

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 01.03.2019****CORAM:****THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE****W.P. [MD]No.21198 of 2017****and****W.M.P. [MD]No.17462 of 2017**

The Management,
Kumbakonam Central Cooperative Bank Limited,
Represented by its Managing Director / Joint Registrar,
Kumbakonam,
Thanjavur District. : Petitioner

Vs.

1.S.Nanthagopalan

2.The Assistant Commissioner of Labour (Gratuity),
Controlling Authority Under
Payment of Gratuity Act, 1972,
O/o. Deputy Commissioner of Labour,
Tiruchirappalli - 20.

3.The President,
Maadhanam Primary Agricultural,
Cooperative Credit Society,
Maadhanam,
Thanjavur District. : Respondents

(R3 impleaded vide court order
dated 27.11.2017 in WMP(MD).No.18190 of 2017)

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the second respondent vide P.G.No.427/2016 dated 11.08.2017 and quash the same.

For Petitioner : Mr.D.Shanmugaraja Sethupathi
For Respondent No.2 : Mr.A.Thiyagarajan
Additional Government Pleader

O R D E R

The Managing Director, Kumbakonam Central Cooperative Bank Limited is the petitioner in this writ petition. The petitioner bank is registered under the Tamil Nadu Cooperative Societies Act, 1983. What is assailed is the order passed by the controlling authority under the Payment of Gratuity Act, 1972. The first



respondent in this writ petition was originally appointed in various Primary Agricultural Cooperative Societies by the Ad-Hoc Committee and then joined duty in the respective society. The first respondent was later appointed in the petitioner bank. He reached the age of superannuation and was paid his gratuity dues.

WEB COPY

2. Subsequently, he filed an application before the controlling authority contending that the period of service put in by him in the respective Primary Agricultural Cooperative Societies before joining in the petitioner bank should also be taken into account and gratuity should be paid for that period of service. The controlling authority allowed the application as prayed for and issued a direction directing the petitioner bank to pay gratuity for the aforesaid period also. The same is assailed in this writ petition.

3. The learned Counsel appearing for the first respondent submitted that the writ petition is liable to be dismissed on the ground of not exhausting of the alternative statutory remedy of appeal. He would point out that as against the order passed by the controlling authority, the petitioner bank could very well have moved the appellate authority.

4. The learned Counsel appearing for the petitioner would submit that since the order impugned in this writ petition is patently lacking jurisdiction, this Court would be justified in entertaining the writ petition. The facts are not in dispute. The claim in this writ petition relates to the period of service put in by the first respondent in the respective Primary Agricultural Cooperative Societies prior to joining the petitioner bank.

5. The petitioner bank has in its counter pointed out that as per G.O.Ms.No.331 dated 05.12.1998, it had been clearly mentioned that the Ad-Hoc employees of Primary Agricultural Co-operative Societies are entitled to receive all the service benefits such as Pay, Other Allowances, Gratuity, Leave, Provident Fund and etc., only from the date of the first respondent joining duty in the services of the Central Cooperative Societies. Even though such a specific objection has been taken in the counter, the controlling authority did not deal with the same. The claim of the first respondent herein is clearly not maintainable. The petitioner bank is liable to pay gratuity to the employees only for the period of service put in by them in the petitioner bank. The petitioner cannot be eligible for gratuity even for the period of service put in by the first respondent herein in the Primary Agricultural Cooperative Societies.

6. Admittedly, the first respondent herein has not questioned Clause 11 of the aforesaid G.O.Ms.No.331, dated 05.12.1988. Therefore, he is clearly estopped from raising a claim for gratuity contrary to the aforesaid G.O.Ms.No.331. The controlling authority ought to have rejected the claim made by the first respondent



herein. The order impugned in this writ petition is quashed. The Writ Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P & A)

WEB COPY

// True Copy //

Sub Assistant Registrar (CS)

MR

To
The Assistant Commissioner of Labour (Gratuity),
Controlling Authority Under
Payment of Gratuity Act, 1972,
O/o. Deputy Commissioner of Labour,
Tiruchirappalli - 20.

ORDER MADE IN
W.P. (MD) No. 21198 of 2017
01.03.2019

TR (15.04.2019) 3P 2C