

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30-10-2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.27509 of 2014

And

M.P.Nos.1 of 2014 and 1 of 2015

The Managing Director (Previously The Special Officer),
Vellore District Central Cooperative Bank Ltd.,
3, Officers' Line,
Vellore-632 001. .. Petitioner

vs.

- 1.The Joint Commissioner of Labour/Appellate
Authority under the Payment of Gratuity Act,
6th Floor, DMS Compound,
Teynampet,
Chennai-600 006.
- 2.The Assistant Commissioner of Labour-I/
Controlling Authority under the Payment of Gratuity Act,
6th Floor, DMS Compound,
Teynampet,
Chennai-600 006.
- 3.Thiru P.A.Abdul Aleem .. Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorari, calling for the orders of the first respondent
culminating in the order dated 27.08.2014 made in PGA Case No.7
of 2014 on the file of the first respondent and quash the same
in so far as the third respondent is concerned.

For Petitioner : Ms.G.Thilakavathi, Senior Counsel
for Mr.R.Gophinath.

For Respondents-1&2 : Mr.J.Ramesh,
Additional Government Pleader.

For Respondent-3 : Mr.S.Sivashanmugam

O R D E R

The order dated 27.08.2014 made in P.G.A. Case No.7 of 2014, is sought to be quashed in the present writ petition.

2. The writ petitioner states that the writ petitioner-District Central Cooperative Bank is a Cooperative Society Registered under the provisions of the Tamil Nadu Cooperative Societies Act, 1983. The affairs of the writ petitioner-District Central Cooperative Bank is regulated under the provisions of the Tamil Nadu Cooperative Societies Act and the Rules as well as the bye-laws approved by the Competent Authority, namely, the Registrar of Cooperative Societies.

3. The grievance of the employees of the writ petitioner- District Central Cooperative Bank is that the gratuity amount, as applicable, as though paid, lesser amount has been paid to them. Consequently, the employees of the writ petitioner- District Central Cooperative Bank approached the Controlling Authority under the provisions of the Payment of Gratuity Act, 1972 and the application was submitted. The Controlling Authority allowed the claim of the employees, against which the writ petitioner-District Central Cooperative Bank preferred Gratuity Appeal and the Appellate Authority confirmed the order of the Controlling Authority. Thus, the writ petitioner- District Central Cooperative Bank is constrained to move the present writ petition.

4. The learned Senior Counsel appearing on behalf of the writ petitioner-District Central Cooperative Bank made a submission that the gratuity amount is calculated and even paid with reference to the Special Bye-Laws approved by the Registrar of Cooperative Societies. In this regard, Clause 28 of the Special Bye-Law covering the service conditions of the employees of the writ petitioner-District Central Cooperative Bank provides gratuity. Accordingly, "the Bank may provide for payment of gratuity to the employees in accordance with the provisions contained in the Payment of Gratuity Act, 1972 or in accordance with the Group Gratuity Cash Accumulation Scheme of Life Insurance Corporation of India, whichever is beneficial to the employee".

5. In this regard, the learned Senior Counsel for the writ petitioner-District Central Cooperative Bank made a submission that the Group Gratuity Cash Accumulation Scheme of Life Insurance Corporation of India is being implemented in respect of the employees of the writ petitioner-District Central Cooperative Bank, as the said Scheme is more beneficial than that of the Payment of Gratuity Act, 1972.

6. As per the said Scheme, the Bank is settling the gratuity amount to the employees and therefore, there is no infirmity, as such, in respect of the payment of gratuity is concerned. In this context, the Payment of Gratuity Act, 1972 itself is inapplicable, as there is a Special Scheme constituted under Section 79 of the Tamil Nadu Cooperative Societies Act, 1983.

7. Section 79 of the Tamil Nadu Cooperative Societies Act, 1983 provides the Gratuity Fund. Accordingly, "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 by-laws for payment of gratuity to the employees at such rates and on such conditions as may be specified in the by-laws and such society may establish a Gratuity Fund or make other arrangements for the purpose".

