IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2023

PRONOUNCED ON : 17.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.No.5558 of 2012
and
M.P.No.1 of 2012

V.Premkumar : Petitioner

-vs-

1.The Deputy Registrar of Co-operative Societies,
The Authority Under Section 90 of the
Tamil Nadu Co-operative Societies Act, 1983,
Thiruvannamalai.

2.The Special Officer,
Thiruvannamalai Co-operative Urban Bank,
No.18/87, Sannathi Street,
Thiruvannamalai-606 601. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent bearing Petition No.203/2010-11 Sa.Pa. Dated 31.05.2011 and quash the same and consequently direct the second respondent to disburse the entire terminal benefits including the difference in Gratuity Payable by reckoning the period of service of the petitioner as 31 years and the amounts unlawfully deducted towards the Surrender Leave

Salary and Children Education Concession together with appropriate interest from the date of retirement.

For Petitioner : Ms.D.Geetha

For R1 : Mr.L.S.M.Hasan Fimal
Additional Government Pleader

For R2 : Mr.L.P.Shanmugasundaram

ORDER

The petitioner has filed this writ petition for issuance of a Certiorarified Mandamus to call for the records of the first respondent in ARC.No.203/2010-11, dated 31.05.2011 and to quash the same and further direct the second respondent to disburse the terminal benefits by reckoning the period of service of the petitioner as 31 years for difference in gratuity and for other amounts mentioned in the petition.

2. The factual matrix of the petitioner that is required for determination of the appeal are as under:

2.1. The petitioner herein had joined the services of the second respondent Bank as Assistant on 01.08.1979 and retired from service on 30.06.2010.

2.2. The second respondent calculated his terminal benefits taking into account of qualifying period of service as 28 years and arrived at the amount of Rs.7,96,262/- and deducted a sum of Rs.4,67,195/- towards various due payable by the petitioner and paid the balance of Rs.3,29,067/-.

2.3. Aggrieved over the said calculation, the petitioner has invoked the provisions of the Tamil Nadu Co-operative Societies Act in ARC No.203/2010-11 and invited an award dated 31.05.2011, whereby, the deductions effected in respect of surrender leave salary, children education concession etc., and inclusion of 312 days as qualifying service towards payment of gratuity was clearly held.

2.4. Aggrieved against the said order passed by the Arbitrator in the above said A.R.C.No.203/2010-11 dated 31.05.2011, the present writ petition has been filed.

3. The learned Additional Government Pleader appearing for the first respondent and the learned counsel for the second respondent have filed

counter affidavits.

3.1. The learned Additional Government Pleader has raised an objection regarding the maintainability of the writ petition that after the Full Bench Judgment of this Court in ***Marappan's Case***, the writ petition is not maintainable. Since the petitioner is retired from service in the year 2010, the writ petition is pending from the year 2011. At this juncture, this Court is not inclined to reject the petition after passage of many years and accordingly, it directed both the parties to file computation of gratuity and arrears of amount if any.

4. After hearing the rival submissions and also the submissions made by the learned Additional Government Pleader, I have directed both the parties to file memo of computation of gratuity according to their respective stands and accordingly, they have filed additional counter affidavit and also the memo of affidavit by the petitioner herein.

5. As per the petitioner calculation is as under:

S. No.	Period of Absence	Days	Treated/Regularised as	As per the order
1.	01.12.1984 to	55	Leave on loss of pay	Resolution of the

	24.01.1985			Special Officer No.294, dated 02.02.1985
2.	18.06.1992 to 10.09.1992	85	Not Regularised	Suspension
3.	03.11.1993 to 26.01.1995	450	01.09.1993 to 02.11.1993 as earned leave	Special Officer's Order dated 07.06.1995
			03.11.1993 to 26.01.1995 as leave on loss of pay	
4.	18.07.1995 to 17.04.1996	275	Service Period	President's order dated 02.02.2000
5.	14.02.2002 to 22.03.2002	37	Medical Leave	Special Officers order dated 05.06.2003
6.	06.05.2005 to 31.05.2005	26	"No work no pay"	Special Officers order dated 17.02.2006 and confirmed by Review Authority. But, it is ordered by the Hon'ble High Court in W.P.No.41232 of 2006, that there cannot be two punishments in this case.
	Total	**928**		

6. As per the counter affidavit filed by the learned Additional Government Pleader, the initial gratuity calculation of the petitioner at the time of retirement as on 30.06.2010 was as below:

	Years	Month	Days
(i) Gross Service from 01.08.1979			

to 30.06.2010	30	10	29
(ii) Less unqualified service 928 days (from 01.12.1984 to 31.05.2005)	02	06	18
(iii) Net qualifying service	**28**	**04**	**11**

Gratuity calculation: Pay + D.A. X 30/26 X No. Of Years of service/2

Eligible gratuity of the petitioner : 26938 X 30/26 X 28/2

= Rs.4,35,152.00

The above gratuity amount was paid after deduction due by the petitioner on 09.07.2010.

