

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.09.2019
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.8524 of 2019
and
W.M.P.No.9041 of 2019

The Managing Director,
The Erode District Central Cooperative Bank Ltd.,
Opposite to VOC Park,
Bhavani Main Road,
Erode - 638003.

... Petitioner

Vs.

1. C.Santhakumar
2. The Joint Commissioner/Coimbatore
Appellate Authority,
Under the payment of Gratuity Act.
Coimbatore.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the order of the second respondent, the Appellate Authority, (Under the Payment of Gratuity Act, 1972), the Joint Commissioner of Labour, Coimbatore made P.G.A.No.18/2018, dated 26.10.2018 and to quash the same as illegal.

For Petitioner : Mr.L.P.Shanmugasundaram
For Respondents : Mr.E.P.Senniyangiri [R1]
Mr.M.Elumalai
Government Advocate [R2]

O R D E R

The order dated 26.10.2018 passed by the Joint Commissioner of Labour, Coimbatore in P.G.A.No.18 of 2018, (Under the Payment of Gratuity Act, 1972) is under challenge in the present writ petition.

2. The writ petitioner is the Erode District Central Cooperative Bank Limited. The petitioner states that the first respondent was working as a Supervisor of the writ petitioner/Bank. On account of an allegations of dereliction of

duty and negligence in performing his duty and responsibility, the writ petitioner/Bank sustained monetary laws. In other words, he paid way for misappropriation of the funds of the writ petitioner/Bank to the tune of of Rs.11,59,27,298/-. The first respondent/employee was also arrayed as an accused in the criminal case registered in this regard. The criminal case registered against the first respondent/employee is pending as of now and charge sheet has already been laid.

3. The learned counsel appearing on behalf of the writ petitioner states that the first respondent reached the age of superannuation on 30.09.2015. The terminal and pensionary benefits due to the first respondent is not settled on account of the fact that the Disciplinary Proceedings were initiated as well as the criminal case is also pending against the first respondent in this regard. The writ petitioner relied on the special by-laws relating to the service conditions of the employees of the writ petitioner/Bank of the District Chengalpet, which was framed under Rule 141 of the Tamil Nadu Co-operative Society Rules, 1988. As per the special by-laws, if the Disciplinary Proceedings are initiated and pending against the employee at the time of retirement and if the criminal case is also pending then he is not entitled to receive the terminal benefits and the settlement of benefits will be done only after the disposal of the Court proceedings as well as the criminal case. This being the service condition of the first respondent/employee, the settlement of benefits would not arise and the order passed by the second respondent/Authority is in violation of the service condition of the writ petitioner/Bank.

4. The learned counsel appearing on behalf of the first respondent disputed the contentions by stating that the first respondent was employed as a Supervisor in the writ petitioner/Bank and he had served more that 30 years of service. He is no way connected with the allegations regarding the misappropriation of funds and he was wrongly implicated in the criminal case. As far as the Payment of Gratuity is concerned, only in the event of termination or dismissal from service, the past services can be forfeited and not otherwise. The second respondent/Authority also relying on the provisions of the Payment of Gratuity Act, held that only if an employee is terminated or dismissed from service, his services are forfeited and in all other circumstances, the employee concerned, is entitled for gratuity in accordance with the provisions of Industrial Disputes Act.

5. This Court is of the considered opinion that the writ petitioner/Co-operative Society Bank is a society registered under the provisions of the Tamil Nadu Co-operative Societies Act. The said enactments will prevail under the general laws. As per the provision of the Tamil Nadu Co-operative Society Rules, the service conditions were approved by the Registrar under Rule 149 of the Tamil Nadu Co-operative Society Rules. Consequently, the special by-laws were also approved by the Registrar by exercising the powers under the Co-operative societies Act. Thus, the Co-operative Society Rules as well as the special by-laws prescribing service conditions will prevail over the general law when the employer in order to protect the public interest and to protect the interest of the Institution in post, certain service condition which was accepted by the employees who all are working with the writ petitioner/Bank. When the service conditions are very much available, the same is binding on all the employees and therefore, they cannot claim that they are entitled for gratuity or other benefits even in case where the Disciplinary Proceedings are pending and also the criminal case is pending. Under these circumstances, the special by-law, which was approved by the Registrar of Co-operative Society, will prevail over the general law.

6. This being the principles to be followed, the order passed by the second respondent directing the writ petitioner to pay gratuity is infirm and not in consonance with the settled legal principles. The first respondent/employee is entitled for gratuity and all other terminal benefits only after the disposal of the criminal case and as well as the Disciplinary Proceedings. If, he is exonerated from all the allegations then he is entitled for all the benefits in accordance with Rules and by-laws.

7. Under these circumstances, the order dated 26.10.2018 passed by the second respondent in P.G.A.No.18 of 2018 is quashed and the writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sni

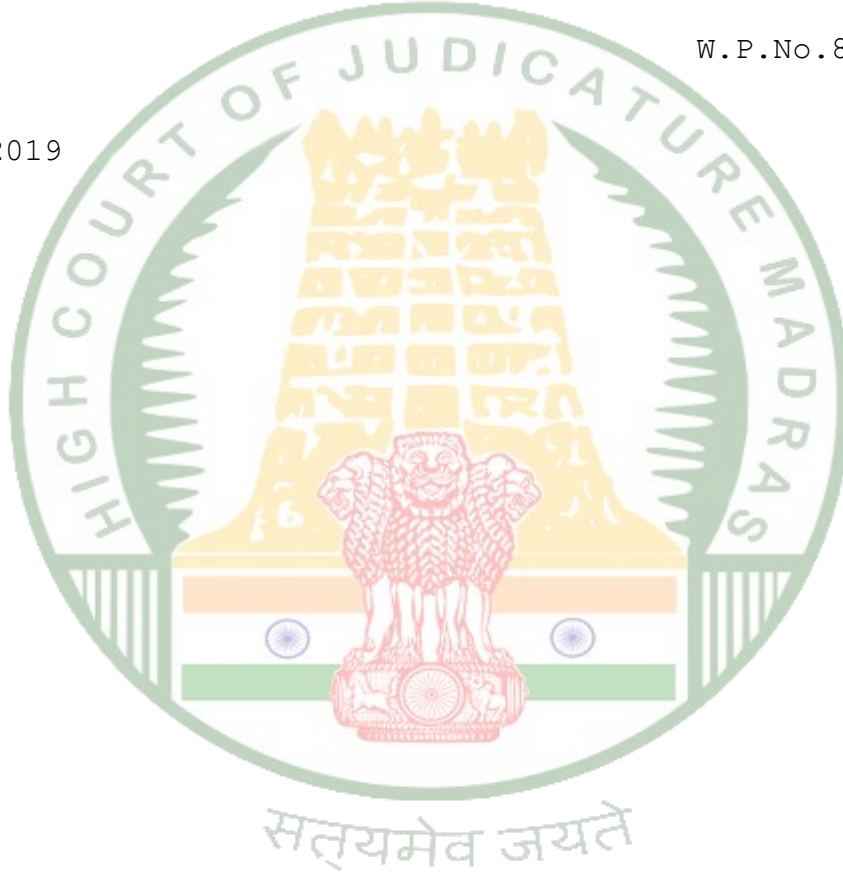
To

The Joint Commissioner/Coimbatore
Appellate Authority,
Under the payment of Gratuity Act.
Coimbatore.

+1cc to Mr.L.P.Shanmugasundaram, Advocate sr.83725
+1cc to Mr.E.P.Senniyangiri, Advocate sr.83486

W.P.No.8524 of 2019

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