



W.A.No.1454 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2022

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURBLE MR.JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.1454 of 2021

P.Dhandapani

.. Appellant

Vs.

1. Villupuram District Central
Co-operative Bank Ltd.,
Rep. by its Special Officer/Administrator,
No.2, Hospital Road,
Villupuram.

2. The Joint Commissioner of Labour,
DMS Compound, Chennai-6.

3. The Assistant Commissioner of Labour,
Office of DCL.II, DMS Compound,
Chennai-600 006.

.. Respondents

Writ Appeal No.1454 of 2021 filed under Clause 15 of the Letters Patent against the order dated 25.11.2019 passed by the learned Single Judge, in W.P.No.11973 of 2013 on the file of this Court.

Writ Petition No.11973 of 2013 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records on the file of the respondents 1 and 2 relating to the order of the



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first respondent, dated 27.12.2012 in P.G.Appeal Nos.8 of 2012 confirming the order of the second respondent, dated 14.06.2012 in P.G.Case No.5/2012 and quash the same.

For appellant : Mr.K.Premkumar

For respondents: Mr.M.R.Gokulakrishnan, Addl.G.P. for R-1

Mr.C.Selvaraj, Addl.G.P. for RR-2 and 3

JUDGMENT

(The Judgment of the Court was delivered by S.Vaidyanathan, J)

The appellant (third respondent in the Writ Petition) was employed in South Arcot District Central Co-operative Bank, which was bifurcated into Villupuram District Central Co-operative Bank and Cuddalore District Central Co-operative Bank with effect from 01.04.1996. After bifurcation, the appellant was working in Villupuram District Central Co-operative Bank Limited. The appellant had rendered sufficient years of service to get gratuity in terms of the Payment of Gratuity Act. Since the gratuity has not been paid, he moved an application before the Controlling Authority under the Payment of Gratuity Act and the claim was granted in P.G.No.5/2012 on 14.06.2012. Aggrieved by the order of the Controlling



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Authority, the Management has preferred an appeal after depositing the amount as ordered by the Controlling Authority and the appellate authority, vide order dated 27.12.2012 in P.G.No.8 of 2012, confirmed the order of the Controlling Authority.

2. According to the appellant, surcharge proceedings have been initiated against him, which was set aside by the Co-operative Tribunal in C.M.A.No.23 of 2008. Since the appellant was allowed to continue and retire on attaining the age of superannuation at 58 years, the Bank ought to have paid gratuity, which was not done, which made him to prefer a claim before the Controlling Authority where he was successful and the appellate authority has also confirmed the order of the Controlling Authority, as stated supra.

3. The Management has contended that it is a Bank and has got a separate scheme for payment of gratuity in terms of its bye-laws. It is further contended that Clause 28 of the said Scheme provides for gratuity and there is a group gratuity cash amalgamations scheme of Life Insurance



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Corporation being maintained for payment of gratuity for the employees of the District Central Co-operative Bank and fund has also been created, which will not be utilised for any other purpose including business purposes and that the Controlling Authority has no locus-standi to entertain any application under the Payment of Gratuity Act.

4. The Management went on to contend that in terms of Section 79 of the Tamil Nadu Co-operative Societies Act, a registered society not being an establishment to which the Payment of Gratuity Act applies, may provide in its bye-laws for payment of gratuity to the employees at such rates and on such conditions as may be specified in the bye-laws and such Society may establish a gratuity fund or make arrangement for the purpose. When the Management has created a separate Scheme for the purpose of payment of gratuity, the Controlling Authority has no locus-standi to entertain an application.

5. The learned Single Judge, on hearing both sides, proceeded to hold that the Tamil Nadu Co-operative Societies Act alone will govern the



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matter, as the Tamil Nadu Co-operative Societies Act is a special enactment and the Payment of Gratuity Act is a general law. Once the Management has decided to have a separate Scheme, approved by the Registrar of Co-operative Societies, the grievance will have to be addressed only under the provisions of the Tamil Nadu Co-operative Societies Act and the Payment of Gratuity Act would not be applicable to the employees of a Co-operative Society.

6. The learned Single Judge has further held that in terms of Sections 153 and 154 of the Tamil Nadu Co-operative Societies Act, the aggrieved persons will have to work out their remedy only before appropriate forum and not under the Payment of Gratuity Act.

7. Heard both sides and perused the materials available on record.

8. It is not in dispute that if an employee has attained the age of superannuation on completion of sufficient years of service, he was an employee under the Tamil Nadu Co-operative Societies Act.

