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W.P.No.28844 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.28844 of 2015
and M.P.Nos.1,2 and 3 of 2015

The Management
Chennai Central Cooperative Bank Ltd. Rep.
by its General Manager No.215 Prakasam
Road Broadway Chennai-600 108.

.... Petitioner

-Vs-

1. V.N. Sundreswaran
S/o.Narayanasamy No.A.150 2nd Street 11th
Main Road Anna Nagar Chennai- 600 040.
2. The Authority Under the
Payment of Gratuity Act/ Assistant
Commissioner of Labour Labour Welfare Board
Building 6th Floor Teynampet Chennai-6.
3. The Appellate Authority
Under payment of Gratuity Act/joint
Commissioner of Labour Labour Welfare Board
Building 6th floor Teynampet Chennai-6.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari Calling for the entire records pertaining to the order of the 3rd respondent dated 08.07.2015 in PGA.No.1 of 2015 confirming the order made in P.G.No.19 of 2013 on the file of the 2nd respondent dated 21.10.2014 and quash the same.

For Petitioner : Mr. Deivasigamani



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for Mr.S.Saravanan

For Respondents : Mr.S.Siva Shanmugam – for R1
No appearance – RR 2 and 3

ORDER

The petitioner challenges the order in P.G.A.No.1 of 2015 dated 08.07.2015 confirming the order in P.G.No.19 of 2013 dated 21.10.2014. The first respondent was charge sheeted and found guilty of charges. He attained superannuation on 31.01.2004 and was permitted to retire without prejudice to the departmental proceedings and also on execution of bond of indemnity that in case of any loss to the bank, the amounts arising out of such loss will be adjusted from the amounts due to him out of his gratuity or other claims. It is the case of the petitioner that surcharge proceedings were initiated against the first respondent and order was passed holding that they were jointly and severally liable to pay a sum of Rs.95,781.90/-.

2. It is the further case of the first respondent that as the gratuity was not paid an application was filed in P.G.No.19 of 2013 on the file of the second respondent. The second respondent heard the writ petitioner as well as the first respondent and gave a direction for release of gratuity, against which an appeal was preferred to the third respondent and the appeal also ended in dismissal. Against the said concurrent findings of the original authority as well as the



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appellate authority, the present writ petition has been filed.

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3. Mr.Deivasigamani learned counsel for the petitioner would submit that (i) criminal case has been registered against the first respondent in Crime No.2,3 and 4 of 2005 on the file of the Inspector of Police, CCIW, Chennai. (ii) Since there is an order of surcharge, the first respondent is not entitled to payment of gratuity (iii) He would submit that in the anticipatory bail petition filed before this Court, a direction was given to the petitioner to keep a sum of Rs.1,25,000/- in deposit. This shows the guilt of the first respondent and hence he is not entitled to gratuity or interest thereon.

4. Mr.Sivashanmugam, learned counsel appearing for the first respondent would submit that unless and until the withholding comes within the scope of Section 4(6) of the Payment of Gratuity Act, the first respondent is entitled to the payment of the same. He would further submit that he has retired at least a decade ago and no action has been initiated against him so far. He would state that a sum of Rs.8,87,594/- is lying with the appellate authority. He would further point out that interest cannot exceed the principal as per Section 8 of the Payment of Gratuity Act and the excess of amount paid was also refunded to the extent of Rs.35,017/-.



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5. I have carefully considered the rival submissions made on either side.

In order to withhold the gratuity, the act must come within the four corners of Section 4(6) of the Payment of Gratuity Act. Both the authorities have found that it does not come within any of these parameters. However, the appellate authority has partially modified the order and has directed that out of the amount of Rs.9,22,611/- that had been deposited by the writ petitioner with the second respondent, only a sum of Rs.8,87,594/- is payable. This is on account of operation of Section 8 of the Act. Mere registration of FIR is not sufficient for the authorities to withhold the gratuity. Withholding of gratuity should be made if crime is alleged to have committed and the crime constitutes an offence involving moral turpitude. Section 4(6)(b)(ii) requires that the termination order should be passed on such an offence. On the contrary, in the present case it is clear that the first respondent was not terminated from service but had been permitted to retire.

6. Learned counsel for the first respondent would invite my attention to Page 1 of the typed set which is a deed of indemnity executed by the first respondent in favour of the bank. This deed of indemnity is sufficient protection to the writ petitioner. In case it has suffered any loss it can always invoke the deed of indemnity.



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7. Dealing with the second argument of the learned counsel for the petitioner Mr.Deivasigamani that an undertaking was given before this Court in CrI.O.P.No.18268 to 18270 of 2005 dated 25.07.2005 and therefore the first respondent is not entitled to gratuity, all that this Court has secured was, pending investigation in Crime Nos.2,3 and 4 of 2005 on the file of the Inspector of Police, CCIW the interest of the petitioner bank should be protected. Consequently it directed withholding of the amount of Rs.1,25,000/- out of Rs.4,90,112/- due to the first respondent. It is pertinent to point out that the word 'payment of gratuity' is nowhere used in the order of anticipatory bail. An order of anticipatory bail is granted in order to protect the life and liberty of the accused, at the same time to ensure that he cooperates with the investigation.

8. I had adjourned the matter for the purpose of Mr.Deivasigamani to verify and report if FIR had been converted into a charge sheet or had ended in acquittal. Mr.Deivasigamani as well as Mr.Sivashanmugam would report that the FIR had remained as FIR and no further progress had been made on the same. Therefore, I am convinced that the orders of the original authority as well as the appellate authority are strictly in accordance with the provisions of the Payment of Gratuity Act and do not require any interference. The writ petition is liable to be dismissed. The petitioner is entitled to a refund of Rs.35,017/- from the deposit and the first respondent is entitled to a sum of Rs.8,87,594/-. It is made



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clear that in case the bond that has been executed by the first respondent has to be invoked, the petitioner shall prove that it had suffered a loss and suffered damages on account of the act of the first respondent. It is not clear whether the amount of Rs.9,22,611/- has been kept in any interest bearing fixed deposit. In case it is in such a deposit the petitioner and the first respondent will be entitled to interest on prorata basis.

9. Mr.Deivasigamani, learned counsel for the petitioner would cite two judgments viz., (i) Standard Stonewares and Tiles -vs- Appellate Authority 2004 (2) KLT 519 and (ii) D.Premkumar and another -vs- Management of Mukkotu Mudi Estate and two others in W.P.No.13128 of 2014 dated 26.10.2022. I have carefully gone through both these judgements. The facts of those cases do not apply to the present situation.

10. In fine, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

06.06.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST
To

1. The Authority Under the



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V. LAKSHMINARAYANAN, J.

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