IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.09.2021

PRONOUNCED ON : 21.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.17182 to 17184 of 2014
and
M.P.Nos.2, 2 & 2 and 3, 3 & 3 of 2014

The Management,
The Coimbatore District Central
Co-operative Bank Ltd.,
Coimbatore-641 018
rep. by its General Manager
Mr.N.Kalaivanan

... Petitioner in all WPs.

Vs.

1.R.Subramanian ... R1 in W.P.17182/2014

2.G.Meenakshi ... R1 in W.P.17183/2014

3.P.Chandramani ... R1 in W.P.17184/2014

4. The Authority
under the Payment of Gratuity Act,
Assistant Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore-611 018. ... R2 in all WPs.

3. The Appellate Authority
Under Payment of Gratuity Act,
Joint Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore-611 018.
Amended as per order dated 09.03.2015
by MDJ in MPs.1 to 1 of 2015 in
W.Ps.17182 to 17184 of 2014. ... R3 in all WPs.

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the entire records pertaining to the order of the third respondent dated 17.04.2014 in AGA No.88, 89 of 2013 & 65 of 2012 partly allowed the order made in G.A.No.133 of 2011, G.A.No.27 of 2012 & G.A.No.181 of 2010 on the file of the second respondent dated 11.03.2013 & 21.05.2012 respectively and to quash the same.

For Petitioner : Mr.S.Saravanan

For Respondent-1 : Mr.A.Deivasigamani for Mr.G.B.Saravanabhavan

For Respondent Nos.2 & 3 : No Appearance

COMMON ORDER

In all these three Writ Petitions, the first respondent are the erstwhile employees of the petitioner-Management/The Coimbatore District Central Co-operative Bank Ltd., and who were denied the gratuity amount payable to them by the Management, on the ground that the surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as "Co-operative Societies Act") was pending. Since the facts, as well as the legal points involved in all these three Writ Petitions are one and the same, a common order is passed. For the sake of convenience, the petitioner/Co-operative Bank is referred to as "the Management" and the first respondent in all the three Writ Petitions were referred to as "employees".

2. Heard the learned counsel for the parties.

3. Based on a set of charges against the employees, the Management had initiated surcharge proceedings against the employees under section 87 of the Co-operative Societies Act and by an order dated 06.01.2009, the charges against them were held to be proved and were made liable for the monetary loss that had allegedly occurred to the Management, with a consequential direction to remit the quantified amount. This order came to be challenged by the employees in Miscellaneous Appeal No.57 of 2009 and by an order dated 01.03.2012, the appeal came to be allowed and the original order dated 06.01.2009, passed under Section 87 of the Co-operatives Societies Act was set aside. The revision preferred by the Management against the said order before this Court in CRP (NPD)No.3296 of 2012, as well as the further appeal by them before the Hon'ble Supreme Court of India in SLP. (Civil) D.No.44624 of 2018 were also dismissed.

4. In the meantime, when the employees had reached their respective age of superannuation, their gratuity was withheld on the ground that surcharge proceedings were pending. However, the Management had permitted the employees to retire from service on their respective dates of superannuation, without prejudice to the pending surcharge proceedings.

5. In this background, the employees had filed individual applications before the Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as "Gratuity Act"), whereby the gratuity amount was quantified and directed to be paid to the respective employees. The appeal filed by the Management against the order of the Authority under the Gratuity Act was dismissed, confirming the order passed by the Original Authority. Challenging these orders, directing payment of gratuity amount to the concerned employees, the Management had preferred these three Writ Petitions.

6. In the incidental proceedings that arose during the pendency of the present case, one co-employee namely, N.Somasundaram, whose case was similar to that of the employees in the present cases, was granted the benefit of an order passed by the Authority under the Gratuity Act. When the Management had challenged the case of N.Somasundaram before this Court in W.P.No.15154 of 2010, the same was dismissed on 24.06.2011. As against which, the Management had preferred an appeal in W.A.No.1558 of 2011 [The Management, The Coimbatore District Central Co-operative Bank Ltd Coimbatore - 641 018 Rep. by its General manager Mr.A.Muthusamy V. 1.N.Somasundaram 2.The Authority under the Payment of Gratuity Act Assistant Commissioner of Labour Dr.Balasundaram Road Coimbatore - 611 018 3.The Appellate Authority under Payment of Gratuity Act Assistant Commissioner of Labour Dr.Balasundaram Road Coimbatore - 611 018] and by an order dated 23.08.2021, the Hon'ble Division Bench of this Court, had dismissed the Writ Appeal, by holding that the Management did not have the authority or jurisdiction to withhold the gratuity amount to its employees, particularly, when they were permitted to retire and were not terminated from their services. The facts involved in the case of N.Somasundaram (supra), is identical to the facts of the employees' case in the present three Writ Petitions and as such, it would be appropriate to extract the entire order of the Hon'ble Division Bench, which reads as follows:-

