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Writ Petition No.14440 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.14440 of 2022

and

WMP.Nos.13656, 25294 &25296 of 2022

The Management,
A.Kullampati Primary Agricultural
Co-operative Society Ltd.,
Rep. by its Secretary,
A.Kullampati & P.O.,
(via) Edapadi
Salem District – 637 101.

...Petitioner

Vs

1.P.Rajamanickam
S/o.Periannan

2.The Additional Commissioner of Labour,
[Appellate Authority U/s.41 of the
Tamil Nadu Shops and Establishments Acts, 1947]
District Collectorate Campus,
Salem – 636 001.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, call for the records of the order of the



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Additional Labour Commissioner, Coimbatore, (Under the Payment of Gratuity Act, 1972) 2nd respondent herein made in P.G.A.No.06/2022 dated 24.03.2022 on the file of the 2nd respondent herein and quash the same.

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents : Mr.S.Ayyadurai [R1]

ORDER

This writ petition has been filed challenging the order of the second respondent, viz., the Additional Commissioner of Labour, Coimbatore, made in P.G.A.No.06/2022 dated 24.03.2022, allowing the appeal filed by the first respondent and directing the petitioner to pay the gratuity of a sum of Rs.2,72,438/- with 10% interest from 09.05.2008.

2. The case of the petitioner is that the first respondent was responsible to verify and ensure that the sales amount of the ration shops are properly paid by the respective salesmen and he has to account and check the same with the bills.

3. A verification was made in two fair price shops on 24.02.2002 and



it was found in the bill book relating to one of the fair price shops that 200 bills have been removed from the bill book. That apart, the daily sales records in respect of fair price shops were verified and it was found that 1000 litres of kerosene was not entered in the stock register maintained in the fair price shops.

4. The main charge that was made against the petitioner was that he was entrusted with the duty of verifying and supervising and he had failed in his duty and the same has resulted in the salesmen committing irregularities in two fair price shops.

5. Charge memo was issued against the first respondent on 25.06.2003 and the first respondent submitted his explanation. A domestic enquiry was conducted and the Enquiry Officer submitted the report on 18.10.2003 with a finding that all the charges have been proved. Further explanation was obtained from the first respondent based on the enquiry report and ultimately, suspension was imposed as a punishment through order dated 03.01.2004. Aggrieved by the same, the first respondent filed a revision u/s.153 of the Tamil Nadu Cooperative Societies Act. By order



dated 30.11.2004, the punishment was set aside and the matter was remanded back to the file of the petitioner. A fresh enquiry was conducted and the same resulted in the punishment of termination from service. It is brought to the notice of this Court that the first respondent has filed an appeal against the order of termination and the same is pending.

6. The first respondent, in the mean time, attained superannuation on 30.06.2011. He filed a claim petition before the Controlling Authority under the Payment of Gratuity Act. The Controlling Authority, through an order dated 15.07.2021, dismissed the petition on the ground that the first respondent was terminated based on charges, which involve moral turpitude and hence, the petitioner is entitled to withhold the gratuity u/s.4(6) of the Payment of Gratuity Act.

7. Aggrieved by the above order, the first respondent filed an appeal before the second respondent and the second respondent, through the impugned order dated 24.03.2022, allowed the appeal and directed the petitioner to pay the gratuity amount along with interest. Aggrieved by the same, the present writ petition has been filed before this Court.



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8. Heard Mr.L.P.Shanmugasundaram, learned counsel for petitioner and Mr.S.Ayyadurai, learned counsel appearing for the first respondent.

9. The short issue that arises for consideration in the present case is as to whether the alleged misconduct for which a charge memo was issued against the first respondent and was terminated from service, involve moral turpitude and as a result, the petitioner is entitled to withhold payment of gratuity u/s.4(6) of the Payment of Gratuity Act.

10. The specific charge against the first respondent was that he was assigned with the duty of verification and supervision of fair price shops and due to gross negligence of the first respondent, irregularities were committed and as a result, the petitioner's Society suffered loss. Therefore, it was contended on the side of the petitioner that the gratuity amount is liable to be forfeited by the petitioner in exercise of powers u/s.4(6) of the Act.

11. Learned counsel appearing for the first respondent submitted that the above issue was considered by the second respondent in detail and it



was found that the nature of charge that was made against the first respondent did not fall within the requirements of Section 4(6) of the Payment of Gratuity Act. Learned counsel further submitted that wherever the gratuity amount is proposed to be withheld or forfeited under Section 4(6) of the Payment of Gratuity Act, an employer is supposed to follow the procedure of notice of forfeiture or withholding of gratuity and an order has to be passed after affording opportunity to the workmen. Without adopting this procedure, there is no question of any automatic withholding or forfeiture of the gratuity amount. Learned counsel for the first respondent also drew the attention of this Court to the judgment of the Apex Court relied upon by the second respondent while allowing the appeal.

12. For proper appreciation, Section 4(6) of the Payment of Gratuity Act is extracted hereunder:

"(6) Notwithstanding anything contained in sub-section (1), -

(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."

13. On a careful reading of the above provision, it is seen that there are two scenarios that can arise to enable the employer to either adjust from the gratuity amount the damage or loss suffered by them or to forfeit the gratuity if the employee had involved in riotous or disorderly conduct or had involved in an act of moral turpitude.

14. In the present case, the petitioner is specifically placing reliance upon Section 4(6)(b)(ii) of the Payment of Gratuity Act and it is contended that the first respondent was terminated from service for an act, which constitutes/involves moral turpitude.

15. It is now too well settled that an order of forfeiture will have to be specifically passed by the employer and it cannot be on the basis of a mere presumption. Normally, an order of forfeiture is passed along with the order of termination wherever the charge involves a moral turpitude. Therefore,



the amount that is proposed to be withheld or forfeited under Section 4(6) of the Payment of Gratuity Act is supposed to be done by a proper procedure to be followed by the employer by issuing notice of proposal of forfeiture and calling upon a reply from the workman and thereafter, considering the same, a specific order of forfeiture/withholding of the gratuity has to be passed. This order must ultimately satisfy the requirements of Section 4(6) of the Payment of Gratuity Act.

16. In the present case, the petitioner did not admittedly follow this procedure. The petitioner wanted the authority to presume that there is a forfeiture/withholding of the gratuity amount based on the charges for which, the first respondent was terminated. As rightly held by the second respondent, the said forfeiture or withholding of gratuity cannot be on the basis of mere presumption.

17. In the light of the above discussion, this Court does not find any ground to interfere with the impugned order passed by the second respondent and the same is supported by cogent reasons.



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Accordingly, this writ petition stands dismissed. There shall be a direction to the petitioner to comply with the order passed by the second respondent within a period of six (6) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

08.02.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To
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N.ANAND VENKATESH, J

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