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W.A.No.1599 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 22-12-2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WRIT APPEAL No.1599 of 2019

S.Gnansekaran

...

Appellant

-VS-

1.The Management,
S.No.1558, The Govt.College of Engineering
Co-operative Stores Ltd.,
rep.by its President,
Salem – 638 011.

2.The Presiding Officer,
Labour Court,
Salem.

...

Respondents

Writ Appeal under Clause 15 of the Letters Patent against the order, dated
25.01.2019, passed in W.P.No.29272 of 2016 on the file of this Court.

For Appellant : Mr.K.S.Narayanan

For Respondent 1 : Mr.L.P.Shanmuga Sundaram



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JUDGMENT

This appeal has been preferred against the order of a learned single Judge, dated 25.01.2019, passed in W.P.No.29272 of 2016.

2. The appellant joined the services of the first respondent Society on 04.01.1975 and became the Manager, on getting promotion. He attained the age of superannuation on 31.12.2011. He completed nearly 37 years of service. The appellant-employee was drawing a pay of Rs.21,177/-, being the basic and dearness allowance, and, in terms of the By-laws applicable to the Society, more particularly in the light of Clause 36 of the Special By-laws of the respondent society, he would be entitled to a sum of Rs.4,52,047/- towards gratuity. The appellant-employee had approached the Labour Court, claiming gratuity amount mentioned supra and also the amount in respect of earned leave surrender.

3. Now, the issue confined in this Writ Appeal is with regard to payment of gratuity. Earlier, the Division Bench, on 03.06.2019, while ordering notice to the respondent, had passed the following order :

"Issue notice returnable in two weeks.

2. Learned counsel appearing for both parties may explain as to whether the Payment of Gratuity Act, 1972, applies to the Respondent-Management or not and if the Act itself does not apply, whether any special Bye-Laws can be applied under which the Petitioner-Workman can still get Gratuity from the respondent."



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4. The appellant-employee and the respondent-Society are governed by the Tamil Nadu Co-operative Societies Act, 1983, and, in terms of Section 79 thereof, an employee would be entitled to gratuity under the Scheme that may be framed by the Management. Section 79 of the Tamil Nadu Co-operative Societies Act is extracted below :

"79. Gratuity Fund .__ (1) A registered society not being an establishment to which the Payment of Gratuity Act, 1972 (Central Act 39 of 1972) applies, may provide in its by-laws for payment of gratuity to the employees at such rates and on such conditions as may be specified in the by-laws and such society may establish a Gratuity Fund or make other arrangements for the purpose.

(2) A Gratuity Fund, if any, established by a registered society under sub - section (1) shall be invested in the financing bank, but shall not __

- (a) be used in the business of the society;**
- (b) form part of the assets of the society;**
- (c) be liable to attachment or be subject to any other process of any court or other authority."**

5. According to the appellant, since the gratuity amount was denied by the employer, he has approached the Labour Court, claiming gratuity and other benefits, and the Labour Court computed the amount of gratuity payable to the appellant at Rs.4,52,047/- in C.P.No.11 of 2012.



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6. Aggrieved over the same, the Management has preferred the Writ Petition, contending that there were only two employees employed under the Management and the Payment of Gratuity Act was not applicable. That apart, the employee was also paid gratuity in terms of the Scheme to an extent of Rs.63,531/-, beyond which he was not eligible. They would further contend that the employee was drawing a salary of Rs.4,200/-, Rs.4,887/-, Rs.1,120/-, Rs.360/- and Rs.100/- towards grade pay, dearness allowance, HRA, CCA and Medical Allowance respectively, and taking note of the basic pay and D.A., the employee would be entitled to Rs.63,531/- alone towards gratuity, which had already been paid and the demand of Rs.4,52,047/- needed to be interfered with, which was accepted by the learned single Judge.

7. For the sake of convenience, Section 4 (5) of the Payment of Gratuity Act, 1972, and Clause 36 of the Special By-Laws of the respondent society are extracted below :

"4. Payment of Gratuity.-

xxxxx

(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."

Clause 36 of the Special By-laws :

"36. GRATUITY



1. The stores shall pay gratuity to the employees in accordance with the provisions of the Payment of Gratuity Act,1972, (Central Act 39 of 1972), whether or not this Act is applicable to the stores.

2. The Board of management shall, at the option of the employees of the stores, implement a group gratuity scheme in concert with the LIC of India or any other organization and the terms and conditions in operation in such schemes shall apply to the employees of the stores."

8. It is not in dispute that the Payment of Gratuity Act,1972, as such, may not be applicable for employing only two workers to the respondent society, which, in the light of the By-law 36 extracted supra and in the light of Section 79 of the Tamil Nadu Co-operative Societies Act, has decided to extend the benefit of payment of gratuity, even if the said Act is not applicable. In the light of Section 4 (5) of the Payment of Gratuity Act, the employees are entitled to better benefits and the Co-operative Societies have adopted the entire provisions of the Gratuity Act, and the By-laws have given the benefit of the 1972 Act even if there is reduction in number of employees prescribed under the Act. The Act, as such, would be applicable if the employees are more than 10. But, in the light of the By-laws, even a sole employee is entitled to the benefit of the Scheme framed. Section 4 (5) of the Payment of Gratuity Act also protects the interests of employees.



9. Moreover, the employee has filed two exhibits, which are marked as Exs.A-11 and A-12. The respondent society has made a provision for payment of gratuity, mentioning Pay and DA as Rs.21,177/- and Gratuity provision up to 31.03.2010 was referred to as Rs.2,44,125/- and up to the date of retirement at Rs.4,39,830/- in the case of the appellant.

10. In the light of the By-law provision, which has been framed in the light of the provisions of the Tamil Nadu Co-operative Societies Act,1983, and that the employer will have to pay gratuity even though there are two employees in the light of the By-law No.36, we are of the view that the order of the learned single Judge in reducing the gratuity amount awarded by the Labour Court in C.P.No.11 of 2012 needs to be interfered with and, accordingly, the appellant-employee would be entitled to a sum of Rs.4,52,047/- towards gratuity, in addition to Rs.35,496/- as leave salary. There is no need that there should be ten employees under the management in terms of the Payment of Gratuity Act, as the By-law gives benefits to the employees even if the employer employs less than ten workers. The amount of gratuity determined by the Labour Court at Rs.4,52,047/- less the amount, if any, already paid, needs to be paid by the first respondent Management together with interest at 10% per annum from the date of retirement, in the light of Section 7 (3A) of the Payment of Gratuity Act,1972. The relevant portion of Section 7 (3A) of the Act of 1972 and the Notification issued thereunder are extracted below:



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"Section 7: Determination of the amount of gratuity:

(1) xxxxx

(2) xxxxx

(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."

"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)"

Therefore, the said amount shall be paid by the respondent to the appellant within a period of four months from the date of receipt of a copy of this order. If the amount is not paid within the time frame, the employer will have to pay interest at 15% per annum



in terms of Section 8 of the Payment of Gratuity Act, 1972. The relevant portions of

Section 8 of the Act of 1972 and the Notification issued thereunder are extracted below:

"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 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 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 (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."

11. Writ Appeal is allowed accordingly. No costs.

Index : Yes/No

Internet : Yes/No

Speaking / Non-speaking Order
dixit

(S.V.N.,J.)

(M.S.Q.,J.)

22-12-2022



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