

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.29696 of 2016,
W.P.Nos. 11971 to 11973 of 2013
and W.P.Nos. 26882 to 26884 of 2016
and W.M.P.Nos.23097 to 23099 of 2016
and WMP.No. 25699 of 2016
and M.P.Nos. 1 and 2 of 2013

W.P.No. 29696 of 2016

Villupuram District Central Co-operative Bank Ltd.,
Rep. By its Managing Director
2, Hospital Road, Villupuram ... Petitioner

-Vs-

1. The Authority under Payment of Gratuity Act
(The Assistant Commissioner of Labour) Vellore
2. A.Mani Chetty ... Respondents

PRAYER in W.P.No.29696 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the first respondent relating to the order of the first respondent dated 19.05.2016 in P.G.No.26 of 2010 and quash the same.

For petitioner : Mr.R.Arumugam in all WPS

For Respondents: Mr.J.Ramesh,
Addl. Govt. Pleader for R1

No appearance for R2

Prayer in WP No.11971 of 2013 :

P-1 VILLUPURAM DISTRICT CENTRAL
CO-OPERATIVE BANK LTD.
REP. BY ITS SPECIAL
OFFICER / ADMINISTRATOR
2 HOSPITAL ROAD
VILLUPURAM.

.. Petitioner

Vs

- R1 THE JOINT COMMISSIONER OF LABOUR
DMS COMPOUND CHENNAI-6.
- R2 THE ASSISTANT COMMISSIONER OF
LABOUR OFFICE OF DCL II DMS COMPOUND
CHENNAI-6.
- R3 N.PONMUDI
33 CO-OP. NAGAR CUDDALORE.
- R4 K.RAMALINGAM
PARINDAL POST ULUNDURPETTAI TALUK
CUDDALORE DISTRICT.
- R5 M.DEIVASIGAMANI
15 MULAI STREET K.V.R. NAGAR
VILLUPURAM- 605602.
- R6 N.SUBRAMANIAN
5 PERUMAL KOIL STREET VALAVANOOR
VILLUPURAM-605108.
- R7 P.RAMANATHAN
35/9 POLICE LINE 6TH STREET
PANRUTI- 607106.
- R8 M.KRISHNAMOORTHY
1115 CHOLAN STREET VOC NAGAR
PANRUTI- 607106.
- R9 P.DURAIRAJ
25/84 KANDASAMY LAYOUT
2ND STREET KK ROAD
VILLUPURAM.
- R10 K.RADHAKRISHNAN
140 ARASAMARA STREET TIRUVANNAMALAI.
- R11 V.VELMURUGAN
2/251 TEACHERS COLONY MANAMPOONDI & POST
VILLUPURAM DISTRICT.
- R12 T.RAMALINGAM
8C VENDATARAMAN STREET
ULUNDURPETTAI- 605106.

- R13 V.GOVINDAREDDY
1/9 PERUMAL KOIL STREET PALLIPUDUPATTU
VILLUPURAM DISTRICT.
- R14 R.ABDUL HAMID
11/7 SUBBARAYA STREET GENGI VILLUPURAM
DISTRICT.
- R15 R.MYLAPPAN
64/14 VALLALAR STREET SANJEEVARAYANPETTAI
TINDIVANAM.
- R16 K.KADIRVELU
10/50 KAMANKOIL STREET THIRUVANNAINALLUR
VILLUPURAM DISTRICT.
- R17 K.SESHAPILLAI
50A KULLETHUPADAI STREET SANKARAPURAM POST
VILLUPURAM DISTRICT.
- R18 S.KALIAMURTHY
40E APPASAMY NAGAR MANNARSAMY KOIL
TINDIVANAM EAST.
- R19 K.EKAMBARAM
9 BHAGATSINGH STREET NGO NAGAR
THIRUKOVILUR.
- R20 V.CHAKKARAVARTHY
56 PILLAIYAR KOIL STREET TINDIVANAM.
- R21 P.NARAYANAN
12 JAMES NAGAR ULUNDURPETTAI VILLUPURAM
DISTRICT.
- R22 K.DEVANATHAN
288 MARUTHUPANDIYAR STREET SUDHAKAR NAGAR
VILLUPURAM-605602.
- R23 K.SHANMUGAM
3/11A PUVATHAMMAN STREET KRISHNAPURAM.
- R24 S.SUBRAMANIAN
MAIN ROAD C.MEIYAR & POST
VILLUPURAM DISTRICT.
- R25 T.RAJASEKARAN
89 PERUMAL STREET THIRUKOVILUR.

