



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2019

CORAM :

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.19546 of 2019

and

W.M.P. (MD)No.16000 of 2019

The Management,
Kumbakonam Central Co-operative Bank Limited,
Rep. by its Managing Director/Joint Registrar,
Kumbakonam,
Thanjavur District.

... Petitioner

vs.

1.The Appellate Authority under the
Payment of Gratuity Act, 1972,
Tiruchirappalli.

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

3.A.Karthikeyan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent, vide P.G.No.53/2017, dated 26.03.2018 and quash the same.

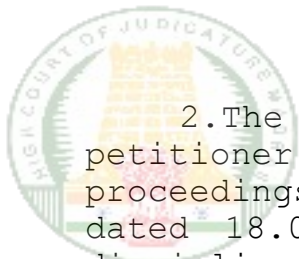
For Petitioner : Mr.D.Shanmugaraja Sethupathi

For R1 & R2 : Mr.S.Dhayalan
Government Advocate

For R3 : Mr.K.Pandiarajan

ORDER

This Writ Petition has been filed seeking to quash the impugned order passed by the first respondent, vide P.G.No.53/2017, dated 26.03.2018.



2.The third respondent while working as Supervisor in the petitioner Bank, was suspended from service pending disciplinary proceedings with effect from 21.02.1973. Thereafter, a charge memo dated 18.02.1974 was issued against him. In pursuance of the disciplinary proceedings, the third respondent was dismissed from service, by order dated 10.10.1975. He has raised an Industrial Dispute in I.D.No.20 of 1992 before the Labour Court, Cuddalore. The Labour Court, Cuddalore, by the Award dated 19.03.2001, set aside the order of termination passed by the Management. The Labour Court, Cuddalore, considering the fact that the third respondent has already retired from service on attaining the age of superannuation, held that he is entitled for back wages with other attendant benefits from the date of termination of service till the date of superannuation. Challenging the Award passed by the Labour Court, the Petitioner Management filed W.P.No.24261 of 2001 before this Court. This Court, by order dated 23.08.2013, confirmed the Award of the Labour Court insofar as setting aside the order of dismissal is concerned. Further, this Court held that the third respondent is deemed to have retired from service on attaining the age of superannuation on 31.07.2000 and modified the Award of the Labour Court with regard to payment of full back wages. The relevant portion of the said order reads as follows:-

'30.(vi) It is clarified that the petitioner shall be entitled for 50% of backwages as directed hereinabove based on the wages as it was paid to his immediate junior during the said period including continuity of service and promotion. It is further directed that the petitioner shall pay the arrears without any delay, preferably within a period of six months from the date of receipt of a copy of this order.'

3.Aggrieved by the said order passed by this Court, the Management has filed W.A.No.862 of 2014 and the same was dismissed by judgment dated 21.07.2014, confirming the order passed by this Court, dated 23.08.2013. Subsequently, the Petitioner Management has paid a sum of Rs.1,14,812/- to the third respondent towards gratuity. The said gratuity was calculated excluding the period from the date of dismissal to the date of deemed reinstatement. The third respondent has filed a claim petition before the Controlling Authority, namely the second respondent herein, under the Payment of Gratuity Act, claiming gratuity from 30.11.1963 to 31.07.2000 i.e., from the date of his initial appointment till the date of his superannuation.

4.The second respondent dismissed the said application filed under the Payment of Gratuity Act on 21.11.2016. As against the said order passed by the second respondent, the third respondent has filed an appeal before the first respondent, vide P.G.A.No.53 of 2017. The first respondent, after adjudication, has allowed the appeal on 26.03.2018 and directed the petitioner Management to pay the remaining sum of Rs.2,44,600/-, after adjusting the gratuity of Rs.1,14,812/- already paid to the third respondent together with



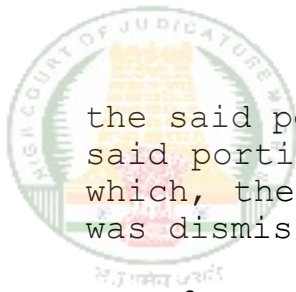
interest at 10% p.a. Against the said order, the present Writ Petition has been filed.

