IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
28.08.2023	25.09.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.19792 OF 2023
W.P. NO. 13200 & 20808 OF 2021
AND
W.M.P. NOS.14004, 14007 & 19106 OF 2023

W.P. NO. 19792 OF 2023

The Chairman
Tamil Nadu Grama Bank
Head Office, 6, Yercaud Road
Hasthampatti, Salem 636 007. .. Petitioner

- Vs -

1. The Appellate Authority under
The Payment of Gratuity Act, 1972 &
Dy. Chief Labour Commissioner (Central)
Chennai, O/O of Dy. Chief Labour Commissioner
(Central), 5th Floor, Shastri Bhawan
Chennai 600 006.

2. The Controlling Authority under the
Payment of Gratuity Act, 1972 &
Regional Labour Commissioner (Central)
Madurai (I/C), O/O of the Labour
Commissioner (Central), Kanaga Apartments

Suite No.III, I Floor, 13-A Lady Doak
College Road, Chinna Chokkikulam
Madurai 625 002.

3. J.Mathavaraj .. Respondents

W.P. NO. 13200 OF 2021

J.Madavaraj .. Petitioner

- Vs -

The General Manager – Admin
Tamil Nadu Grama Bank
No.6, Yercaud Road
Hasthampatti, Salem 636 007. .. Respondent

W.P. NO. 20808 OF 2021

J.Mathavaraj .. Petitioner

- Vs -

The General Manager – Admin
Tamil Nadu Grama Bank
No.6, Yercaud Road
Hasthampatti, Salem 636 007. .. Respondent

W.P. No.19792 of 2023 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 1st respondent in GA No.10 of 2023 confirming the order of the 2nd respondent in PG Application No.16 of 2022 quash the order of the 1st respondent dated 26.05.2023 and consequently direct the 1st respondent to refund the sum of Rs.18,06,746/- deposited with the 2nd respondent with interest.

W.P. No.13200 of 2021 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records in HO/HRM/114/2021-22 dated 30.04.2021 issued by the respondent, quash the same and consequently direct the respondent to settle all the terminal benefits with interest to the petitioner within a time frame.

W.P. No.20808 of 2021 filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondent to disburse my terminal benefits including Pension, Gratuity and encashment of earned leave by considering my representation dated 30.06.2021 within a time frame.

For Petitioners	:	Mr. Raghunathan, for M/s.T.S.Gopalan & Co. In WP 19792/2023 Ms. D.Geetha in WP 13200 & 20808 of 2021
For Respondents	:	Ms. Rita Chandrasekaran, for M/s.Aiyar & Dolia in WP 13200 & 20808 of 2021

Ms. D.Geetha for R-3 in WP 19792/23
Mr. S.Janarthanam, SPCGC for R2 in WP 19792/2023

COMMON ORDER

Assailing the order passed by the appellate authority, viz., the 1st respondent, directing payment of gratuity to the 3rd respondent holding that the petitioner cannot proceed with the disciplinary proceedings initiated after the superannuation of the employee, the present petition in W.P. No.19792/2023 has been filed. The 3rd respondent has filed the other two writ petitions, one challenging the order of the respondent therein withholding the terminal benefits and for a direction to pay the terminal benefits and the other writ petition to consider the representation of the 3rd respondent dated 30.06.2021 and to disburse the terminal benefits, including pension, gratuity and encashment of earned leave to the 3rd respondent.

2. As all the writ petitions revolve around the same issue, they are taken up and disposed of by this common order. For brevity, the petitioner/Management will be referred to as petitioner and the petitioner/3rd respondent would be referred to as workman.