7. With regard to column 4 and 5 in the memo filed by the petitioner's side, the additional counter affidavit filed by the respondents had admitted the same in respect of 312 days were treated as net qualifying service as per the award passed by the first respondent and with regard to Item No.6 namely, 26 days for the period from 06.05.2005 to 31.05.2005 was treated as 'Medical Leave' by the Special Officer and also paid the salary thereof on 01.07.2010 and after the said payment, it appears that the computation amount was recalculated as stated above the 312 days and 26 days in aggregate to the 338 days are now eligible for the further calculation of gratuity to the petitioner as below:

	Years	Month	Days
(i) Gross Service as stated above	30	10	29
(ii) Less unqualified service of 928 days by deducting 338 days as eligible for qualified the balance of unqualified service (590 days)	01	07	15
(iii) Net qualifying service	**29**	**03**	**14**

Revised eligible gratuity due to the petitioner : 26938 X 30/26 X 29/2

= Rs.4,50,693.00

7(a). The difference between the eligible gratuity amount is Rs.4,50,693/--Rs.4,35,152/-=Rs.15,541.00 as now, the difference in gratuity amount is being paid by the second respondent Bank to the petitioner through the cheque.

8. It is also seen that the gratuity in its etymological sense is a gilt, especially for service rendered or return for favours received. Hence, the periods from 01.12.1984 to 24.01.1985 for 55 days; from 18.06.1992 to 10.09.1992 for 85 days and from 03.11.1993 to 26.01.1995 for 450 days aggregating for 590 days were treated as 'loss of pay' for which, the period shall not be considered as the eligible duty period for net qualifying service

for the calculation of gratuity.

9. As per the award in A.R.C.No.203/2010-11, dated 31.05.2011, an aggregate amount of Rs.6,353/- was paid by the second respondent Bank to the petitioner through cheque. Further, one part of the prayer that as per the award passed by the first respondent as the Arbitrator under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 is now fulfilled by being paid to the petitioner towards the difference in gratuity amount of Rs.15,541.00/- and towards the deduction from his retirement benefit to the tune of Rs.6,353/- into the aggregate of Rs.21,894.00/- through cheque. Further, the period of continuous service for payment of gratuity to the petitioner in terms of Section 2-A of the payment of Gratuity Act, 1972 has been worked out and paid to the petitioner by way of cheque No.009450 for an amount of Rs.21,894.00/- dated 31.01.2023 which has been issued in favour of the petitioner herein.

10. Coming to the audit objections regarding the surrender leave salary of Rs.6,765/- with interest of Rs.10,756/- and children education concession of Rs.49,950/- along with interest of Rs.60,060/- were recovered

from the petitioner's retirement benefits in view of the audit objection that they are not entitled to. After perusing the counter affidavit, I find that the same is in accordance with law and thus a sum of Rs.21,894/-was arrived at in respect of the gratuity balance by way of cheque dated 31.01.2023 and the same was handed over to the petitioner pending the writ petition. The calculation is as under:

	Years	**Month**	**Days**
(i) Gross Service from 01.08.1979 to 30.06.2010	30	10	29
(ii) Deduct interrupted period of service as detailed below:			
(a) Leave on loss of pay from 01.12.1984 to 24.01.1985-55 days			
(b) Period not regularised 18.06.1992 to 10.09.1992-85 days			
(c) Leave on loss of pay 03.11.1993 to 26.01.1995-450 days	1	8	11
(d) No work No pay (Dies now) 06.05.2005 to 31.05.2005 – 26 days Total 616 Days			
Net qualifying service	29	2	18
	(or) 29 years		

Eligible amount of gratuity : Rs.26,938 X 30/26 X 29/2

Rs.4,50,693.00

Eligible amount of terminal benefits	:	Rs.4,50,693.00
Deduct amount of already paid	:	Rs.4,35,152.00
Balance	:	Rs.15,541.00
Add amounts allowed as per the award passed in ARC 203/2010-11 dated : 31.05.2011	:	Rs.6,353.00
Net amount paid	:	Rs.21,894.00

11. For the objection of audit with regard to the children education concession without there being any power to the second respondent Bank, the petitioner appears to have availed the loan and hence, the deduction made on this behalf is held to be sustainable in law and hence, I find that the balance of the amount as calculated *supra*, namely, Rs.21,894/- has already been paid pending the writ petition on 31.01.2003 and hence, I accept the counter filed by the first respondent. Accordingly, the writ petition is partly allowed in respect of the amount that was paid pending the writ petition as stated *supra*. With regard to the other claims, the petition shall stands dismissed.

12. In the result, the writ petition is partly allowed to the limited extent as discussed in the preceding paragraphs, where subsequent amount

has been paid by the second respondent Bank during the pendency of the writ petition. With regard to the other claims, the petition shall stand dismissed and liberty is given to the petitioner, if he is still aggrieved, to move appropriate Co-operative Societies before the concerned learned Principal District Court. No costs. Consequently connected miscellaneous petition is closed.

17.10.2023

Index: Yes / No
Internet: Yes / No
NCC : Yes/No
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To

1.The Judicial Magistrate No.I, Ariyalur.

2.The Additional District Sessions Judge, Ariyalur.

3.The Inspector of Police (Crime Branch),
Ariyalur Police Station,
Ariyalur.

4.The Additional Public Prosecutor,
Madras High Court, Madras.

RMT. TEEKAA RAMAN, J.

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Pre-Delivery Order made in
W.P.No.5558 of 2012
and
M.P.No.1 of 2012

17.10.2023