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9. For the sake of convenience, Section 4(5) of the Payment of Gratuity Act, needs to be referred to, which is extracted as follows:

"Section 4: Payment of gratuity:

.....

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

...."

10. Section 4(5) clearly stipulates that in case the Management gives the better benefit than what has been provided under the Tamil Nadu Co-operative Societies Act, the employees are entitled to get the benefits. It does not mean that the employees who are working in Co-operative Society, cannot get the benefits of the provisions of the Payment of Gratuity Act. In case the Scheme gives lesser benefit than what has been provided under the Act, the employees cannot be prevented from approaching the authority under the provisions of the Payment of Gratuity Act. When there are two forums available to an employee, he is entitled to choose the forum which is



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beneficial to him. The Apex Court in the decision reported in 1991 (1) LLJ 111(SC) = 1990 (2) LLN 3 = MANU/SC/0652/1990 (Nirchiliya and others Vs. Management of Safire Theatre) held that the employee can choose the forum and though it has been rendered in the context of denial of employment, the same principle will apply here also.

11. In this case, the provisions of the Tamil Nadu Co-operative Societies Act, so also the Payment of Gratuity Act, 1972, are applicable to a Co-operative Society. There is no evidence before the authority concerned to show that the Management is giving better benefits than what has been provided for under the Payment of Gratuity Act to drive the employees to get the relief invoking Section 153 or Section 154 of the Tami Nadu Co-operative Societies Act.

12. It may be true that the Payment of Gratuity Act is a general Act and the Tamil Nadu Co-operative Societies Act is a special enactment. It does not mean that the employees are precluded from approaching the authority claiming gratuity when the Payment of Gratuity Act, 1972, gives a



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better benefit than the one provided under the Scheme.

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13. Hence, we are of the view that the impugned order passed by the learned Single Judge needs to be interfered with. The order of the Controlling Authority, as confirmed by the appellate authority, is restored and the amount if any lying in deposit with the Controlling Authority, shall be credited to the account of the writ petitioner by the authority within four weeks from the date of receipt of a copy of this order. In case the amount has been withdrawn by the Co-operative Bank, the actual amount of gratuity payable on due date, shall be remitted to the employee within a period of eight weeks, together with interest @ 10% per annum on the gratuity amount. If the amount of gratuity with interest @ 10% per annum is not paid within the time stipulated, it amounts to Revenue recovery and the gratuity amount together with interest @ 15% shall be recovered in terms of Section 8 of the Act of 1972. The relevant portion of Sections 7 and 8 of the Act of 1972 and the Notifications issued thereunder are extracted below:

"Section 7: Determination of the amount of gratuity: (1) A person who is eligible for payment of gratuity under this Act or any person

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authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for re-payment of long term deposits, as that Government may, by notification specify: Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground."

"Section 8: Recovery of Gratuity: If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority, shall, on an application made to it in this behalf by the



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aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

Provided that the Controlling Authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case, exceed the amount of gratuity payable under this Act."

"Notification under Section 7(3-A) of the Payment of Gratuity Act:

S.O. 874--In exercise of the powers conferred by sub-section (3A) of Section 7 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies ten percent per annum at the rate of simple interest payable or the time being by the employer to his employees in cases where the gratuity is not paid within the specified period.

This Notification shall come into force on the date of its publication in the Official Gazetter (vide the Gazette of India, Extraordinary, P.II, Section 3(i) dated 1st October, 1987 at p.2)"

"Notification under Section 8 of the Payment of Gratuity Act:-

S.O.1032(E). - In exercise of the powers conferred by Section 8 of the Payment of Gratuity Act, 1972



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(39 of 1972), the Central Government hereby specifies 15 per cent per annum as the rate of compound interest, recoverable by the Collector for the time being, along with the amount of gratuity and payable to the person entitled thereto.

This notification shall come into force on the date of its publication in the Official Gazette."

14. The Writ Appeal is allowed to the extent indicated above.

Consequently, C.M.P. is closed. There shall be no order as to costs.

(S.V.N.,J) (M.S.Q.,J)
15.12.2022

Index: Yes/no
Speaking Order: Yes/no
Neutral Citation: Yes/no
cs

To

1. Villupuram District Central
Co-operative Bank Ltd.,
Rep. by its Special Officer/Administrator,
No.2, Hospital Road, Villupuram.

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2. The Joint Commissioner of Labour,
DMS Compound, Chennai-6.
3. The Assistant Commissioner of Labour,
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Chennai-600 006.

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and

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