



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P. (MD)Nos.3083 and 3084 of 2012

and

M.P. (MD)Nos.1 and 1 of 2012

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W.P. (MD)No.3083 of 2012

The Management,
Vathalakkundu Co-operative Urban Bank Ltd.,
Vathalakkundu,
Dindigul District.

... Petitioner

versus

1. The Appellate Authority under
the Payment of Gratuity Act,
[Joint Commissioner of Labour],
Mannarpuram, Tiruchirappalli.
2. The Controlling Authority under
the Payment of Gratuity act,
[Assistant Commissioner of Labour]
Khajamalai Colony, Trichirappalli.

3. R.Subramanian

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarifi, to call for the records of the 1st respondent relating to P.G.Appeal No.7 of 2011 and quash the order dated 20.01.2012.

W.P. (MD)No.3084 of 2012

The Management,
Vathalakkundu Co-operative Urban Bank Ltd.,
Vathalakkundu,
Dindigul District.

... Petitioner

versus

1. The Appellate Authority under
the Payment of Gratuity Act,
[Joint Commissioner of Labour],
Mannarpuram, Tiruchirappalli.



2. The Controlling Authority under
the Payment of Gratuity act,
[Assistant Commissioner of Labour]
Khajamalai Colony, Trichirappalli.

3. R.Subramanian

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarifi, to call for the records of the 1st respondent relating to P.G.A.[LA] No.6 of 2011 and quash the order dated 20.01.2012 and to call for the records of the 2nd respondent relating to P.G.No.321/2010 and quash the order dated 29.04.2011 to the extent continuing the period between 14.08.1978 and 30.11.1982 for the purpose of gratuity to the 3rd respondent.

For Petitioner
in both W.Ps.: Mr.S.Seenivasagam
For Respondents
in both W.Ps.: Mr.A.Karthick,
Government Advocate for R1 and R2
Mr.V.O.S.Kalaiselvam for R3.

COMMON ORDER

Since the issue involved in both the writ petitions and the parties are one and the same, both the writ petitions are taken up together and disposed of by way of a common order.

2. The petitioner Bank is a Co-operative Institution constituted under the provisions of the Tamil Nadu Co-operative Societies Act and the Rules framed thereunder. The 3rd respondent herein/workman was initially appointed as Junior Assistant on 14.08.1978. He was placed under suspension on 01.03.1982, based on certain serious charges levelled against him. During the enquiry, he was found guilty of several serious misconduct and hence, he was dismissed from service on 30.11.1982. Challenging the same, the workman filed a writ petition in W.P.No.11408 of 1986, that was dismissed as not maintainable. Thereafter, he filed an appeal before the Deputy Commissioner of Labour, Madurai, under Section 41 of the Tamil Nadu Shops and Establishments Act and that was also dismissed on merits. Aggrieved over the same, the workman again filed W.P.No.11408 of 1986 and that was also dismissed. Hence, he preferred an appeal in Writ Appeal in W.A.No.2213 of 1987. During the pendency of the writ appeal, he made a representation to the Management to reconsider the order of dismissal and requested for reinstatement. Thereafter, an settlement under Section 18(1) of the Industrial Disputes Act was arrived and the 3rd respondent was reinstated into service without back wages or service benefits. On attaining the age of superannuation, he was allowed to retire from service on 07.2010 and he was paid the gratuity amount as



calculated as per the Gratuity Act for the period he rendered the continuous period of service during his tenure.

3. Aggrieved over the same, the workman preferred an application before the second respondent, stating that he was paid the gratuity amount lesser than what he was eligible, that was taken on file in P.G.No.321 of 2010. In that application, the Management filed a counter stating that the workman, after his initial appointment on 14.08.1978, was placed under suspension on 01.03.1982 and after the completion of enquiry, he was dismissed from service on 30.11.1982 and therefore, the workman did not complete the minimum requirement of 5 years of continuous service as required under Payment of Gratuity Act and though he was reinstated into service on a settlement with continuity of service, it means that it was providing an exemption from disqualifying to get gratuity and that past service cannot be counted as a qualifying service for gratuity and hence, his service between 14.08.1978 and 30.11.1982 cannot be counted for the purpose of gratuity and that as he did not render the service between 01.12.1982 and 15.12.1990, he was not eligible to get gratuity for that period and thus, a sum of Rs.3,10,803/- was paid towards gratuity for the eligible period and thereby, nothing more is payable to him towards gratuity. The second respondent, though accepted the plea of not rendering service by the workman for the period from 1982 to 1990, rejected the plea of not completing 5 years of service between his initial appointment on 14.08.1978 and dismissal on 30.11.1982 and directed the Management to pay a sum of Rs.62,165/- to the 3rd respondent, by counting the period between 14.08.1978 and 30.11.1982 also for gratuity.

4. Aggrieved, the 3rd respondent again filed an appeal before the first respondent that was taken on file in P.G.A.No.7 of 2011. The petitioner Management also preferred a Cross Appeal along with a petition to condone the delay in filing the appeal. The first respondent has taken up both appeals together. However, the first respondent allowed P.G.A.No.7 of 2011 filed by the 3rd respondent, upholding the plea that the period of non-employment also be counted for gratuity and calculated the gratuity amount at Rs.4,97,317/- and also directed the petitioner Management to pay a further sum of Rs.1,86,494/- with interest at the rate of 10% from the date of retirement, i.e. from 31.07.2010 and dismissed P.G.A. (LA) No.6 of 2011 filed by the Management, stating that the reasons stated to condone the delay was not acceptable. Challenging the order of allowing the appeal filed by the workman/3rd respondent, the petitioner Management filed W.P.(MD)No.3083 of 2012. Challenging the order of dismissing the appeal with the condone delay petition filed by Management, the petitioner Management filed W.P.(MD)No.3084 of 2012.



