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W.A.No.1284/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 06-02-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.No.1284 of 2021

Villupuram District Central Co-operative Bank Ltd.,
rep. by its Joint Registrar/Managing Director,
2, Hospital Road,
Villupuram-605 602.

...

Appellant

-vs-

1.The Authority under Payment of Gratuity Act/
Assistant Commissioner of Labour,
Vellore.

2.Tmt.N.Jayachandra

...

Respondents

Appeal is filed under Clause 15 of the Letters Patent against the order,
dated 24.08.2018, passed in W.P.No.19034 of 2016, on the file of this Court.

For Appellant : Mr.R.Arumugam

For Respondent 1 : Mrs.E.Ranganayaki,
Addl. Govt. Pleader.

For Respondent 2 : Mrs.Hema Sampath,
Senior Counsel,
for Mrs.R.Meenal.



JUDGMENT

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This appeal has been preferred by the appellant employer against the order of the learned single Judge, dated 24.08.2018, passed in W.P.No.19034 of 2016, whereby the order passed by the Authority under Payment of Gratuity Act, namely, Assistant Commissioner of Labour, Vellore, was confirmed.

2. The admitted facts are that the second respondent employee was appointed as Manager of the appellant Bank on 12.12.1974 and relieved from the said post on 30.09.2010. Surcharge proceedings were initiated against her and an order was passed on 07.02.2013 by the authority for recovery of a sum of Rs.2,77,98,427/- along with two other employees.

3. The main contention of the appellant is that when the amount is due, it can be withheld by an order passed by the authority under surcharge proceedings and there is no need to release the fund.

4. Admittedly, no departmental proceedings were initiated against the respondent when surcharge proceedings were initiated. She was allowed to retire from service. It is an admitted case of the learned counsel for the appellant that there was no provision in the by-laws of the appellant bank to proceed departmentally at that relevant point of time even after the retirement of the employee and that there was an amendment subsequent to that.



5. In any event, in terms of Payment of Gratuity Act, 1972, the amount has got to be paid within the stipulated time and surcharge proceedings were issued only on 07.02.2013, while the employee retired on 30.09.2010. There is no evidence before this Court that she has been allowed to retire without prejudice to her rights.

6. It is further stated by the learned counsel for the appellant that the employee has not challenged the surcharge proceedings, which have become final, and the appellant is entitled to recover the amount by means of separate proceedings.

7. Withholding the payment of gratuity is not correct. That apart, as against the order passed by the Original Authority, an appeal remedy is available and, bypassing the same, approaching this Court is not appropriate. In view of the fact that there is a condition precedent that the entire amount has got to be deposited, the appellant has bypassed the appeal remedy and approached this Court.

8. We are not able to accept any of the submissions of the appellant, more so, in the light of the decision of this Court in *Onward Trading Company, Madras v. Deputy Commissioner of Labour, Madras*, 1989 (2) LLN 672 and 673 (Mds HC), wherein, it is held that, as against the order of the Original Authority, an appeal has got to be filed before the Appellate Authority under the Payment of Gratuity Act, 1972, for which, the entire amount has to be deposited, as a condition precedent.

9. The learned single Judge, in Paragraph 8.2 of the order, has held as under :



"8.2. In this case, there is no enforceable order and, therefore, there is no ground to withhold the gratuity. However, it is made clear that if, on fresh enquiry, there is an order against the employee, then it is open to the petitioner herein (employer) to deduct that amount from any other retirement benefits payable to the second respondent (employee)."

10. We make it clear that in case of any adverse order with regard to surcharge proceedings against the employee, it is open to the appellant bank to proceed in accordance with law. But, withholding the amount, more particularly referring to Section 4 (6) of the Act, may not be attracted in this case. If the appellant employer wants to invoke Section 4 (6) of the Act, a detailed inquiry has to be conducted and charges have to be proved for making forfeiture of the entire gratuity.

11. Writ Appeal is, accordingly, dismissed. No costs. Consequently, the connected C.M.P.No.8137 of 2021 is closed.

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Speaking / Non-speaking Order
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(S.V.N.,J.) (J.S.N.P.,J.)
06-02-2023

To

The Authority under Payment of Gratuity Act/
Assistant Commissioner of Labour,
Vellore.



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S.VAIDYANATHAN,J.
AND
J.SATHYA NARAYANA PRASAD,J.

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