



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 22841 of 2017

and

W.M.P. (MD) No. 19144 of 2017

WEB COPY

The Management,
Kumbakonam Central Co-operative Bank Limited,
represented by its Managing Director/Joint Registrar,
Kumbakonam,
Thanjavur District. ... Petitioner

-VS-

1. S.Kaliyamoorthy
2. The Assistant Commissioner of Labour (Gratuity),
Controlling Authority Under the Payment of Gratuity Act, 1972,
O/o. Deputy Commissioner of Labour,
Thiruchirappalli - 20.
3. The President,
Ervadi Primary Agricultural Co-operative Credit Society,
Ervadi,
Papanasam Taluk,
Thanjavur District. ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the Second Respondent vide P.G. No. 387 of 2016 dated 31.07.2017 and quash the same.

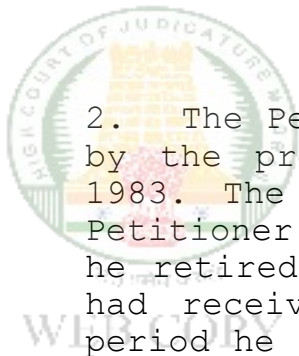
For Petitioner : Mr. D.Shanmugaraja Sethupathi

For Respondents : Mr. R.Vijayakumar (for R1)

Mr. R.Velmurugan (for R2)

O R D E R
(through video conference)

Heard Mr. D.Shanmugaraja Sethupathi, Learned Counsel for the Petitioner, Mr. R.Vijayakumar, Learned Counsel for the First Respondent and Mr. R.Velmurugan, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.



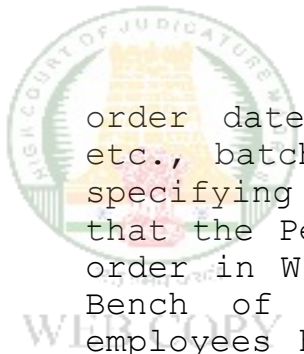
2. The Petitioner is a District Central Co-operative Bank governed by the provisions of the Tamil Nadu Co-operative Societies Act, 1983. The First Respondent was employed in the services of the Petitioner during the period from 15.09.1972 till 31.07.2010, when he retired from service on attaining the age of superannuation and had received a sum of Rs. 8,69,469/- towards gratuity for that period he had worked. Long thereafter, the First Respondent made an application in P.G. No. 387 of 2016 under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Gratuity Act' for short) before the Second Respondent for additional amount of gratuity for the period from 24.01.1970 to 14.09.1972 when he had worked in the services of the Third Respondent, which is a primary agricultural co-operative society. According to the First Respondent, his appointment in the Third Respondent was made by the *ad hoc* committee consisting of the Board of Directors of the Petitioner who were controlling the affairs of the Third Respondent and it was on account of such employment with the Third Respondent that the First Respondent had been absorbed in the services of the Petitioner. Though the Petitioner resisted such claim, the Second Respondent overruled the objections and granted an additional sum of Rs. 68,642/- by order dated 31.07.2017 passed in P.G.No. 387 of 2016, which is assailed in this Writ Petition.

3. It is common ground that the Petitioner has taken an insurance policy from Life Insurance Corporation of India covering liability to pay gratuity for the employees of the Petitioner in terms of Section 4-A of the Gratuity Act and that the said insurance policy contains the clause as extracted below:-

"4. Sum assured:- The Sum Assured under the Pure Endowment Assurance shall be an amount equal to 15 days salary of the member as on the Entry Date or the Annual Renewal Date, as the case may be for each year of service upto the Normal Retirement Date subject to the maximum of 20 months salary...."

In terms of the said clause, the maximum amount of gratuity that the concerned employee is entitled is restricted to 20 months of his last drawn monthly salary of Rs. 39,660/- which would work out to Rs. 7,93,200/- in this case. Inasmuch as the First Respondent has admittedly received the sum of Rs. 8,69,469/- from the Petitioner towards gratuity, which is higher than the said amount of Rs. 7,93,200/-, it is pointed out by the Learned Counsel for the Petitioner that the claim made before the Second Respondent for the additional amount of gratuity is plainly untenable. Learned Counsel for the First Respondent is not in a position to refute the corrections of aforesaid submissions made by the Petitioner, which unexceptionally deserves acceptance.

4. It is also brought to notice that in respect of employees similarly placed to the First Respondent, this Court in the common



order dated 05.02.2020 passed in Review Application 132 of 2019 etc., batch has specifically adverted to this aspect of the matter specifying the ceiling on gratuity amount. Though it is informed that the Petitioner has preferred an appeal against the said common order in W.A. (MD) No. 799 of 2020 etc., batch before the Division Bench of this Court on certain other aspects, the concerned employees have not chosen to challenge that order, meaning thereby that the ruling of the Court on the question of ceiling of 20 months salary as the maximum amount of gratuity, has attained finality and binds subsequent cases including the present matter.

5. Though several other contentions have been raised by Learned Counsel for both sides, it would not be necessary to delve into the same inasmuch as the said aspect on ceiling of gratuity amount clinches the dispute between the parties.

The result of the foregoing discussion is that the Writ Petition is disposed on the following terms:-

- (i) the impugned order dated 31.07.2017 in P.G. No. 387 of 2016 passed by the Second Respondent is set aside;
- (ii) the application in P.G. No. 387 of 2016 on the file of the Second Respondent shall stand dismissed;
- (iii) consequently, the connected miscellaneous petition is closed; and
- (iv) the parties shall bear their respective costs.

Sd/-

Assistant Registrar (W)

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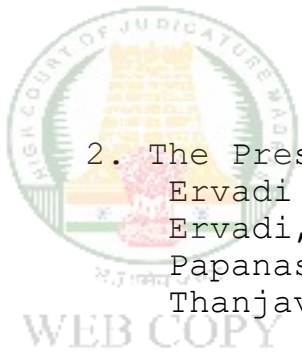
Sub Assistant Registrar(CS)

sm/vjt

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 Assistant Commissioner of Labour (Gratuity),
Controlling Authority Under the Payment of Gratuity Act, 1972,
O/o. Deputy Commissioner of Labour,
Thiruchirappalli - 20.



2. The President,
Ervadi Primary Agricultural Co-operative Credit Society,
Ervadi,
Papanasam Taluk,
Thanjavur District.

3. The Managing Director/Joint Registrar,
Kumbakonam Central Co-operative Bank Limited,
Kumbakonam,
Thanjavur District.

**+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-24165[F] dated
28/07/2021)**

**W.P. (MD) No. 22841 of 2017
26.07.2021**

RK (06.10.2021) 4P 5C