

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.28819 of 2003

K-113, Kugalur Primary Agricultural
Co-operative Bank Ltd., rep.by its
Administrator N.K.Gopalakrishnan
Kugalur - 638 313
Gobi Taluk
Erode District

.... Petitioner

vs

1.The Joint Commissioner of Labour

[Appellate Authority under the
Payment of Gratuity Act]

Balasundaram Road
Coimbatore - 641 018

2.The Assistant Commissioner of Labour

[Controlling Authority under Payment
of Gratuity Act]

Sankar Nagar
Salem - 636 007

3.S.Dhanapal

...Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records relating to A.G.A.No.45/2001 dated 25-8-
2003 on the file of the first respondent herein, quash the same.

For Petitioner : M/s.Zeenath Begam
For Mr.T.Murugamanickam

For Respondents : Mr.J.Ramesh
Additional Government Pleader
R1 & R2
Mr.N.Manokaran for R3

O R D E R

The order dated 25.08.2003 passed in A.G.A.No.45/2001 is under challenge in the present writ petition.

2. The petitioner is K-113, Kugalur Primary Agricultural Co-operative Bank Limited, which is a society registered under the provisions of the Tamil Nadu Cooperative Societies Act, 1983. One Mr.K.S.Arumugam was appointed as an Appraiser in the writ petitioner Bank and later on, he was promoted as appraiser-cum-Assistant Secretary. On account of certain serious allegations of misappropriation, the disciplinary proceedings were initiated against the said employee. However, before completion of the disciplinary proceedings, the employee died and thereafter, further action was taken. It is an admitted fact that no final order has been passed in the disciplinary proceedings. The 3rd respondent, who is the blood brother of the deceased employee, filed an application for settlement of gratuity under the Payment of Gratuity Act, 1972. The claim of the 3rd respondent was allowed against which the writ petitioner Cooperative Bank filed an appeal before the Appellate authority and the Appellate Authority also confirmed the claim made out by the 3rd respondent. Challenging the said order, the present writ petition is filed.

3. The learned counsel for the writ petitioner states that the 3rd respondent is not the Class-I legal heir of the deceased employee and therefore, he has to produce the Succession certificate and other relevant certificates for the purpose of claiming gratuity. This apart, the writ petitioner is the Cooperative Bank registered under the provisions of the Tamil Nadu Cooperative Societies Act and the By-law approved by the Registrar of Cooperative Society provides the mode of payment of gratuity to the employees. The gratuity fund is maintained by the writ petitioner Bank in the Financing Bank namely, the Central Cooperative Bank. Thus, the gratuity is to be paid from and out of the said fund by following the procedures as contemplated in the By-laws of the Cooperative Societies. The procedure for payment is also stipulated in the By-laws.

4. This being the factum, the payment of Gratuity Act in respect of the employees of the Cooperative Societies is not applicable. They are entitled to claim gratuity under Section 79 of the Tamil Nadu Cooperative Societies Act and by virtue of the said provision, a separate gratuity fund is created by the society through its By-laws and the fund is maintained in a separate account in the Financing Bank.

5. The preliminary issue is raised by the learned counsel for the writ petitioner stating that the Gratuity petition

before the 1st respondent under the Gratuity Act itself is not maintainable in view of the provisions of the Tamil Nadu Cooperative Societies Act, 1983 which is a Special Act and will prevail over the general Act.

6. In order to ascertain the maintainability of the Gratuity Petition under the Gratuity Act, this Court has to consider the provisions of the Tamil Nadu Cooperative Societies Act, which is applicable in respect of the Cooperative Societies registered under the said Act.

7. Admittedly, the writ petitioner Cooperative Bank registered under the provisions of the Tamil Nadu Cooperative Societies Act. Thus, the said Act alone will be applicable and only in the absence of any provision for payment of Gratuity and other service conditions, the general law would be applicable. The legal principles in this regard is that when the Special Act is in force, the same will prevail over the general law in respect of the employees of the Cooperative Societies. In this regard, it is relevant to consider Section 79 of the Tamil Nadu Cooperative Societies Act. Section 79 speaks about the Gratuity fund and the same reads as under:

"79. Gratuity Fund.-(1) A registered Society not being an Establishment to which the Payment of Gratuity Act, 1972(Central Act 39 of 1972) applies, may provide in its Bylaws for payment of gratuity to the Employees at such rates and on such conditions as may be specified in the Bylaws and such Society may establish a Gratuity Fund or make other arrangements for the purpose.

(2) A Gratuity Fund, if any, established by a registered Society under sub-section(1) shall be invested in the Financing Bank, but shall not -

- (a) be used in the business of the Society;
- (b) form part of the assets of the Society;
- (c) be liable to attachment or be subject to any other process of any Court or other Authority;"

8. As per the above provision, a Registered Society not being an establishment to which the payment of Gratuity Act, 1972 applies. In respect of the subsequent provision, the writ petitioner Cooperative Bank has provided payment of gratuity under its By-laws and separate fund is also created in the financing Bank and the same shall not be used in the business of the Society. Incorporating the said conditions stipulated in Section 79 of the Act, the By-laws of the writ petitioner Society was constituted.