> "The unsuccessful management of a Co-operative Bank before the Assistant Commissioner of Labour as well as Appellate Authority under the Payment of Gratuity Act, had preferred W.P. No.15154 of 2010, challenging the said proceedings. The writ petition was dismissed by the learned single Judge, against which, the

above appeal is preferred.

2. The short facts leading to the above case is that the first respondent was a Manager with the appellant-bank. He was issued with Charge Memo dated 18.04.2007 alleging fraud against him causing loss to the bank to an extent of Rs.7,81,911/-. However, when he attained the age of superannuation on 30.04.2007, he was relieved from the service on the same day in terms of Special By-Law No.5(ii), without prejudice to the charges pending against him and any final orders that may be passed in the said charges.

3. As the first respondent was relieved from the services of the appellant-bank, he applied for gratuity under Section 4(1) of the Payment of Gratuity Act, 1972. The first respondent had a sum of Rs.4,71,600/- to his credit, as gratuity. The appellant-bank refused to disburse the gratuity amount, contending that the first respondent was not eligible for the same, as there were charges pending against him and he had not cooperated with the enquiry proceedings.

4. It is also pertinent to note that the surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 was initiated and the liability of the first respondent was fixed at a sum of Rs.7,81,911/- on 06.01.2009. Nevertheless, the Controlling Authority held that, since the petitioner was allowed to retire from service on attaining the age of superannuation, the gratuity cannot be withheld or forfeited. When an employee is not terminated on the grounds of causing loss to the employer and permitted to retire, the gratuity amount cannot be withheld by the authorities. That apart, in the surcharge proceedings, the liability of the first respondent was quantified and it is open to the appellant to proceed against him under Section 87(2) of the Tamil Nadu Co-operative Societies Act, 1963, treating the same as arrears to the Government. Therefore, the payment of gratuity was allowed with 10% interest per annum on the belated payment. The appellant before preferring the appeal on the file of the third respondent, had deposited the entire amount of Rs.3.5 Lakhs. The only reason given by the appellant for not disbursing the amount is that

the surcharge proceedings are pending and the first respondent caused loss to the bank. Admittedly, if there was any loss caused to the bank due to the misconduct of the first respondent, the bank would have taken appropriate action under Law.

5. It will be relevant to quote Section 4 of the Payment of Gratuity Act, as below:

4. Payment of Gratuity.- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

(a) on his superannuation, or

(b) on his retirement or resignation,

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement: Provided further that in case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned: Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account: Provided further

that in the case of an employee who is employed in a seasonal establishment, and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Explanation.-In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed ten lakh rupees.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(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.

(6) Notwithstanding anything contained in subsection (i),-

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited-

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

6. A reading of the above section makes it clear that subsection (5) is a non-obstante clause of the entire section. Sub section (5) has overriding effect on all other sections of the Act. Even under sub section (6)(i)(a), the

gratuity can be forfeited only to the extent of damages or loss caused to the bank. In case the employee is terminated for any act or willful omission or negligence causing damage to the employer, then the loss can be recovered from the gratuity by way of forfeiture, as contemplated under Section 4(6)(i)(b). Under sub-section 6(i)(b), the forfeiture of the gratuity either wholly or partially is permissible only when the employee is terminated on account of disorderly conduct or any other act of violence on his part and if the termination is for any act, which constitutes an offence involving moral turpitude and the said offence is committed during the course of employment. Therefore, from the above, it is clear that forfeiture of the gratuity is permissible only in the circumstances indicated above.

