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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE ON WHICH RESERVED : 02.11.2021
DATE ON WHICH PRONOUNCED : 24.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A.No.2202 of 2021
and
C.M.P.No.13937 of 2021

1. The Managing Director,
The Tamilnadu State Apex Co-operative
Bank Ltd.,
233, N.S.C.Bose Road,
Chennai - 600 001.
2. The Tamilnadu State Apex Co-operative
Bank Ltd.,
Rep. By its President,
233, N.S.C.Bose Road,
Chennai - 600 001.
3. The Deputy General Manager (HRD),
The Tamil Nadu State Apex Co-operative
Bank Ltd.,
233, N.S.C.Bose Road,
Chennai - 600 001.

...Appellants/Respondents

-vs-

P.Soundararajan

...Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to allow the Writ Appeal and quash the order passed by this Court in W.P.No.19880 of 2014, dated 23.12.2020.

Prayer in W.P.No.19880 of 2014:-

W.P.No.19880 of 2014 filed under Article 226 of the Constitution of India pleaded to issue a writ of certiorarified Mandamus or any other appropriate writ, order of direction in the nature of a writ calling for the records relating to the proceedings in C.No.12296/HRD/2012-13 dated 02.02.2013 made by the 3rd respondent herein and quash the same and consequently direct the



respondents herein to release and pay a sum of Rs.2,84,000/- with interest at 15 percent per annum within a reasonable time to be fixed by this Honourable Court.

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For Appellants : Mr.A.Selvendran

For Respondent : Mr.Prakash Goklaney

J U D G M E N T

(Judgment of the Court was made by R.VIJAYAKUMAR,J.)

This Writ Appeal has been filed by the petitioners to quash the order, dated 23.12.2020 passed in Writ Petition in W.P.No.19880 of 2014.

2.The respondents in the Writ Petition are the appellants herein. The Writ Petitioner was working as a Chief Manager in the Appellants' Bank and he retired from service on 31.01.2013. The Writ Petitioner was settled all the dues except a sum of Rs.2,84,000/- towards gratuity amount. The Appellants' Bank has passed an order on 02.02.2013 withholding the gratuity amount to the tune of Rs.2,84,000/- in lieu of overdues in 14 salary loans sanctioned by the Writ Petitioner while he was working as a Chief Manager in Adambakkam West Branch.

3.Challenging this order of withholding the gratuity amount, the Writ Petitioner filed W.P.No.19880 of 2014. After hearing both the parties, the learned Single Judge allowed the Writ Petition on the grounds that the Appellants' Bank is not entitled to withhold the gratuity amount even on the ground of pendency of enquiry and the Appellants' Bank have no power to withhold the gratuity amount. On the above said finding, the Writ Petition was allowed with a direction to the Appellants' Bank to settle the balance amount of Rs.1,80,228/- along with statutory interest within a period of twelve weeks. The said order is under challenge in the present Writ Appeal.

4. The learned counsel for the appellants contended that the Writ Petitioner had attained the age of superannuation on 31.01.2013 and the impugned order of the withholding the gratuity amount was passed on 02.02.2013. On 20.03.2014, the Writ Petitioner has addressed a letter to the first respondent, authorizing the bank to adjust the overdue loan amount from the gratuity amount and he was agreeable to receive the balance amount. According to the Appellants' Bank, based upon this letter of this Writ Petitioner, the third appellant has passed an order releasing the balance gratuity amount on 20.03.2014.



Once the Writ Petitioner has given an undertaking to withhold the gratuity amount, now he cannot turn around and demand the balance gratuity amount.

5. The learned counsel for the respondent/Writ Petitioner contended that though he addressed the letter to the first appellant on 20.03.2014, he has addressed another letter on 07.04.2014, retracting the contents found in his letter, dated 20.03.2014. The learned counsel for the Appellants' Bank admitted that such a letter has to be received by the Bank on 07.04.2014.