3. It is the case of the petitioner that the workman was working as Clerk in Minnampalli Branch since October, 2019 till his date of cessation on 30.04.2021. On 01.03.2021, the Retired Employees, who had formed a Sangam under the name and style of Tamil Nadu Grama Bank Retirees Sangam to take up the cause of retired employees, organised a protest meeting, observing dharna and shouting slogans by assembling in front of the Head Office at Hasthampatti, Salem. The 3rd respondent had not only participated in the meeting, but had also vociferously raised slogans and gave speeches against the Bank, including its Chairman. The dharna had taken place at 9.30 a.m. on 1.3.2021, which was a working day and, therefore, the participation of the workman in the dharna during working hours is impermissible. It is the further case of the petitioner that by about 1.00 p.m., the crowd led by the workman entered the premises of the Head Office and went near the Chairman's Office located in the first floor by causing hindrance to the movement of the employees working and only after they left, the employees, including the Managers, Chairman and other employees could leave the area.

4. It is the further case of the petitioner that with respect to 1.3.2021, the workman submitted leave application on 3.3.2021 and had not applied for leave or permission prior to 1.3.2021. The act of the workman was riotous and disorderly behaviour in the office premises during the working hours, which warrant major punishment in the event of the charge being proved.

5. On 10.3.2021, the workman was issued with a memo referring to his conduct on 1.3.2021 and to show cause why disciplinary action shall not be initiated against him to which reply dated 16.3.2021 was given denying the charges. Not satisfied with the explanation, disciplinary action was initiated by issuing charge sheet on 30.03.2021 and the reply to the charge sheet also not being satisfactory, further action was contemplated. However, as the workman had reached the age of superannuation on 30.04.2021, the workman was issued with a notice of cessation as per Regulation 45 of the Service Regulations.

6. It is the further case of the petitioner that in May, 2021, the workman filed W.P. No.13200 of 2021 on the ground that he had already

crossed the age of superannuation and, therefore, the petitioner cannot proceed with disciplinary action in which interim stay was granted on 24.06.2021.

7. It is the further case of the petitioner that Regulation 45 of the Tamil Nadu Grama Bank Service Regulations (for short 'Service Regulations') provides for continuance of disciplinary proceeding even after the date of superannuation of an employee and the employee would not be entitled for any pay and allowances after the date of superannuation and also would not be entitled for payment of retirement benefits till final order is passed in the disciplinary proceedings, except the self-contribution of the employee to the Contributory Provident Fund.

8. It is the further case of the petitioner that the explanation to the said clause provides that encashment of privilege leave and gratuity may also be withheld till the completion of the disciplinary proceedings and final order is passed by the competent authority, which shall be subject to the final order of the competent authority.

9. It is the further case of the petitioner that Regulation 44 of the Tamil Nadu Grama Bank Pension Regulations (for short 'Pension Regulations') provides for payment of provisional pension. It is the further case of the petitioner that the petitioner Bank's Regulation, the Regulations of RBI, NABARD and Indian Bank, which is the sponsor Bank similarly empowers the respective competent authority to withhold the payment of gratuity of an employee till the conclusion of the departmental proceedings initiated against an employee. Moreover, Rule 8 (4) of the CCS (Pension) Rules, 2021 also provides that no gratuity shall be paid to a government servant till the conclusion of the departmental or judicial proceedings.

10. It is the further case of the petitioner that in the event of dismissal from service for the misconduct for which disciplinary proceedings was initiated against the employee, the punishment of dismissal imposed on the employee would entail losing of pension, which necessitated the passing of the aforesaid Regulations and that the said Regulations are not inconsistent with each other nor are they inconsistent with Section 30 of the Regional

Rural Banks Act. It is the further case of the petitioner that Regulation 45 of the Service Regulation and Regulation 44 of the Pension Regulations are not inconsistent with each other.

11. It is the further case of the petitioner that invoking Regulation 45 of the Service Regulation, the terminal benefits of the workman were withheld, however, invoking Regulation 44 of Pension Regulations, the workman was paid provisional pension and gratuity alone was withheld pending conclusion of the disciplinary proceedings.