5. According to the learned counsel appearing for the petitioner, the third respondent is entitled to get gratuity only if he worked for not less than five years, in which, 240 days in a calendar year as per the provisions of the Payment of Gratuity Act. The third respondent is not entitled to get gratuity for his non-employment period. This Court, in the order dated 23.08.2013 made in W.P.No.24261 of 2011, did not direct the petitioner Management to pay gratuity for the period when the third respondent was not in service. The first respondent erred in ordering gratuity for non-employment period of the third respondent. The third respondent is not entitled to get interest from the date of his superannuation. The order of dismissal is passed in pursuance of the disciplinary proceedings, which had attained finality only on 21.07.2014. If at all the third respondent is entitled to get interest, he will get interest only from 21.07.2004 and hence, the third respondent is not entitled to get interest for the gratuity amount from the date of his superannuation and prayed for allowing the Writ Petition.

6. The third respondent filed counter affidavit. The learned counsel appearing for the third respondent submitted that the order of dismissal was set aside by the Labour Court in the Award dated 19.03.2001. The said order was confirmed in the Writ Petition filed by the petitioner as well as in the Writ Appeal. The learned counsel appearing for the third respondent denied the contention of the learned counsel appearing for the petitioner that the third respondent is entitled to interest only from the date of dismissal of the Writ Appeal filed by the Petitioner Management i.e., 21.07.2014. The Labour Court as well as this Court held that the third respondent is entitled to all other benefits, including the gratuity also. The first respondent considering the entire materials, has ordered payment of gratuity together with interest at 10% p.a. and therefore, there is no error in the order of the first respondent and prayed for dismissal of the Writ Petition.

7. I have heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent and perused the materials on record.

8. From the Award of the Labour Court, it is seen that after setting aside the order of dismissal, the Labour Court ordered reinstatement with full back wages and attendant benefits. In the Writ Petition filed by the petitioner, this Court modified the Award only with regard to payment of back wages. This Court did not set aside the Award of the Labour Court with regard to attendant benefits. At the same time, in the order, this Court directed the petitioner Management to grant benefits to the third respondent based on the wages as it was paid to his immediate juniors during



the said period, including continuity of service and promotion. The said portion of the order has already been extracted supra, against which, the petitioner Management filed the Writ Appeal and the same was dismissed, confirming the order passed in the Writ Petition.

9.A reading of the Award of the Labour Court, wherein the third respondent was granted with all attendant benefits and this Court in the order dated 23.08.2013, made in W.P.No.24261 of 2001, has granted all the benefits to the third respondent as it was paid to his immediate junior and also granted continuity of service and eligible promotion. Once the order of dismissal is set aside and this Court ordered continuity of service including promotion, the third respondent is entitled to gratuity from the date of his appointment till the date of his superannuation. There is no error in the reason given by the first respondent, directing the petitioner Management to pay gratuity taking into account the entire period of service rendered by the third respondent.

10.The first respondent has granted interest for the belated payment of gratuity at 10% p.a. as per the provisions of Payment of Gratuity Act. In the present case, the gratuity is ordered to the third respondent for the period, during which, he did not work on the ground that he deemed to be in service when the order of dismissal was set aside. Considering the said fact, the interest at 10% p.a. granted by the first respondent, is modified to 6% p.a.

11.With the above modification, this Writ Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

smn2

To

1.The Appellate Authority under the
Payment of Gratuity Act, 1972,
Tiruchirappalli.

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



+1 CC to M/s.SPL GP (SR-94625[F] dated 25/10/2019)

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-94405[F] dated 24/10/2019)

+2 CC to M/s.K.PANDIARAJAN, Advocate (SR-94214[F] dated 24/10/2019)

W.P.(MD)No.19546 of 2019
24.10.2019

JMN(15.11.2019) 5P : 7C