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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.23505 of 2008

R.Balasubramaniam

...Petitioner

Vs.

1. The Assistant Commissioner of Labour Court,
Salem.
2. The Appellate Authority under the Payment of Gratuity Act,
Joint Commissioner of Labour,
Coimbatore.
3. The Dharmapuri District Central Co-operative Bank Ltd.,
Rep. by its Special Officer,
By pass Road,
Dharmapuri.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records relating to the proceedings made in A.G.A.No.54 of 2006 dated 04.09.2008 passed by the 2nd respondent and quash the same so for it is against the petitioner and consequently direct the 3rd respondent to make payment in accordance with the order made in P.G.No.33/2004 dated 05.07.2006 passed by the 1st respondent.

For Petitioner : Mr.G.Ethirajulu

For Respondents : Mr.S.John J.Raja Singh (for R1 and R2)
Government Advocate
Mr.M.S.Palaniswamy (for R3)



O R D E R

The petitioner was employed with the Dharmapuri District Central Co-operative Bank Limited from 04.05.1967 till his retirement on 28.02.2003. The admitted position is that he was entitled for Gratuity of an amount of Rs.4,56,192.66/- in respect of which the third respondent made a part payment of a sum of Rs.3,18,056/- on 19.04.2005.

2. While settling the amount payable as Gratuity, the bank did not take into account settlement dated 13.02.1997 arrived at between the parties in terms of Section 12(3) of the Industrial Disputes Act (in short 'Act'). As a result the Gratuity was computed at an amount less than what the petitioner had arrived at in his computation.

3. An application thus came to be filed by the petitioner before the Assistant Commissioner of Labour/R1, who, by order dated 08.07.2006 confirmed the entitlement of the petitioner to the balance amount of a sum of Rs.1,38,137/- with interest at the rate of 10% per annum from date of eligibility till date of actual payment.

4. The order of R1 also confirmed the position that the petitioner would be liable to be classified as a workman under the Act for the purpose of the settlement arrived at between the parties. The appeal filed by the Bank before the Appellate Authority under the Gratuity Act was allowed by R2, vide order dated 04.09.2008, reversing the finding of R1 to the effect that the petitioner is a workman and computing the balance of Gratuity payable at a sum of Rs.58,428/-. Assailing the aforesaid order of R2, the petitioner is before this Court.

5. Learned counsel for the petitioner would not seriously contest the order of R2 in restricting the amount of Gratuity at a sum of Rs.58,428/-. His submissions before me only touch upon the payment of interest on both components of Gratuity i.e. the amount of Rs.3,18,056/- paid on 19.04.2005 and the amount of Rs.58,428/- paid in four installments on 14.06.2008, 04.08.2008, 16.09.2008 and 18.10.2008.

6. Learned counsel for R3 would not dispute the position that the petitioner is entitled to interest of a sum of Rs.67,881/- being computed at 10% in terms of Section 7(3a) of the Payment of Gratuity Act 1972 on an amount of Rs.3,18,056/- for a period between 01.03.2003 to 18.04.2005 being the date of payment. The entitlement of the petitioner to interest of an amount of Rs.67,881/- is thus undisputed.



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7. In regard to the interest payable on the sum of Rs.58,428/-, both parties concur that the petitioner is entitled to a sum of Rs.32,944/- being interest payable on Rs.58,428/- for the period 01.03.2003 to 18.10.2008 when the last of the four installments was remitted, in all, a sum of Rs.1,00,825/-.

8. The petitioner has also claimed interest on interest at the rate of 6% from the date of entitlement to the date when the amounts were actually paid. This claim is contested by the Bank. No doubt, there is no statutory provision or entitlement for interest on interest. However, it is a matter of fact that the petitioner retired on 28.02.2003 and was thus entitled to the amount of Rs.3,18,056/- + 58,428/-, even as on that date. However, only an amount of Rs.3,18,056/- has been paid on 19.04.2005 and a sum of Rs.58,428/- on 18.10.2008. The interest in regard to the delayed payments has not been remitted till date. I am thus of the view that the petitioner is entitled for compensation for the delay in paying over the Gratuity (principal and interest) and quantify the same at an amount of Rs.10,000/-.

9. Even in a situation when the enactment in question does not provide for interest on interest, the Court is always entitled to consider whether the payment of the principal and statutory interest was delayed and whether there was any justification for such delay.

10. In the present case, even if there was dispute in regard to the component of Rs.1,38,137/- which came to be resolved only on 04.09.2008, the first component of Rs.3,18,056/- ought to have been paid over to the petitioner upon his retirement on 28.02.2003, but was ultimately paid only on 19.04.2005. The amount of Rs.58,428/- was paid on 18.10.2008 though quantified and ordered on 04.09.2008. The delay, specifically in regard to the first component is clear and more so, the absence of any justification for the same.

11. This writ petition thus stands disposed in light of the aforesaid discussion. Let the amounts representing interest and compensation as set out aforesaid, be paid over to the petitioner, a senior citizen, within a period of four (4) weeks from today. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar



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Joint Commissioner of Labour,
Coimbatore.

3. The Special Officer,
The Dharmapuri District Central Co-operative Bank Ltd.,
By pass Road,
Dharmapuri.

+1cc to the Government Pleader Sr No.43379

+1cc to M/s.G.Ethirajulu, Advocate Sr No.43107

+1cc to M/s.M.S.Palaniswamy, Advocate Sr No.42948

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JPII (CO)
PR (23/09/2021)