12. Subsequent to the order of stay obtained by the workman, the workman approached the 2nd respondent by filing an application u/s 7 of the Payment of Gratuity Act claiming gratuity on which the 2nd respondent passed orders on 18.10.2022 allowing the claim of the workman for payment of gratuity holding that there was inconsistency between Regulation 45 of the Service Regulations and Section 14 of the Payment of Gratuity Act and that the Payment of Gratuity Act should prevail.

13. The petitioner, while preferring the appeal, on 6.12.2022, deposited the amount of gratuity with the 2nd respondent and the appeal was heard and disposed of by the 1st respondent by order dated 26.5.2023 holding that after 30.04.2021, the workman ceased to be in service as there was inconsistency between Regulation 45 of the Service Regulations and Section 14 of the Payment of Gratuity Act. Aggrieved by the said order, the present petition in W.P. No.19792/2023 is filed by the petitioner/Management, while the other two writ petitions have been filed by the workman claiming terminal benefits.

14. Learned counsel appearing for the petitioner submitted that the order passed by the authorities holding that there is inconsistency between Regulation 45 and Section 14 of the Payment of Gratuity Act is wholly misconceived as the authorities have not adverted to the respective materials before rendering such a finding.

15. Learned counsel for the petitioner submitted that Service Regulations and Pension Regulations have been framed by virtue of powers conferred u/s 30 of the Regional Rulal Banks Act, 1976 (for short 'the Act') and

such being the case, the Service Regulation having provided for continuance of disciplinary proceedings even after the superannuation of the employee and withholding of the terminal benefits of the workman is permissible and justified.

16. Drawing the attention of this Court to Section 23-A of the Act, which provides for Amalgamation of Regional Rural Banks, learned counsel submits that the said provision provides the transferee Regional Rural Bank (for short 'RRB') with authority and privileges as specified in the notification of amalgamation and in exercise of the said authority, the Service Regulations and Pension Regulations have been framed and, therefore, such Regulations framed are equally applicable to the employees of the transferor RRB, as is evidenced from clause (a) of sub-section 3 of Section 23-A.

17. Learned counsel appearing for the petitioner submitted that when Section 23-A had clothed power to exercise authority on the employees and by virtue of Section 30 of the Act, the Regulations have been framed,

Regulation 45 of Service Regulation cannot be said to be inconsistent with Section 14 of the Payment of Gratuity Act.

18. Learned counsel further submitted that clause 7 of the Gazette Notification relating to Amalgamation provides that the employees of the transferor RRB shall continue in the transferre RRB on the same remuneration and terms and conditions of service, or, as the case may be, by which they were governed immediately before the effective date of amalgamation. The Amalgamation of two banks having been permitted and subsequently, by virtue of the powers conferred u/s 30, the Board of Directors have framed the Service Regulations, the Regulations are applicable to all the employees.

19. Further, it is submitted that Regulation 45 of the Service Regulations and Regulation 44 of the Pension Regulation provide that the employee should not suffer, for which purpose, it is couched in such a manner that the employee would not be deprived of both the retiral benefits, viz., pension and gratuity in case of continuance of disciplinary proceedings. Therefore, the inconsistency alleged to be in the Regulations is wholly

misconceived and there is no proper application of mind. Therefore, the order passed by the 1st and 2nd respondents is liable to be interfered with.

20. Learned counsel for the petitioner in support of the aforesaid contentions, placed reliance upon the decision of the Apex Court in ***The Chairman, Mahanadi CoalfieldsLtd. – Vs – Rabindranath Choubey (2020 (18) SCC 71)***.

21. Per contra, learned counsel appearing for the workman, countering the aforesaid submissions contended that the authorities, viz., respondents 1 and 2 have rightly appreciated the Regulations vis-a-vis the Act and have come to the right conclusion that there is inconsistency between Regulation 45 and Section 14 of the Payment of Gratuity Act and, therefore, have rightly issued the directions, which does not warrant any interference.