8. In the present case, such a special fund has already been created and as per the Scheme approved in the Special Bye-Law, the gratuity amount is paid to the employees of the Cooperative Societies. Thus, as per Section 79 of the Tamil Nadu Cooperative Societies Act, 1983, the provisions of the Payment of Gratuity Act, 1972, cannot be applied at all. When the Special Scheme implemented for payment of gratuity in respect of the employees of the writ petitioner-District Central Cooperative Bank is concerned, the General Act will not have any application and consequently, the Controlling Authority or the Appellate Authority under the Gratuity Act has no jurisdiction to adjudicate the issues in respect of payment of gratuity to the employees.

9. This Court considered the legal principles in this regard in WP No.28819 of 2003 dated 18.09.2019 and the relevant paragraphs are extracted hereunder:-

"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.”

10. The learned Senior Counsel appearing on behalf of the writ petitioner-District Central Cooperative Bank solicited the attention of this Court that the benefit of DCRG had already been paid to these employees. However, they have approached the Controlling Authority under the Payment of Gratuity Act, 1972, claiming differential benefits by stating that the gratuity amount calculated by the writ petitioner-District Central Cooperative Bank is erroneous. Even in such cases where there are mistakes or errors in calculations, the grievances are to be redressed only under the provisions of the Tamil Nadu Cooperative Societies Act, 1983 and not under the Payment of Gratuity Act, 1972, since there is an exemption under Section 79 of the Tamil Nadu Cooperative Societies Act, 1983, which is to be construed as a Special Act in respect of the facts and circumstances are concerned.

11. As far as the Cooperative Institutions, which have adopted the Special Scheme for payment of gratuity, which is a Special Act and as per Section 79 of the Tamil Nadu Cooperative Societies Act, 1983, the application of payment of gratuity is barred. Thus, the Payment of Gratuity Act, is not applicable to the writ petitioner-District Central Cooperative Bank as there is a Special Scheme, which was approved by the Competent Authority under the Tamil Nadu Cooperative Societies Act, 1983. Redressal mechanism is provided under the Tamil Nadu Cooperative Societies Act, 1983 itself. When the employees are entitled to approach the Competent Authority for the redressal of their grievances with reference to the payment of gratuity or its calculation, then they are bound to exhaust the available remedy under the provisions of the Payment of Gratuity Act, 1972, since the Payment of Gratuity Act, 1972, is not applicable as far as the writ petitioner-District Central Cooperative Bank is concerned.

12. Under these circumstances, the third respondent-employee is at liberty to approach the Competent Authority under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983, by filing a revision petition in the prescribed format and by paying the prescribed fees. In the event of receiving any such revision petition, the Competent Authority is empowered to adjudicate the issues on merits and decide the same in accordance with law and by affording an opportunity to all the parties concerned. The third respondent-employee is at liberty to file a condone delay petition along with the revision petition and the delay, if any, in this regard, shall be condoned by the Revisional Authority and the revision petition shall be decided on merits and in accordance with law. Consequently, the impugned order dated 27.08.2014 made in PGA

Case No.7 of 2014 is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Svn

To

- 1.The Joint Commissioner of Labour/Appellate Authority under the Payment of Gratuity Act, 6th Floor, DMS Compound, Teynampet, Chennai-600 006.
- 2.The Assistant Commissioner of Labour-I/ Controlling Authority under the Payment of Gratuity Act, 6th Floor, DMS Compound, Teynampet, Chennai-600 006.

+1cc to Mr.S.Sivashanmugam, Advocate, S.R.No. 90298
+1cc to Mr.R.Gopinath, Advocate, S.R.No. 89867
+1cc to the Government Pleader, S.R.No. 90420

VG II(CO)
GN(03/12/2019)

WP No.27509 of 2014

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