

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.26442 of 2012

N.Murugesan

... Petitioner

Vs.

1. The Special Officer,
Kallakurichi Coop. Primary Agricultural
and Rural Development Bank Ltd.,
Kallakurichi, Villupuram District.
2. The Deputy Commissioner of Labour/Controlling
Authority under Payment of Gratuity Act, 1972,
Office of the Deputy Commissioner of Labour II,
Chennai - 6.
3. The Joint Commissioner of Labour/Appellate Authority
under the Payment of Gratuity Act, 1972,
Office of the Commission of Labour, Chennai - 6.

... Respondent

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the order dated 05.06.2012 of the third respondent made in P.G.A.5/12, quash the same and consequently, restore the order dated 31.01.2011 of the second respondent made in P.G.Case No.212 of 2009 with further direction to the first respondent to release the amount with interest as ordered by the second respondent.

For Petitioner : Mr.S.Venkataraman

For Respondent No.1 : Mr.L.P.Shanmugasundaram
Special Government Pleader

For Respondent
Nos.2 and 3 : Ms.T.Girija
Additional Government Pleader

O R D E R

The present Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order dated 05.06.2012 of the third respondent made in P.G.A.5/12, quash the same and consequently, restore the order dated 31.01.2011 of the second respondent made in P.G.Case No.212 of 2009 with further direction to the first respondent to release the amount with interest as ordered by the second respondent.

2. The petitioner was an employee under the first respondent Cooperative Society and retired from service on 30.04.2008 on attaining the age of superannuation. He was paid the maximum amount of gratuity of Rs.3,50,000/- taking into account the last pay drawn at Rs.19,302/- per month. The petitioner claimed that his last pay drawn is Rs.20,755/- per month and the calculation made by the respondents is erroneous and demanded corresponding gratuity to the tune of Rs.4,55,013/-. Since it was not paid, he filed an Appeal before the Controlling Authority, which was allowed in view of G.O.Ms.No.235 Finance (Pay Cell) Department, dated 01.06.2009, wherein, gratuity was enhanced from Rs.3,50,000/- to Rs.10,00,000/- with retrospective effect from 01.01.2007. Against the order of the Controlling Authority, the Society preferred an appeal under the Gratuity Act before the Appellate Authority/Joint Commissioner of Labour, Chennai. The Appellate Authority has set aside the order passed by the Controlling Officer and confirmed the order of the first respondent fixing the gratuity at Rs.3,50,000/-. Against which, the present Writ Petition has been filed by the petitioner.

3. During the pendency of the Writ Petition, yet another case pertaining to the another employee was dealt with by this Court and the claim for similarly placed person, was rejected. Against which, an appeal was preferred in W.A.No.1261 of 2011, dated 24.04.2019, wherein, the Division Bench of this Court has held that the employee of the Cooperative Society has no right to claim gratuity on par with the Government employee as he will not fall under the purview of the Tamil Nadu Pension Rules, 1978. The relevant portion of the judgment is extracted below:-

9. A similar contention raised by the retired employees of the State Bank of India for the enhancement of the maximum amount of gratuity to Rs.2,50,000/- with effect from 01.04.1995 and to Rs.3,50,000/- with effect from 01.01.1996 on the basis of the recommendations of the Fifth Pay Commission appointed by the Central Government have been negatived by the Hon'ble Supreme Court of India

in Shitla Sharan Srivastava -vs- Government of India [(2001) 6 SCC 106] by pointing out that the amendment enhancing the maximum of gratuity to Rs.3,50,000/- in Section 4(3) of the Payment of Gratuity Act, 1972, came into effect only from 24.09.1997, and those who retired prior to that date cannot claim that benefit. It also requires to be noticed here that in Municipal Corporation of Delhi -vs- Dharam Prakash Sharma [(1998) 7 SCC 221] and Nagar Ayukt Nagar Nigam -vs- Mujib Ullah Khan (Order dated 02.04.2019 in Civil Appeal No. 2628 of 2017), the Hon'ble Supreme Court of India has made the legal position clear and in respect of establishments governed by the Payment of Gratuity Act, 1972, in view of the overriding effect contained in Section 14 of that Act, the liability to pay gratuity in accordance with the provisions of that Act would not cease even if pension with gratuity is paid to its employees under some other statutory provision, unless specific exemption had been obtained under Section 5 of that Act on being satisfied that the employees are in receipt of gratuity and pensionary benefits not less favourable than the benefits conferred under that Act. It is not in dispute that no such exemption has been obtained in respect of the Tamil Nadu Civil Supplies Corporation Limited, in which the Appellants had worked till their retirement from service. In other words, the right of the Appellants to claim gratuity arises only under the provisions of the Payment of Gratuity Act, 1972, and they cannot fall on the Tamil Nadu Pension Rules, 1978, to derive the benefit of enhancement of the maximum amount of gratuity from Rs.3,50,000/- to Rs.10,00,000/-, with effect from earlier date on 01.01.2006 instead of 24.05.2010, when the amendment came into force.

As per the above judgment, enhancement of maximum amount of gratuity from Rs.3,50,000/- to Rs.10,00,000/- will be applicable only to the Government employee. But, the petitioner herein admittedly is an employee of the Kallakurichi Coop. Primary Agricultural and Rural Development Bank Ltd., which falls within the purview of the Tamil Nadu Cooperative Societies Act, 1961. As such, the petitioner's entitlement to gratuity falls under the purview of Payment of Gratuity Act, 1972, and not under the Tamil Nadu Pension Rules, 1978, as claimed by him. The judgment of the Division Bench in W.A.No.1261 of 2011 will squarely apply to the case on hand.

In view of the categorical finding, the relief sought for in this Writ Petition cannot be granted and hence, the Writ Petition is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Asi

To

1. The Special Officer,
Kallakurichi Coop. Primary Agricultural
and Rural Development Bank Ltd.,
Kallakurichi, Villupuram District.
2. The Deputy Commissioner of Labour/Controlling
Authority under Payment of Gratuity Act, 1972,
Office of the Deputy Commissioner of Labour II,
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under the Payment and Gratuity Act, 1972,
Office of the Commission of Labour, Chennai - 6.

+1cc to the Government Pleader, S.R.No. 9497

W.P.No.26442 of 2012

SKY(CO)
GN(26/03/2021)

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