BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD) No.12994 of 2011
and
M.P. (MD) Nos.1 & 2 of 2011

The Management,
Sivagangai District Central
Co-operative Bank Ltd.,
Rep. by its Special Officer,
Sivagangai. .. Petitioner

Vs.

1. The Joint Commissioner of Labour,
76, East Marat Street,
Anjali Towers, Madurai 625 001.

2.The Assistant Commissioner of Labour,
Sundaram Theatre Road,
K.K.Nagar, Madurai-20.

3.N.Chidambaram .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari, to call for the records relating to the order passed by the first respondent in P.G.A.No.31/2009 dated 25.07.2011 confirming the order passed by the second respondent in P.G.No.139/2004 dated 10.12.2007 and quash the same.

For Petitioner : Mr.D.Shanmugarajasethupathi

For Respondent Nos.1&2 : Mr.D.Muruganantham, Additional Government Pleader

For Respondent No.3 : Mr.V.O.S.Kalaiselvam

ORDER

The writ petition has been filed challenging the order passed by the first respondent in P.G.A.No.31/2009 dated 25.07.2011 confirming the order passed by the second respondent in P.G.No.139/2004 dated 10.12.2007.

2. The case of the petitioner is that the petitioner Bank is a registered Co-operative Bank under the Tamilnadu Co-operative Societies Act. The third respondent was worked as an employee of the petitioner Bank and retired from service on attaining superannuation on 31.05.2001. The third respondent received entire gratuity due to him as per the scheme namely, Group Gratuity (Cash accumulation) Scheme, which is linked with Life Insurance Corporation of India. Being not satisfied with the gratuity amount settled by the petitioner Bank, the third respondent filed an application before the Assistant Commissioner of Labour, claiming further amount of gratuity notwithstanding the claim made already as per the length of his service. He also claimed interest for belated payment of gratuity. However, the original authority ordered for payment of difference amount to the third respondent, contrary to the settlement arrived under Section 12(3) of the Industrial Disputes Act dated 28.02.1997. Aggrieved by the said order, the petitioner filed an appeal before the appellate authority. The appeal was taken on file by the first respondent/appellate authority in P.G.A.No.31/2009 and without going into the merits of the case, the appeal was dismissed on the ground of delay. Challenging the same, the petitioner filed a writ petition before this Court in W.P.No.10013/2009. This Court, by order, dated 28.01.2011 allowed the writ petition and set aside the order of the appellate authority and remanded the matter back to the authority for fresh consideration. Thereafter, the matter was decided and the earlier order was confirmed. Challenging the same, the petitioner filed the present writ petition.

3. The learned counsel for the petitioner would submit that the Group Gratuity Settlement Scheme and the settlement arrived under Section 12(3) of the Industrial Disputes Act dated 28.02.1997 itself binding on the third respondent. He further would submit that Section 4(a) of the Payment of Gratuity Act mandates every employer to obtain insurance in the manner prescribed for his liability for payment towards the gratuity under the Act from Life Insurance Corporation of India. Accordingly, the petitioner management had framed a scheme namely, Group Gratuity Scheme linked with Life Insurance Corporation of India. As per the scheme, the employee is entitled to get the amount upto Rs.3,50,000/-, which is fixed by the Act as upper limit, however, subject to a maximum of the amount equaling 20 months salary. In the present case, the third respondent's 20 months salary is calculated to the tune of Rs.3,48,007/-. The petitioner Bank already settled gratuity to the tune of Rs.3,09,340/- to the third respondent. Hence, the original authority as well as the appellate authority ordered for payment of difference amount calculated to the tune of Rs.38,667/- along with interest at the rate of 10% from 20.11.2003 to till the date of realization and also ordered for 10% interest for the gratuity amount already paid to the tune of Rs.3,48,007/- from the date of retirement, ie., on 30.06.2001 till the date of payment, ie., on 20.11.2003, which is unsustainable one and according to the learned

counsel for the petitioner, the said order is contrary to the Scheme as well as Section 4(A) of the Payment of Gratuity Act. Hence, he prays for allowing this writ petition.