9. In respect of the petitioner society, the By-law placed before this Court reveals that the procedure for payment of gratuity is provided. Based on the By-laws, the gratuity fund is also being maintained in the Financing Bank and therefore, the petition under the Gratuity Act cannot be entertained at all. When Section 79 of the Tamil Nadu Cooperative Societies Act deals with the gratuity fund and a Cooperative Society registered under the Tamil Nadu Cooperative Societies Act created a separate fund for the payment of gratuity in the financing Bank and the fund was not utilized for any business purpose or other purposes, there is no reason to entertain petition by the Controlling Authority under the Payment of Gratuity Act. Whenever the Special law provides Payment of Gratuity under separate provision and the modalities and the procedures were contemplated, then the 1st respondent should not entertain any petition under the Gratuity Act as the Special law will prevail over the general law.

10. In this context, it is relevant to take note of Section 14 of the Payment of Gratuity Act 1972, which states that "The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act". Thus, only in the event of inconsistency or repugnance, the Payment of Gratuity Act, 1972 will have the overriding effect and in all other circumstances, the Special Act alone should prevail over the general Act in respect of the Payment of Gratuity to the employees. As far as the Cooperative Societies are concerned, Section 79 of the Tamil Nadu Cooperative Societies Act provides that a Gratuity Petition is to be maintained separately in the financing Bank by the Cooperative Societies and the gratuity as applicable is to be disbursed in favour of the employees only from that fund. When such a facility is contemplated under the Tamil Nadu Cooperative Societies Act, the Controlling Authority cannot have any jurisdiction to entertain a petition under the Payment of Gratuity Act, 1972 in respect of the employees working in Cooperative Societies, which all are registered under the provisions of the Tamil Nadu Cooperative Societies Act.

11. This Court is of the considered opinion that in the event of entertaining a Gratuity petition under the Payment of Gratuity Act, 1972 by the Controlling Authority, the very spirit and sanctity of Section 79 of the Tamil Nadu Cooperative Societies Act, 1983 is diluted. It is not as if, the employees can approach the Forum at their choice. When the Special

Enactment speaks about the maintenance of gratuity fund, more specifically, under Section 79 of the Tamil Nadu Cooperative Societies Act, then the grievances are to be redressed only under the provisions of the Tamil Nadu Cooperative Societies Act and not under the general Act. In the event of entertaining gratuity petitions by the Payment of Gratuity Act 1972, confusions would arise and litigants may attempt to take undue advantage. Thus, multiplicity of these proceedings, at the first instance, they try to get the gratuity amount under the Special By-laws of the Cooperative Societies and thereafter, they file further petition before the Controlling Authority under the Payment of Gratuity Act 1972, claiming more amount of gratuity along with the interest. Such multiplicity of proceedings resulting in financial loss to the public institutions, can never be encouraged nor be allowed. Contrarily, once a provision is made under the Special Enactment for payment of gratuity, then the employees working in the Cooperative Societies must approach the competent authorities under the provisions of the Tamil Nadu Cooperative Societies Act for the purpose of settlement of gratuity and not under the general Act.

12. In view of the facts and circumstances that the 3rd respondent is not a Class-I legal heir and the 3rd respondent has not set out his claim along with all necessary document including a Succession Certificate. The writ petitioner is right in not settling the gratuity in favour of the 3rd respondent. This apart, the Controlling Authority under the Gratuity Act also committed an error in jurisdiction by entertaining the petition under the Payment of Gratuity Act, 1972. The employees of the Cooperative Societies or their legal heirs are entitled to claim gratuity only under the provisions of the By-laws of the society, which was approved by the Registrar of Cooperative Societies under the provisions of the Tamil Nadu Cooperative Societies Act. The Tamil Nadu Cooperative Societies Act provides a redressal mechanism and if at all, any employee or the legal heirs of the employees are aggrieved, then they are bound to approach the competent authority under the provisions of the Tamil Nadu Cooperative Societies Act for the redressal of their grievances. While the Special Act provides a mechanism for redressal of grievances, the person cannot file a petition under the general law and this being the principles to be followed, the writ petition deserves to be considered.

13. Accordingly, the order passed by the 2nd respondent dated 30.03.2001 in P.G.A.No.24/2000 and the Appellate order passed by the 1st respondent on 25.08.2003 in A.G.A.No.45 of 2001 are quashed. The 3rd respondent is at liberty to approach the

competent authority under the provisions of the Tamil Nadu Cooperative Societies Act along with all required documents to redress his grievances.

14. With these observations, the writ petitions stands allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Commissioner of Labour
[Appellate Authority under the
Payment of Gratuity Act]
Balasundaram Road
Coimbatore - 641 018.

2.The Assistant Commissioner of Labour
[Controlling Authority under Payment
of Gratuity Act]
Sankar Nagar
Salem - 636 007.

+1c to the Government Pleader Sr.80709
+1cc to Mr.N.Manokaran, Advocate Sr.80404
+1cc to S.Krishnamoorthy, Advocate Sr.80285

W.P.No.28819 of 2003

srg 24/10/2019

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