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W.P.No.18230 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.18230 of 2018 &
W.M.P. No.21537 of 2018

Vellore District Central Cooperative Bank,
Represented by its Managing Director,
No.3, Officers Line, Anna Salai,
Vellore 632 001.

... Petitioner

Vs.

1. The Additional Commissioner of Labour
The Appellate Authority under the
Payment of Gratuity Act,
6th Floor, DMS Compound,
Teynampet, Chennai 600 001.
2. The Assistant Commissioner of Labour,
The Controlling Authority under the
Payment of Gratuity Act,
Office of the Deputy Commissioner of Labour
Vellore 01

3. M.Gurunathan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the records
of the first respondent pertaining to the orders dated 25.05.2018 in P.G.A.



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No.123/2016, quash the same and consequently direct the disbursement of gratuity as per the order of the 2nd respondent dated 31.10.2016 subject to the finality of the surcharge proceedings pending before this Court in W.P.Nos.7326/2003 and W.M.P. No.1/2011 in W.P. No.6648/11 as per the directions dated 14.06.2018 made in W.A. No.49/2015.

For Petitioner : Mrs. G.Thilagavathi
Senior Counsel
for M/s. R.Gopinath
For R1 & R2 : Mr.M.Shahjahan
Special Government Pleader
For R3 : Mr.R.Arumugam

ORDER

This Writ Petition is filed by the District Central Cooperative Bank, which is registered under the Tamil Nadu Cooperative Societies Act, 1983. The third respondent was an Assistant Manager in the petitioner Bank and retired from services on 31.05.2006. The 3rd respondent filed P.G.No.234/2013 before the Controlling Authority under the Payment of Gratuity Act 1972 claiming Rs.6,44,780/- as gratuity for the services rendered by him for 35 years. However, the 3rd respondent was proceeded against by the petitioner Bank in Surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act for shortage of cash to the tune of Rs.4,35,000/-. In the relieving order dated 30.05.2006 itself, it was clearly mentioned that the terminal benefits due to him are withheld till the



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completion of surcharge proceedings. Criminal action was also initiated by the petitioner Bank against the 3rd respondent and two other employees.

Therefore, the gratuity payable to the 3rd respondent was not settled till the conclusion of the legal proceedings in this Court.

2. In the meanwhile, based on the orders in PG 234/2013, the Controlling Authority passed an order on 29.08.2016 directing the petitioner Bank to pay Rs.6,44,780/- as gratuity with interest @ 10%. However, on 31.10.2016, the Controlling Authority revised the amount of gratuity payable as Rs.3,50,000/- as per Section 4(3) of the Gratuity Act 1972 (herein after referred to as 'the Act'). This revised order was challenged by the 3rd respondent before the Appellate Authority, the Additional Commissioner of Labour, Chennai, in P.G.A No.123/2016. The 3rd respondent had also pointed out that in many other cases the ceiling of gratuity was exceeded for other employees by following the circular dated 30.06.2004 as per Section 4(5) of the Act for better terms of gratuity.

3. This impugned order of the appellate authority is assailed in this Writ Petition.



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4. Mrs. G.Thilagavathi, learned Senior Counsel assisted by

Mr. R.Gopinath, learned counsel for the writ petitioner would contend that the Controlling Authority had, by mistake, initially issued an order dated 29.08.2016 directing the respondent to pay a sum of Rs.6,44,780/- with 10% interest as gratuity without keeping in mind the ceiling prescribed under Section 4(3) of the Act. It was also argued that the Controlling Authority on realising his mistake, issued a revised order on 31.10.2016 restricting the quantum of gratuity to Rs.3,50,000/- as per Section 4(3) of the Act. It was further contended that the 3rd respondent did not object to the quantum of amount as he had claimed only as per the Act and not based on any better terms by following the circular dated 30.06.2004 issued by the Registrar of Co-operative Societies. It was also further contended that his claim for a higher amount citing the circular 30.06.2004 is clearly an after thought and cannot be entertained at any cost. Therefore, according to him the order of appellate authority in P.G.A. No.123/2016 is erroneous and needs to be set aside.

5. Per contra Mr.R.Arumugam, learned counsel for the 3rd respondent contended that the contents of the circular dated 30.06.2004 is very clear on when the ceiling of gratuity stipulated in the Section 4(3)



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of the Act be breached especially as per the bylaws of the District Central Co-operative Bank which has been approved by the Government. The clause which has been approved with regard to the payment of gratuity has been overlooked conveniently by the controlling Authority thereby adopting a discriminating approach amongst peer employees who retired on the same date. He therefore prayed for dismissal of the writ.

6. It is contended by Controlling Authority (2nd respondent) that there was a bonafide mistake while disposing P.G.234/2013 filed by the 3rd respondent (employee) before the Controlling Authority. The Controlling Authority vide his order dated 29.08.2016 had allowed the gratuity of Rs.6,44,780/- and thereafter a couple of months later reversing it to Rs.3,50,000/- without even explaining how such a mistake crept into his first order of sanction of gratuity. This mistake cannot be termed as a typographical error or a bonafide mistake because the Controlling Authority is in charge of Disbursement of gratuity and therefore the contention of the learned counsel for the petitioner Bank that it was a bonafide error that the Controlling Authority missed to note the ceiling of gratuity as per Section 4(3) of the Act is not acceptable. The contention of the petitioner Bank that there was a surcharge



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proceedings against the 3rd respondent which was the reason for the belated disbursement of gratuity cannot be totally accepted on the face of it as that alone was not the bone of contention in the present case. The crux of the issue was why there was discrimination amongst employees who retired more or less at the same time in the matter of quantum of gratuity. Moreover, it was also the contention that the Controlling Authority definitely altered the amount of gratuity.

7. In order to have a better clarity on the provisions made in the circular dated 30.06.2004 issued by the Registrar of Co-operative Societies, the same is extracted hereunder:

"2) Insofar as District Central Cooperative Banks are concerned, they are permitted to pay gratuity in accordance with the Group Gratuity cash Accumulation scheme of L.I.C. of India. In the special bylaws of the District Central Cooperative Banks approved by the Government the following clause has been approved with regard to the payment of gratuity.

"The bank may provide for payment of gratuity to the employees in accordance with the provisions contained in



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the payment of Gratuity Act, 1972 or in accordance with the group gratuity, a non accumulation scheme of LIC of India, whichever is beneficial to the employees."

8. The order of the Appellate authority is sound and with proper reasoning. It also clearly spells out that discrimination made in the quantum of gratuity paid to different employees who relieved on or before 31.05.2006 and therefore I do not find any merit in the Writ Petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently connected Writ Miscellaneous Petition is closed.

18.10.2023

bga

Index : yes/no

Speaking /Non speaking Order

To

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R.HEMALATHA, J.

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