- R26 V.SADAGOPAN
NORTH STREET ERAIYURPALAYAM & POST
VILLUPURAM DISTRICT.
- R27 P.GOVINDASAMY
KOVADI VILLAGE TINDIVANAM.
- R28 A.ABDUL MALIK
TVN ROAD ULUNDURPETTAI VILLUPURAM.
- R29 A.MANIVANNAN
AVIYUR KEIZAIUR POST THIRUKOVILUR.
- R30 T.A.RAMALINGAM
121 RAMAIAH LAYOUT VILLUPURAM-605602.
- R31 Smt.Ponnachi
W/o.Late M.Deivasigamani
- R32 Vinothkumar
S/o.Late M.Deivasigamani
- R33 Smt.Sankari
D/o.Late M.Deivasigamani Respts.31 to 33
are residing at No.15 Mulai St K.V.R.Nagar
Villupuram.605 602
- R34 Janarthanan
S/o.Late K.Radhakrishnan
- R35 Santhanalakshmi
D/o.Late K.Radhakrishnan
- R36 Ramathilagam D/o.Late K.
Radhakrishnan Respts.34 to 36 are residing
at 140 Arasamara St Tiruvannamalai.
- R37 Smt.Nachiammal
W/o.Late A.Manivanan
- R38 Kolanchiappan
S/o.Late A.Manivannan
- R39 Senthilkumar
S/o.Late A.Manivanan
- R40 Balamurugan
S/o.Late A.Manivanan

R41 Sathiya D/o.Late A.Manivannan
R37 to 41 are residing at Aviyur
Keizaiur Po Thirukovilur. ..Respondents

R31 to33 34 to 36 & 37 to 41
are substituted as Lrs of Deceased R5 M.
Deivasigamani R10.K.Radhakrishnan & R29 A.
Manivannan

As per order dt.16.07.18
by SMSJ IN WMPs.30516 to 30518/16 IN WP.11971/2013

Prayer in WP No.11971 of 2013 : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari calling for records on the file of the Respondents 1 and 2 relating to the order of the first Respondent dated 27.12.2012 in P.G. Appeal No.6 of 2012 confirming the order of the second respondent dated 14.6.2012 in P.G. Case No.3/2012 6/2012 to 32/2012 and quash the same.

For Respondents : Mr.J.Ramesh,
R1 & R2 Additional Government Pleader

R3 to R30 : Mr.Premkumar

WP No.11972 of 2013 :

P-1 Villupuram District Central Co-operative Bank Ltd.,
Rep. By its Special Officer/Administrator,
2, Hospital Road, VillupuramPetitioner

Vs

R1 THE JOINT COMMISSIONER OF LABOUR
DMS COMPOUND CHENNAI-6.

R2 THE ASSISTANT COMMISSIONER OF LABOUR
OFFICE OF DCL II DMS COMPOUND
CHENNAI-6.

R3 P.Shanmugam (Deceased)

R4 Smt.Thilagavathy

R5 Sivagurunathan

R6 Sivaramakrishnan

R7 Sivachidambaram ..Respondents

R4 to R7 are residing at 364, Sivajothi Nagar, C, Lthandareswaradaranallur, Chiambaram, Cuddalore District.

R4 to R7 are substituted as Lrs of Deceased R3 P.Shanmugam as per order dated 16.07.2018 by SMSJ in WMP 25948/16 in WP No.11972/13.

Prayer in WP No.11972 of 2013 : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari calling for records on the file of the Respondents 1 and 2 relating to the order of the first Respondent dated 27.12.2012 in P.G.Appeal No.7 of 2012 confirming the order of the second respondent dated 14.06.2012 in P.G. Case No.4/2012 and quash the same.