22. It is the further submission of the learned counsel that the Service Regulations on the basis of which the workman is denied the terminal benefits has not been approved by the Central Government as mandated u/s 30 of the

Act nor notified in the Government Gazette and, therefore, the same has no statutory value and cannot be the basis to deny the terminal benefits of the workman and only the Payment of Gratuity Act would prevail.

23. It is the further submission of the learned counsel that Regulation 72 of the Service Regulations provides for forfeiture of gratuity in case of dismissal on account of misconduct, which has caused financial loss and not otherwise. In the case of the workman, the misconduct not having caused any financial loss, the withholding of gratuity on the basis of Regulation 45 is wholly unreasonable and unjustified.

24. Both the Controlling Authority and the Appellate Authority have threadbare analysed the Regulations vis-a-vis the Payment of Gratuity Act and have come to the conclusion that the withholding of gratuity is against the provisions of the Payment of Gratuity Act, which alone would prevail and not the Regulations, which does not have the concurrence of the Central Government and, therefore, the said orders does not require any interference.

25. In support of the aforesaid submissions, learned counsel for the workman placed reliance on the following decisions :-

"i) Bhagirathi Jena – Vs – Board of Directors, OSFG (1999 (2) SCR 354);

ii) Jaswant Singh Gill – Vs – M/s.Bharat Coking Coal Ltd. & Ors. (2007 (1) SCC 663);

iii) A.John Durain – VS – The Registrar of Co-operative Societies (W.P. (MD) No.4627/2008);

iv) C.Mathesu – Vs – The Secretary to Government (2013 (3) CTC 369);

v) P.Muthusamy – Vs – Tamil Nadu Cements (2006 (4) MLJ 504);

vi) M.K.Krishnan – Vs – The Director of Veterinary Services (W.P. No.12837/2006)"

26. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

27. Before adverting to the various provisions on the basis of which the orders impugned herein have come to be passed, the scheme of formation of

the RRB's and the functionality and conditions of service requires to be perused so as to holistically consider the whole issue.

28. Regional Rural Banks were constituted under the Act for developing rural economy for the purpose of development of agriculture, trade, commerce, industry and other productive activities in rural areas to provide credit and other facilities particularly to small and marginal entrepreneurs, agricultural labourers, artisans, etc. The National Bank for Agriculture and Rural Development (NABARD) was specified to be the regulating and supervising establishment of RRB besides providing and regulating the credits to RRB.

29. Initially, in 1977, Pandyan Grama Bank (sponsored by Indian Overseas Bank) was formed with Headquarters at Sattur and in 1985, Adhiyaman Grama Bank was formed with Head Quarters at Dharmapuri. In 1986, Vallalar Grama Bank was formed with Head Quarters at Cuddalore. In the year 2006, Adhiyaman Grama Bank and Vallalar Grama Bank were amalgamated to form Pallavan Grama Bank (sponsored by Indian Bank) with

Head Quarters at Salem. Pandyan Grama Bank and Pallavan Grama Bank were decided to be amalgamated and, accordingly, Notification was issued by the Central Government on 1.4.2019 to the amalgamation, which notification reads as under :-

> *"Whereas the Central Government, after consultation with the National Bank for Agriculture and Rural Development (NABARD), the Government of Tamil Nadu and the Indian Bank and Indian Overseas Bank, being the Sponsor Banks of Pallavan Grama Bank and Pandyan Grama Bank, is of the opinion that it is necessary in the public interest and in the interest of the development of the area served by the aforesaid Regional Rural Banks and also in the interest of the said Regional Rural Banks themselves, that the said Regional Rural Banks should be amalgamated into a single Regional Rural Bank;*
>
> * * * * * * *
>
> *1. Pallavan Grama Bank and Pandyan Grama Bank (hereinafter referred to as "the transferor Regional Rural Banks") sponsored by the Indian Bank and Indian Overseas Bank in the State of Tamil Nadu are hereby amalgamated into a single Regional Rural Bank which shall be called as Tamil Nadu Grama Bank (hereinafter referred to as "the transferee Regional Rural Bank") with its head office at Salem under the sponsorship of Indian Bank."*