7. Admittedly, in the instant case, the employee was allowed to retire on the date of attaining superannuation, though the enquiry proceedings are pending on the said date. Therefore, forfeiture or withholding of the gratuity is permissible under Section 4(6)(i)(b)(ii) of the Act only in the event of termination on account of any disorderly conduct involving the moral turpitude and the employee is convicted. In the present case there is no conviction of the first respondent for the misconduct, which according to the appellant, is an offence involving moral turpitude. Therefore, there is no justification in withholding the gratuity amount of the petitioner.

8. As mentioned earlier, the Co-operative Societies Act, 1963 provides for recovery of loss caused to the bank by invoking the Revenue Recovery Act from the employee. Since the surcharge proceedings has come to an end, it is open to the authorities to recover the loss caused to the bank by the first respondent, in the manner known to law, but the gratuity cannot be withheld.

9. Against the order of recovery passed by the Deputy Registrar, Co-operative Societies, Coimbatore, the respondent herein has preferred a civil miscellaneous appeal in Co-Op. C.M.A. No.57 of 2009 on the file of the Principal District Judge, Coimbatore. The same was allowed by a judgment and decree by setting aside the order of the Deputy Registrar, Co-operative Societies,

Coimbatore made in Thaa.Thee No.1 of 2008 dated 06.01.2009 under Section 87 of the Co-operative Societies Act. Aggrieved by the judgment and decree passed in the said Co-operative civil miscellaneous appeal, the appellant-bank has preferred a civil revision petition in C.R.P. (NPD) No.3296 of 2012 and this court, by an order dated 24.08.2017, dismissed the civil revision petition by confirming the Judgment and decree of the Principal District Judge, Coimbatore dated 01.03.2012. Not stopping with that, the appellant-bank, has questioned the order of the learned single Judge dated 24.08.2017 made in C.R.P. (NPD) No.3296 of 2012 before the Hon'ble Supreme Court in S.L.P. (Civil) Diary No.44624 of 2018 and the same was dismissed by the Hon'ble Supreme Court by order dated 08.04.2019.

10. Section 13 of the Payment of Gratuity Act stipulates that no gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under Section 5 shall be liable for attachment in execution of any decree or order of any civil, revenue or criminal court.

11. In the light of Section 13 of the Payment of Gratuity Act also, gratuity cannot be attached on any account for recovery to be made against the first respondent, as gratuity is not liable to be attached, to satisfy any decree.

12. In such circumstances, there is no merit in the appeal and it is open to the first respondent to withdraw the amount. We do not find any error or defect in the order of the learned single Judge.

13. Accordingly, the writ appeal is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.”

7. In the light of the decision of the Hon'ble Supreme Court of India in N.Somasundaram's case (supra), the action of the Management in withholding the gratuity amount payable to the present employees on the ground that the surcharge proceedings were pending, is not only unjustifiable, but also illegal. Above all, the Management had no authority per-se to withhold the gratuity amount, more particularly, when the surcharge proceedings were set aside and confirmed by the Hon'ble Supreme Court of India.

8. In the light of the above discussions, all the three Writ Petitions stands dismissed. Consequently, the petitioner-Management is called upon to disburse the gratuity amount payable to each of the respondents herein namely, R.Subramanian in W.P.No.17182 of 2014, G.Meenakshi in W.P.No.17183 of 2014 and P.Chandramani in W.P.No.17184 of 2014, as determined by the third respondent/Appellate Authority in the order dated 17.04.2014, passed in AGA Nos.88 & 89 of 2013 and 65 of 2012 respectively, within a period of two weeks from the date of receipt of a copy of this order.

9. In the result, all the three Writ Petitions stand dismissed with the above directions. Consequently, the Connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(LA)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Joint Commissioner of Labour,
   The Appellate Authority
   Under Payment of Gratuity Act,
   Dr.Balasundaram Road,
   Coimbatore-611 018.

2. The Assistant Commissioner of Labour,
   The Authority
   under the Payment of Gratuity Act,
   Dr.Balasundaram Road,
   Coimbatore-611 018.

+3ccs to Mr.G.B.Saravanabhavan, Advocate, S.R.Nos.3745 to 3747

+3ccs to Mr.S.Saravanan, Advocate, S.R.Nos.3766 to 3768

ORDER MADE IN
W.P.Nos.17182 to 17184 of 2014 and
M.P.Nos.2, 2 & 2 and 3, 3 & 3 of 2014

PM(CO)
SU(07/02/2022)