For Respondents

R1 & R2 : Mr.J.Ramesh
Additional Government Pleader
R3 : Deceased
R4 to R7 : Mr.K.Prem Kumar

WP No.11973 of 2013 :

P1 VILLUPURAM DISTRICT CENTRAL CO-OPERATIVE BANK LTD
REP. BY ITS SPECIAL OFFICER / ADMINISTRATOR
2 HOSPITAL ROAD VILLUPURAM. ..Petitioner

Vs

R-1 THE JOINT COMMISSIONER OF LABOUR
DMS COMPOUND CHENNAI-6.
R-2 THE ASSISTANT COMMISSIONER OF LABOUR
OFFICE OF DCL II DMS COMPOUND
CHENNAI-6.

R-3 P.DHANDAPANI
18/15 THULUKKANAM STREET,
AVARAPPAKKAM, TINDIVANAM. ..Respondents

Prayer in WP No.11973 of 2013 : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of calling for records on the file of the Respondents 1 and 2 relating to the order of the first Respondent dated 27.12.2012 in P.G. Appeal No.8 of 2012 confirming the order of the second respondent dated 14.6.2012 in P.G. Case No.5/2012 and quash the same.

For Respondent for R1 & R2 : Mr.J.Ramesh
Additional Government Pleader

for R3 : Mr.K.Premkumar

WP No.26882 to 26884 of 2016 :

P1 VILLUPURAM DISTRICT CENTRAL CO-OPERATIVE BANK LTD
REP. BY ITS SPECIAL OFFICER / ADMINISTRATOR
2 HOSPITAL ROAD VILLUPURAM. ..Petitioner in all WPS

Vs

R-1 THE AUTHORITY UNDER PAYMENT OF GRATUTITY ACT/
THE ASSISTANT COMMISSIONER OF LABOUR, VELLORE.
... 1st Respondent in all Wps

R-2 G.MUNUSAMY ..2nd Respondent in WP 26882/16

R-2 K.RAMASAMY ..2nd Respondent in WP 26883 & 26884/16

Prayer in WP No. 26882 to 26884 of 2016 : Petition filed under
aRticle 226 of the Constitution of India, praying to issue a
writ of certiorari calling for records on the file of the first
Respondent relating to the order of the first Respondent dated
04.05.2016 in 1) P.G.33 of 2013 2) P.G.No.34 of 2013 and 3)
P.G.No.35 and quash the same.

For Respondents in all Wps : Mr.J.Ramesh,
for R1 Additional Government Pleader
for R2 : NA

ORDER

The orders passed by the Authority under the Payment of
Gratuity Act, 1972 in P.G.No.26 of 2010, P.G.Nos. 33, 34, 35 of
2013 and P.G.Nos. 3, 6 to 32 of 2012 and P.G.Nos. 4 and 5 of
2012 are under challenge in these present writ petitions.

2. In all these writ petitions, the writ petitioner is the
Villupuram District Co-operative Bank Limited, which is a Co-
operative Society registered under the Tamil Nadu Co-operative
Societies Act, 1983. Admittedly, the Co-operative Societies are
controlled and regulated under the provisions of the Tamil Nadu
Co-operative Societies Act as well as the Rules and the by laws
are approved by the competent authority namely the Registrar for
each society.

3. The learned counsel appearing on behalf of the respondent employees contended that their claim is for differences in gratuity amount that was actually paid to these employees. In other words, certain period of services has not been reckoned as qualifying service for the purpose of calculating the gratuity. Thus, these employees were constrained to move the competent authority for calculation of those left out period for payment of gratuity under the payment of Gratuity Act, 1972. Thus, all the respondents/employees had received their gratuity as per the calculation made by the writ petitioner/Management. However, the claim was made regarding the differential amount to be paid based on the grievance that portion of the services were not taken into consideration as qualifying service for the purpose of calculating the gratuity amount.

4. The question to be decided in these writ petitions is that whether the first respondent authority under the payment of Gratuity Act has got jurisdiction to entertain a petition from the employees of a Co-operative Bank, wherein, Bank itself is having a separate gratuity scheme in its special bylaw.

5. Clause 28 provides for gratuity. Accordingly, the group gratuity cash amalgamations scheme of Life Insurance Corporation is being maintained for payment of gratuity to the employees working in the District Central Co-operative Bank. A gratuity fund has been credited for the purpose of payment of gratuity and the said fund will not be utilised for any other purposes including business purposes of the Central Co-operative Bank, which is being the nature of the scheme constituted and being maintained by the Bank with reference to Section 79 of the Tamil Nadu Co-operative Societies Act whether the first respondent authority under the Gratuity Act is competent to entertain an application under the Gratuity Act or not.