6. Admittedly, the Writ Petitioner had retired on 31.01.2013. The Writ Petitioner was permitted to retire by the Appellants' Bank without reserving any right to initiate any disciplinary proceedings. In fact no disciplinary proceedings were pending on the date of his retirement. Hence, it is clear that the Appellants' Bank is not entitled to recover or withhold any gratuity amount without even conducting enquiry and finding that the Writ Petitioner is guilty of any delinquency. The letter, dated 20.03.2014 though authorized the Bank to withhold the gratuity amount, the same has been retracted on 07.04.2014. Hence, unless the Writ Petitioner has found to be guilty and any one of the circumstances as contemplated under Section 4(6) of the Payment of Gratuity Act, 1972, are made out he cannot be deprived of the gratuity. Of course, the Apex Court in the following cases categorically held that gratuity can be adjusted / withheld, depending upon the circumstances of each case.

i) Chairman-cum-Managing Director, Mahanadi Coalfields Limited vs. Rabindranath Choubey, reported in AIR 2020 SC 2978;

39. To sum up, my conclusion to the question is as under:

Que. 1-Whether it is permissible in law for the employer to withhold the payment of gratuity even after the employee has attained his superannuation from service because of the pendency of disciplinary proceedings against him?

Ans. I am in agreement with the view expressed by brother Justice Shah that in view of Rule 34.3 of the Rules, 1978, the employer has a right to withhold gratuity during pendency of the disciplinary proceedings.

Que. 2- Whether the penalty of dismissal could be imposed after the employee stood retired from service?



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Ans. In my considered view, after conclusion of the disciplinary inquiry, if held guilty, indeed a penalty can be inflicted upon an employee/delinquent who stood retired from service and what should be the nature of penalty is always depend on the relevant scheme of Rules and on the facts and circumstances of each case, but either of the substantive penalties specified Under Rule 27 of the Rules, 1978 including dismissal from service are not open to be inflicted on conclusion of the disciplinary proceedings and the punishment of forfeiture of gratuity commensurate with the nature of guilt may be inflicted upon a delinquent employee provided Under Rule 34.3 of Rules, 1978 read with Sub-section (6) of Section 4 of the Act, 1972.

40. To conclude, the impugned judgment of the High Court dated 17th July, 2013 is not sustainable and deserves to be set aside and the disciplinary authority may proceed and conclude the pending disciplinary proceedings expeditiously and take a final decision in accordance with the scheme of Rules, 1978 read with Sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972."

ii) Steel Authority of India Ltd., vs. Raghbendra Singh and Others, reported in MANU/SCOR/46090/2020;

"We, however, set aside the observations made in paras 19 and 21 qua the principles of penal rent being charged as we are of the view that if an employee occupies a quarter beyond the specified period, the penal rent would be the natural consequence and such penal rent can be adjusted against the dues payable including gratuity."

7. In the present case, no proceedings were initiated as against the petitioner while he was in service and he was permitted to retire without reserving any right to initiate / continue disciplinary proceedings and any letter given by the Writ Petitioner one year after his retirement will not confer any right upon the Appellants' Bank to withhold the gratuity amount. Hence, we do not find any reasons to interfere with the order of the Single Judge and the Writ Appeal stands dismissed. No costs.

8. The Appellants' Bank is directed to pay the balance gratuity amount of Rs.1,80,228/- within a period of twelve weeks from the date of receipt of copy of this order along with statutory interest. However, liberty is given to the



Appellants' Bank to initiate appropriate proceedings to recover the overdues in salary loans from the petitioner, if they are advised so. Consequently connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

vsd

To

1. The Managing Director,
The Tamilnadu State Apex Co-operative
Bank Ltd.,
233, N.S.C.Bose Road,
Chennai - 600 001.
2. The President,
The Tamilnadu State Apex Co-operative
Bank Ltd.,
233, N.S.C.Bose Road,
Chennai - 600 001.
3. The Deputy General Manager (HRD),
The Tamil Nadu State Apex Co-operative
Bank Ltd.,
233, N.S.C.Bose Road,
Chennai - 600 001.

+2ccs to Mr.Prakash Goklaney, Advocate, S.R.No.60931
+1cc to Mr.A.Selvendran, Advocate, S.R.No.61136

W.A.No.2202 of 2021
and
C.M.P.No.13937 of 2021

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