5. The learned counsel appearing for the petitioner submitted that initially, the 3rd respondent entered into the service of the petitioner Management in the year 1978 and on certain serious allegations levelled against him, he was placed under suspension on 01.03.1982. As he has not completed the continuous service period of five years in the Establishment, he is not entitled for gratuity. After the completion of enquiry, the workman was dismissed from service on 30.11.1982 and thereafter, he was recommended for reinstatement in the year 1990. Therefore, the period between 1982 and 1990, he is not entitled for gratuity. But, the original authority as well as appellate authority have not properly considered all those issues and have mechanically granted the relief in favour of the workman, which is non-est in law. Accordingly, he prayed for allowing the writ petition.

6. The learned counsel appearing for the petitioner further submitted that the original authority calculated the period of service from 1978 to 1982 and granted the benefit in favour of the workman/3rd respondent to the tune of Rs.62,165/-, against which, the Management filed an appeal with the condone delay petition. However, the appellate authority, without considering the merits of the case, mechanically rejected the condone delay petition, which is unsustainable in law. Accordingly, he prayed for allowing the writ petition.

7. Per contra, the learned counsel appearing for the workman/3rd respondent submitted that the workman/3rd respondent entered into service in the year 1978 and he was placed under suspension in the year 1982 and thereafter, he was recommended for reinstatement in the year 1990, based on 18(i) settlement. As per the settlement, the workman is entitled for continuity of service and payment of gratuity. Clause 4 of 18(i) settlement makes it clear that the petitioner is entitled for gratuity for the entire period. Further, the gratuity contribution was paid by the Management to the Life Insurance Corporation in the name of workman and the said amount was returned by the LIC to the tune of Rs.4,97,317/-. However, the Management paid only a sum of Rs.3,10,823/-, and not paid the balance amount of Rs.1,86,464/-. The second respondent, without considering the same, calculated as if the workman rendered the service for 240 days in the suspension period and deducted 8 years of service, which is unsustainable in law. The first respondent has properly considered the said aspect and held that the workman is entitled to receive the gratuity amount which was paid by the petitioner Management to LIC for the entire period from the date of initial appointment till the date of his retirement. Hence, the workman is entitled to receive the balance amount of Rs.1,86,494/- Therefore, the order of the appellate authority need not be interfered with.



8. The facts in the present case are not in dispute. Admittedly, the petitioner entered into the service of the petitioner Management in the year 1978 and on certain serious charges levelled against him, he was placed under suspension in the year 1982. On the same year, he was removed from service. The order of dismissal was challenged before the Deputy Commissioner of Labour, Madurai, under Section 41 of the Tamilnadu Shops and Establishments Act, wherein, the order of dismissal was confirmed. Aggrieved over the said order, the workman filed a writ petition in W.P.No.11408 of 1986 that also ended against him. Thereafter, he preferred a writ appeal in W.A.No.2213 of 1987 before this Court. During the pendency of the writ appeal, the petitioner Management and workman entered into an agreement under Section 18(1) of the Industrial Disputes Act and he was reinstated into service in the year 1990 and on attaining the age of superannuation, he retired from service in year 2010.

9. The workman/3rd respondent claimed that as per the settlement under Section 18(1) of the Industrial Disputes Act, he is entitled to receive the gratuity for the entire period, i.e. from the date of initial appointment till the date of his retirement. Further, the gratuity amount was contributed by the Management to the Life Insurance Corporation from the year 1978 till the age of his retirement.

10. On the contrary, it is the contention of the Management that the workman is not entitled for gratuity for the period from 1982 to 1990. Even the contribution of the gratuity amount was paid by the Management to the Life Insurance Corporation in the name of the workman, he is entitled only for the period from 15.12.1990 and 31.07.2010.

11. A copy of the 18(1) settlement was marked as Ex.A6 before the second respondent. As per the settlement, particularly, clause 4 of the settlement makes it clear that except the gratuity amount, the workman is not entitled for any benefits. Therefore, the workman is entitled for gratuity from the date of his initial appointment till the date of his retirement. Further, the gratuity contribution was paid by the Management to the Life Insurance Corporation in the name of workman and the said amount was returned by the Life Insurance Corporation to the tune of Rs.4,97,317/-. But, the Management paid only a sum of Rs.3,10,823/- to the workman. Since the workman/3rd respondent is entitled for gratuity from the date of his initial appointment and till the age of his retirement, he is entitled to receive the balance amount of Rs.1,86,464/-. Therefore, the orders of the appellate authority, namely, the first respondent, do not warrant any interference.



12. Accordingly, both the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar(P & A)

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Sub Assistant Registrar(CS)

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To

1. The Joint Commissioner of Labour,
Mannarpuram, Tiruchirappalli.

2. The Assistant Commissioner of Labour,
Khajamalai Colony, Trichirappalli.

+1 CC to M/s.V.O.S.KALAISELVAM, Advocate (SR-5843[F] dated 18/02/2021)

+1 CC to M/s.SPL GP (SR-5926[F] dated 18/02/2021)

+2 CC to M/s.S.SEENIVASAGAM, Advocate (SR-6204[F] dated 19/02/2021)

W.P. (MD)Nos.3083 and 3084 of 2012

17.02.2021

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PK(CO)

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