6. Section 79 of the Tamil Nadu Co-operative Societies Act enumerates that "a registered society not being an establishment to which the payment of Gratuity Act, 1972 applies, may provide in its bylaws for payment of gratuity to the employees at such Rules 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." Therefore, the Act provides a choice to the Management to constitute a separate scheme and maintain a Gratuity Act for the purpose of settlement.

7. When the action is granted by way of statute to the Management of the Co-operative Societies and the writ petitioner management exercised the action by constituting a separate gratuity, which was approved by the Registrar of Co-operative

Society, then all such claims are to be settled through the provision of the Tamil Nadu Co-operative Societies Act.

8. As far as the Co-operative Societies registered under the Tamil Nadu Co-operative Societies Act are concerned, the said Act alone will prevail over the general law. In other words, as far as Co-operative Societies are concerned, Co-operative Societies Act is the Special Act and Gratuity Act is to be considered as General Law. Therefore, any grievances regarding the payment of gratuity is to be redressed by approaching the statutory authorities under the Tamil Nadu Co-operative Societies Act. Once, the Management has chosen to constitute a separate scheme and implement the scheme through its bylaws, which was approved by the Registrar of Co-operative Societies under the Act, then the grievances are to be redressed under the provisions of the Act and the General Act namely the Gratuity Act would not be applicable at all. In other words, the provision of the payment of Gratuity Act is executed as Section 79 unambiguously stated that "a registered society not being an establishment to which the payment of Gratuity Act, 1972, applies. Therefore, when a separate scheme is implemented under Section 79 of the Tamil Nadu Co-operative Societies Act, the payment of Gratuity Act, 1972 would not be applicable to the employees of the Tamil Nadu Co-operative Societies Act. Thus, the jurisdiction of the competent authority under the payment of Gratuity Act is ousted. The grievances, if any, to the employees are to be redressed through the Tamil Nadu Co-operative Societies Act. Tamil Nadu Co-operative Societies Act provides mechanism for redressal of grievance, more specifically, Section 153 of the Co-operative Societies Act provides revision and the Regional Joint Registrars are empowered to adjudicate the same and pass orders on merits and in accordance with law.

9. Section 154 provides review and therefore all such grievances regarding the payment of Gratuity is to be redressed by the employees of the Co-operative Society by filing a revision under Section 153 of the Co-operative Society Act and the first respondent authority under the payment of Gratuity Act has no jurisdiction to entertain any application as his jurisdiction has been ousted on account of fact that the Section 79 of the Tamil Nadu Co-operative Societies Act was implemented by the writ petitioner/management.

10. Under these circumstances, the grievances of the writ petitioner is to be redressed by filing an appropriate application before the competent authority under the Tamil Nadu Co-operative Societies Act. This Court, in view of the fact that the first respondent has no jurisdiction, is not inclined to decide the merits of this case. The second respondent employees are at liberty to approach the competent authority under the

provision of the Tamil Nadu Co-operative Societies Act for redressal of their grievances. In the event of filing any such revision petition, the competent authority shall entertain the writ petition and decide the same on merits and in accordance with law.

11. With these observations, the writ petitions stand allowed. No costs. Connected miscellaneous petitions are closed.

12. The learned counsel for the writ petitioner Management states that they have deposited the amount before the competent authority. In view of the fact that the writ petitions are allowed, the second respondent/ Controlling Authority/Assistant Commissioner of Labour is directed to repay the deposit amount with accrued interest within a period of four(4) weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-Insp Cell)

//True copy//

Sub Assistant Registrar

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To

The Authority under Payment of Gratuity Act
(The Assistant Commissioner of Labour), Vellore.

+3ccs to Mr.K.Prem Kumar, Advocate SR.No.98640, 98641, 98639

+1cc to Mr.C.Prakasam, Advocate SR.No.99070

+7cc to Mr.R.Arumugam, Advocate SR.No.98466

+1cc to Government Pleader SR.No.98947

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W.P.Nos.29696 of 2016,
W.P.Nos. 11971 to 11973 of 2013
and W.P.Nos. 26882 to 26884 of 2016
and W.M.P.Nos.23097 to 23099 of 2016
and WMP.No. 25699 of 2016
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BP (CO)
GMY (22/09/2020)