

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.10.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.562 of 2020

V.Pandian

...Appellant/Petitioner

Vs.

1. The Joint Registrar of Cooperative Societies,
Cuddalore Region, Cuddalore,
Cuddalore District.
2. The Deputy Registrar of Coop. Societies,
Chidambaram Circle, Chidambaram,
Cuddalore District.
3. The President,
E.2676, Pichavaram Primary Agricultural
Co-op Credit Society,
Pichavaram & Post,
Chidambaram Taluk,
Cuddalore District.

...Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 24.10.2019 made in W.P.No.18468 of 2019.
Prayer in W.P.No.18468 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus directing the respondents to disburse the interest at the rate of 18% for belated payment of retirement benefits after deducting already interest paid at the rate of 8% for EPF and Security Deposit and pass orders.

For Appellant : Mr.C.Prakasam

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant and learned counsel for the respondents.

2. The issue raised in this appeal was formulated in our order dated 27.7.2020, which is extracted herein under:

"The case of the appellant is that he is entitled to interest on the belated payment of gratuity. The appellant was appointed as Clerk in a Society and he was relieved on attaining superannuation on 31.10.2014. Since some alleged enquiry was stated to have been pending against him, the retirement benefits were settled in the year 2018 and a representation came to be made by the appellant in 2018 claiming interest on the delayed payment. The same was brought before this Court through a writ petition before the learned Single Judge, who did not find it expedient to entertain the writ petition and observed that the appellant could have approached the appropriate authority for payment of interest on the belated payment of terminal benefits.

2. Learned counsel for the appellant submits that the gratuity payable is not disputed. The delay in the payment has been caused not on account of the appellant and therefore, he is right to claim interest thereon. Learned counsel has invited the attention of the Court to Sections 78 and 79 of the Tamil Nadu Co-operative Societies Act, 1983 and relying on the judgment of a learned Single Judge in the case of R.Alagarsamy v. Managing Director, Tamil Nadu State Transport Corporation (Madurai) Limited and others, reported in 2019 (5) CTC 425 contends that the appellant is entitled to interest on the belated payment of gratuity.

3. The first question is as to whether the Payment of Gratuity Act, 1972 or any other provision be applicable with regard to the claim of payments of interest. It is no doubt true that the Payment of Gratuity Act itself in Section 7(3A) makes a provision for payment of interest and also makes a provision for settlement of any such disputes under the Act. Nonetheless, keeping in view Sections 78 and 79 of the 1983 Act, it will only be applicable if the provisions of 1972 Act are applicable.

4. Learned counsel states that the by-laws of the Society specifically make a provision for entitlement of gratuity. The said by-laws are not before us in order to ascertain as to which provision can be invoked for accepting or otherwise

denying the claim of the appellant or calling upon him to approach the appropriate forum. Learned counsel for the appellant may, therefore, file an additional affidavit bringing on record the by-laws and also explaining the relevant provisions applicable with regard to the claim of interest on deferred payment of gratuity.

5. Let the same be filed within six weeks.

6. Issue notice to the respondents returnable by 07.09.2020. Private service on the third respondent is also permitted."

3. After having framed the question, we were also informed that according to Bye-law No.37, the Payment of Gratuity Act, 1972 (in short, "the 1972 Act") was made applicable, which fact was also recorded in our order dated 7.9.2020, extracted herein under:

"Mr. Shanmugasundaram, learned counsel, states that he takes notice for respondent no.3.

2. We have already framed a question in our order dated 27.07.2020 and the learned counsel for the appellant states that he has filed an additional typed set of papers bringing on record the bye-laws, copy of which has already been received by Mr. Shanmugasundaram. Learned counsel has invited the attention of the Court to bye-law No.37 to contend that the Payment of Gratuity Act is applicable.

3. The only question, therefore, is as to whether interest would also be payable thereon or not.

4. Mr. Shanmugasundaram may obtain instructions on this issue and file an appropriate affidavit within two weeks.

List on 28.10.2020.

4. Today when the matter was heard, a counter-affidavit has been placed before us on behalf of the respondents, wherein the aforesaid indication of the applicability of the 1972 Act has not been specifically disputed. It is, therefore, evident that the rate of interest applicable on delayed payment of gratuity should be at least in our opinion the same as provided for under the 1972 Act. We are, therefore, of the opinion that the learned Single Judge ought not to have dismissed the writ petition without specifying as to the law applicable to the controversy.

5. As observed above, the rate of interest to which the appellant would be entitled in relation to the amount paid as gratuity would be the same as per Section 7(3A) of the 1972 Act, which is 10% per annum simple interest. Accordingly, the impugned judgment dated 24.10.2019 of the learned Single Judge is modified to the extent that the appellant will be entitled 10% per annum simple interest on the amount of gratuity that has been paid to the appellant from the date it fell due. The amount be calculated and paid within a period of three months.

The appeal is partly allowed to the extent aforesaid. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Joint Registrar of Cooperative Societies,
Cuddalore Region, Cuddalore,
Cuddalore District.
2. The Deputy Registrar of Coop. Societies,
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Cuddalore District.
3. The President,
E.2676, Pichavaram Primary Agricultural Co-op Credit Society,
Pichavaram & Post,
Chidambaram Taluk,
Cuddalore District.

+1cc to the Government Pleader, S.R.No.35019

+1cc to Mr.*, Advocate, S.R.No.35277

W.A.No.562 of 2020

SSD(CO)
RV(20/11/2020)