before the first respondent, who had confirmed the same, by order, dated 21.03.2011. Challenging the said order, the appellant preferred writ petition in W.P.(MD)No.8578 of 2011. In the writ petition, for the first time, the respondents 4 & 5 were impleaded. They are the Regional Manager and Senior Manager of Life Insurance Corporation of India. Before the writ Court, the appellant contested the jurisdiction of the payment of gratuity authority to adjudicate the third respondent's claim. This argument was negatived and that is how, the appellant Society is before us, by way of this appeal.

4. The learned Counsel for the appellant reiterated the contentions advanced before the writ Court and submitted that the second respondent has no jurisdiction to decide the dispute of this nature, especially when there is a Master Policy taken by the appellant management with the Life Insurance Corporation and if at all, there is any liability, the Life Insurance Corporation has to settle the same. Secondly, it is contended that the third respondent was terminated from service and therefore, the question of payment of gratuity does not arise.



5. As pointed out earlier, Life Insurance Corporation was never a party before the respondents 1 & 2. Therefore, for the first time, they cannot be made as parties in the writ petition and the appellant cannot contend that the Life Insurance Corporation has to settle the full gratuity claim, when it is not disputed that the Life Insurance Corporation has already paid Rs.1,76,761/- (Rupees One Lakh Seventy Six Thousand Seven Hundred and Sixty One only) to the third respondent, out of the total amount of Rs.3,50,000/- (Rupees Three Lakh and Fifty Thousand only).

6. Therefore, the question arises as to who has to pay the balance amount of Rs.1,73,239/- (Rupees One Lakh Seventy Three Thousand Two Hundred and Thirty Nine only). The answer to the question should be in favour of the third respondent, as the duty to pay the remaining gratuity amount is on the appellant co-operative society.

7. Admittedly, the policy availed by the appellant Society with Life Insurance Corporation is a Master Policy and whatever amount payable under the insurance coverage for such category of employees alone will be paid by the Life Insurance Corporation and nothing more. Therefore, the contention advanced by the appellant, in this regard, does not merit acceptance.

8. The second contention advanced by the appellant Society is that the third respondent has been dismissed from service and therefore, he is not entitled to gratuity. This argument also cannot be accepted, since gratuity is payable for past services and there cannot be any forfeiture of the gratuity, on dismissal of an employee. That apart, there is no allegation that recovery has to be effected from the third respondent. Hence, non-settlement of the remaining gratuity to the third respondent is not tenable.

9. For the above reasons, writ appeal fails and the same is accordingly, dismissed. The appellant Socceity is directed to pay the balance amount of gratuity payable to the third respondent, being a sum of Rs.1,73,239/- (Rupees One Lakh Seventy Three Thousand Two Hundred and Thirty Nine only). As the said amount is lying in deposit, the third respondent workman is permitted to withdraw the amount which is lying in the deposit before the second respondent, along with admissible interest and the interest ordered to be paid by the writ Court stands vacated. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar



To

1.The Appellate Authority (Gratuity),
(Joint Commissioner of Labour),
Trichy.

2.The Assistant Commissioner of Labour (Gratuity),
Trichy - 20.

+1CC to Mr.R.Subramanian, Advocate, SR.No. 53870
+1CC to Mr.G.Prabhu Rajadurai, Advocate, SR.No. 53745
+1CC to Mr.S.Arunachalam, Advocate, SR.No. 53739
+1CC to the Special Government Pleader SR.No.53817

W.A. (MD) No.1132 of 2013
07.03.2018

gk
AM/KKR/SAR 4/20.03.2018/4P/7C