



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.03.2022

CORAM

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 7474 of 2019

and

W.M.P. Nos. 8134 and 8135 of 2019

Managing Director
Saidapet Cooperative Bank Limited
No.41, Karneeswarar Koil Street
Saidapet, Chennai - 600 015.

... Petitioner

-vs-

1. N.Panchaksharam

2. Assistant Commissioner /Controlling Authority
Under the Payment of Gratuity Act
Office of the Commissioner of Labour
Chennai - 600 006.

3. Additional Commissioner / Appellate
Authority under the Payment of Gratuity Act
Office of the Commissioner of Labour
Chennai - 600 006.

4. President
Saidapet Cooperative Bank Limited
No.41, Karaneeswarar Koil Street
Saidapet, Chennai - 600 015.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records of the Third Respondent relating to P.G.A. No. 198/2017 dated 03.08.2018 and of the Second Respondent to the order in P.G. No. 83 /2014 dated 27.04.2017 and quash both the orders.

For Petitioner : Mr. P.Anbarasan

For Respondents: Mr. M.R.Dharanichander (For R1)

Mr. V.Bharanitharan (For R2 to R4)
Additional Government Pleader (Co-op)



O R D E R

Heard Mr. P.Anbarasan, Learned Counsel for the Petitioner, Mr. M.R.Dharanichander, Learned Counsel for the First Respondent and Mr.V.Bharanitharan, Learned Additional Government Pleader (Co-operative societies) appearing for the Second to Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, which is a Co-operative Society governed by the Tamil Nadu Co-operative Societies Act, 1983, has challenged the order dated 03.08.2018 in P.G.A. No. 198 of 2017 passed by the Third Respondent in the appeal under Section 7(7) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act' for short) confirming the order dated 27.04.2017 in P.G. No. 83 of 2014 passed by the First Respondent under Section 7(4) of the Act determining that the sum of Rs. 8,98,914/- as gratuity payable by the Petitioner to the Third Respondent within 30 days from the date of receipt of its copy along with interest at the rate of 10% per annum till payment in this Writ Petition.

3. The grievance ventilated by the Petitioner at the time of filing of the Writ Petition was that the First Respondent had caused loss for which surcharge proceedings had been taken, but by order dated 14.06.2011 in C.M.A. No. 15 of 2009 and order dated 03.12.2011 in Co-operative Appeal No. 22 of 2005, the same had been set aside and the Petitioner had filed Civil Revision Petitions in C.R.P. Nos. 173 and 175 of 2013 before this Court, which were then pending. It is brought to the notice of the Court by Learned Counsel for the First Respondent that by order dated 22.09.2020 in C.R.P. Nos. 173 and 175 of 2013, the Civil Revision Petition have been dismissed, meaning thereby that the First Respondent has been fully exonerated from liability in the surcharge proceedings.

4. Learned Counsel for the Petitioner next contended that the interest awarded at the rate of 10% per annum is exorbitant and would have to be reduced. In this context, it would be relevant to point out here that the Hon'ble Supreme Court of India in H.Gangahanume Gowda -vs- Karnataka Agro Industries Corporation Ltd., [(2003) 3 SCC 40] and Y.K.Singla -vs- Punjab National Bank [(2013) 3 SCC 472] have reiterated the legal position from Section 7(3A) of the Payment of Gratuity Act, 1972, that if the amount of gratuity payable to an employee within 30 days from the date of cessation of his employment is not paid, there is no discretion to the employer to deny interest which would have to be paid at such rate not exceeding the rate notified by the Central Government from time to time, and the only exception for the same would be:-

- (i) when the delay in the payment of gratuity is due to the fault of the employee; and



(ii) the employer has obtained permission in writing from the Controlling Authority under the Payment of Gratuity Act, 1972, for the delayed payment on this ground.

In the absence of having obtained any such permission from the Controlling Authority under the Payment of Gratuity Act, 1972, for the delayed payment of gratuity, the First Respondent would be entitled to the gratuity amount due with interest fixed at the rate of 10% per annum by the Central Government for the same.

5. In that view of the matter, there does not appear to be any infirmity in the impugned order requiring interference by this Court in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution.

6. Since it is represented that the Petitioner has already deposited the gratuity amount with the concerned authority at the time of preferring appeal before the Third Respondent, the First Respondent is not precluded from making necessary applications for its withdrawal in accordance with law.

In fine, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Maya
To

1. Managing Director
Saidapet Cooperative Bank Limited
No.41, Karneeswarar Koil Street
Saidapet, Chennai - 600 015.
2. Assistant Commissioner /Controlling Authority
Under the Payment of Gratuity Act
Office of the Commissioner of Labour
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4. President

Saidapet Cooperative Bank Limited
No.41, Karaneeswarar Koil Street
Saidapet, Chennai - 600 015.

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+1 cc to Mr.P.Anbarasan, Advocate Sr.NO. 16436

+1 cc to Mr.M.R.Dharanichander , Advocate Sr.NO. 16027

W.P. No. 7474 of 2019

smi (CO)

A.SK(15/06/2022)