



W.P.No.10705 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.10705 of 2019 and
W.M.P.Nos.11191 & 11194 of 2019

The Management,
The Kancheepuram District Central
Co-operative Bank Ltd.,
Rep. by its Managing Director,
15-G, Sheikpet North Street,
Kancheepuram - 631 501.

... Petitioner

Vs.

- 1 The Joint Commissioner of Labour -II
(Appellate Authority under the
payment of Gratuity Act, 1972)
Office of the Deputy Commissioner of Labour,
D.M.S Compound, Teynampet,
Chennai 600 006.
- 2 The Assistant Commissioner of Labour -II,
(Controlling Authority under the
payment of Gratuity Act, 1972)
Office of the Deputy Commissioner of Labour,
D.M.S Compound, Teynampet,
Chennai 600 006.

3 A.John Batcha

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking a Writ of Certiorari, calling for the records culminating in the order of the 1st respondent made in P.G.A.No.110/2016, dated 05.06.2017 received on 12.06.2017 and quash the same confirming the order of the 2nd respondent dated 27.10.2015 made in P.G.Case No.38/2012.

For Petitioner : Ms.G.Thilakavathi, Senior Counsel
Assisted by
Mr.R.Gopinath

For Respondents
For R1 and R2 : Mr.D.Gopal,
Government Advocate

For R3 : No appearance

ORDER

Challenging the orders made in P.G.A.No.110/2016 passed by the 1st respondent / the Joint Commissioner of Labour -II (Appellate Authority under the Payment of Gratuity Act, 1972), the present Writ Petition is filed by the petitioner / Management.

2. The 3rd respondent is the General Manager of the Writ Petitioner Cooperative Bank and he was charged for misappropriation of fund to the tune of Rs.3,54,89,365/- and surcharge proceedings were



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initiated against him on 29.09.2011. Prior to this, he was placed under suspension with effect from 23.04.2011. On 31.05.2012, he attained the age of superannuation while the surcharge proceedings were pending for disposal and hence the Writ Petitioner Management did not pay him Gratuity of Rs.9,05,262/-. Therefore, the 3rd respondent filed a petition before the 2nd respondent for payment of gratuity amount. The said petition was allowed by the 2nd respondent vide orders dated 27.10.2015, as against which, the Management filed an appeal in P.G.A.No.110/2016 before the 1st respondent. The 1st respondent had confirmed the orders passed by the 2nd respondent. Aggrieved over the same, the Management has filed the present Writ Petition.

3. Ms.G.Thilakavathi, learned Senior Counsel assisted by Mr.R.Gopinath, learned counsel for the petitioner/Management contended that there are serious allegations against the 3rd respondent for misappropriation of funds to the tune of Rs.3,54,89,365/- necessitating the initiation of surcharge proceedings and it was disposed off on 07.03.2013. The charges against the delinquent were held proved.



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The Enquiry Officer, vide his orders dated 07.03.2013, had held that seven persons including the 3rd respondent herein were jointly and severally liable to pay the amount of Rs.3,54,89,365/-. She would therefore contend that when the 3rd respondent is liable to pay a sum of Rs.3,54,89,365/-, the Controlling Authorities viz., the Respondents 1 and 2 are wrong in directing the Writ Petitioner to disburse the Gratuity amount to them.

4. Though several opportunities have been given to the 3rd respondent, there is no representation on his behalf.

5. The learned Senior Counsel appearing for the petitioner also relied on the decision of this Court in ***W.P.No.20697 of 2013*** filed by one ***T.K.Babu (Public Interest Litigation) against the Central Bureau of Investigation, Rep. by Joint Director, Nungambakkam, Chennai and 5 ors.*** seeking to take criminal action against the persons mentioned in the above said surcharge proceedings and the said petition was dismissed by a learned Single Judge of this Court on 29.01.2016, as against which,



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the said T.K.Babu, filed ***W.A.No.394 of 2016*** before a Division Bench of this Court. The Division Bench, in its orders dated 17.06.2019 had held thus:

“15.....The State Investigating Agency which was dealing with the matters hitherto is directed to hand over the entire records pertaining to the investigation of the above cases which are available with them in favour of the Officer to be appointed by the Joint Director of the Central Investigation Bureau. We place on record the submissions made by the learned counsel for the cooperative bank that the cooperative department would extend all the cooperation in this regard.

16. Accordingly, the closure report in Cr.No.03 of 2013 stands set aside and the pending case in C.C.No.06 of 2011 on the file of the Judicial Magistrate-I, Poonamalee also stand closed. The records available on the file of this court would get transferred to the CBI to be handed over to the Office to whom the CBI entrusts the investigation of the cases. No outer limit is fixed for completion of the investigation as lot of investigation is required to be done in this case. We also make it clear that the investigating officer of the CBI shall also go into the issue of the alleged fire accident in crime No.427 of 2011



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said to have occurred leading to the destruction of the records. We further clarify that it is for the appropriate officer of the CBI either to entrust the investigation to Anti-Corruption Branch or Economic Offences Branch.”

6. In the circumstances, the Writ Petition is allowed and the orders passed by the 1st respondent in P.G.A.No.110.2016, dated 05.06.2017 and P.G.Case No.38/2012, dated 27.10.2015 passed by the 2nd respondent are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No
Speaking/Non-Speaking order
vum



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