4. Per contra, the learned counsel for the third respondent would submit that there is no dispute that the third respondent is entitled to gratuity which was paid by the petitioner Management from the contribution of the third respondent made to the Life Insurance Corporation of India and the said gratuity amount is the contribution of the third respondent, it is not the contribution of the employer and the maximum limit of gratuity fixed by the Act is Rs.3,50,000/- and the third respondent rendered 39 years of service in the petitioner's Bank and accordingly, the difference of gratuity amount was calculated to the tune of Rs.38,667/-, which was ordered to be paid to the third respondent is legally sustainable one. Moreover, the Registrar of Co-operative Societies, Chennai, issued a circular, dated 30.06.2004 and the circular makes it clear that the Bank may provide for payment of gratuity to the employees in accordance with the provisions contained in the payment of Gratuity Act, 1972 or in accordance with the Group Gratuity (Cash accumulation) Scheme of LIC of India, whichever is beneficial to the employee. In the present case, the total contribution of the third respondent in the Group Insurance Scheme is Rs.3,48,007/-. The above said scheme itself makes it clear that the order of the original authority and the appellate authority is perfectly in order. Accordingly, he prayed for dismissal of this writ petition.

5.Heard the learned Counsel on either side and carefully perused the materials available on record.

6. In the present case, admittedly the third respondent is the employee of the petitioner's Bank and the third respondent made the gratuity contribution as per the scheme namely, Group Gratuity (Cash accumulation) Scheme linked with Life Insurance Corporation of India and the petitioner settled the gratuity amount to the tune of Rs.3,09,340/- to the third respondent. However, being not satisfied with the said amount, the third respondent filed claim petition under Section 7 of the Payment of Gratuity Act before the original authority and the original authority, by calculating the service rendered by the third respondent, arrived at a conclusion that total gratuity amount is Rs.3,48,007/-. The said amount is below to Rs.3,50,000/-, which is the ceiling limit fixed as per the Payment of Gratuity Act. After deducting the amount already paid to the third respondent, the balance amount of Rs.38,667/- was ordered to be paid in favour of the third respondent. This Court perused the circular dated 30.06.2004 issued by the Registrar of Co-operative Societies, Chennai, which makes it clear that the Bank may provide for payment of gratuity to the employees in accordance with the provisions contained in the payment of Gratuity Act, 1972 or in accordance with the Group Gratuity (cash accumulation) Scheme of LIC of India, whichever is beneficial to the employee. In the present case, the original authority as well as the appellate authority

calculated the total service rendered by the third respondent and applied the maximum ceiling amount of gratuity as per the Payment of Gratuity Act, calculated the total amount as Rs.3,48,007/-. In view of this Court, the conclusion arrived at by both the authorities need not be interfered with by this Court under Article 226 of the Constitution of India.

7. In view of the above observations, this writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed. However, the third respondent is entitled for 6% interest from the date of retirement till the date of approach of the original authority in the year 2004, and with regard to the balance amount, the third respondent is entitled for 6% interest between 31.05.2001 and till the date of payment as per the Payment of Gratuity Act.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar()

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
1. The Joint Commissioner of Labour,
76, East Marat Street,
Anjali Towers, Madurai 625 001.

2.The Assistant Commissioner of Labour,
Sundaram Theatre Road,
K.K.Nagar, Madurai-20.

+1.C.C. To Mr.D.Shanmugarajasethupathi, Advocate, Sr.8917
+1.C.C. To Mr.V.O.S.Kalaiselvan, Advocate, Sr. 9288
+1.C.C. To Special Government Pleader, Sr.9206

W.P(MD)No.12994 of 2011
04.03.2021

PJL
RM 19/05/2021 (4P-6C)