30. Clause 7 in the said Notification dated 28.1.2019, relates to the service of all employees and the same being integral to the consideration of the issue before this Court, is quoted hereunder for reference :-

> *"7. (a) The service of all the employees of the transferor Regional Rural Banks (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947) shall continue in the transferee Regional Rural Bank at the same remuneration and on the same terms and conditions of service, or, as the case may be, by which they were governed immediately before the effective date of amalgamation."*

31. The aforesaid notification was issued on the basis of Section 23-A of the Act and more particularly the aforesaid clause 7 was on the basis of clause (a) of sub-section (3) of Section 23-A and the same is also quoted hereunder :-

> *"(3) Every notification issued under sub-section (1) may also provide for all or any of the following matters, namely –*
>
> *(a) the continuance in service of all the employees of the transferor Regional Rural Banks (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947) are specifically mentioned in*

the notification) in the transferee Regional Rural Bank at the same remuneration and on the same terms and conditions of service, which they were getting or, as the case may be, by which they were being governed, immediately before the date on which the amalgamation takes effect."

32. Therefore, from the above it is clear that the notification dated 28.12019 for amalgamation is in consonance with Section 23-A of the Act. Further, from the above clause, it is evident that till such time any Rules or Regulation is framed by the newly amalgamated entity, viz., the Tamil Nadu Grama Bank, the service conditions of the employees of the transferor bank would be on the basis of the terms and conditions of service as was in existence prior to such amalgamation.

33. Pursuant to the amalgamation, Section 30 provides power to the amalgamated entity, viz., the Tamil Nadu Grama Bank to frame Regulations and the same reads as under :-

"30. Power to make regulations.- (1) The Board of Directors of a Regional Rural Bank may, after consultation with the Sponsor Bank and the [National Bank] and with the previous sanction of the Central Government, by notification

in the Official Gazette make regulations, not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

* * * * * * *"

34. Twin conditions have been laid down u/s 30 of the Act for the purpose of making regulations, the first being that there should be a consultative process made by the Board of Directors of the Regional Rural Bank with the Sponsor Bank and the National Bank and secondly previous sanction of the Central Government should be obtained for the purpose of making the regulation.

35. It is only on the ground that the previous sanction of the Central Government has not been obtained, the Service Regulation is alleged to have no statutory force, which also formed the basis of the rendering of findings by the authorities below. In this context, this Court has to find out whether the Service Regulation and Pension Regulation have the statutory force so as to be made enforceable against the workman.

36. No doubt true that twin conditions, aforesaid, have been laid down u/s 30 of the Act. However, it is borne out by record, as is evident from the notification that NABARD is the regulatory and supervisory authority insofar as the RRBs are concerned. In this backdrop, the various RRBs have sought for various clarifications from NABARD for which vide letter dated 25.3.2019, certain clarifications were issued the material part is reflected in S. Nos.14 and 15 of the said letter, which is quoted hereunder :-

14	*Re-notification of Pension Regulations in case of amalgamated RRBs*	*After amalgamation, the name of RRB in the Pension Regulations would have to be changed by way of amendment to Pension Regulations*
15	*Notification of Service Regulations as per RRB Section 30 of RRB Act, 1976*	*RRB Service Regulations are framed under Section 30 of RRB Act, 1976. After amalgamation, the name of RRB in the Service Regulations would also have to be changed by way of amendment to Service Regulations. This has to be done in accordance with the procedure stipulated under Section 30 of RRB Act.* *No permission is required from NABARD for such notifications*

37. Further to the above communication, by letter dated 3.5.2019, NABARD had written to all the Chairman of the amalgamated RRBs, which has been placed before this Court, has relevance to the issue on hand and the same is quoted hereunder :-

> *"Please refer to our Ref. No.NB.IDD/1506/316 (Amalgamation/2018-2019 dated 25 March 2019 on captioned subject. In this connection you are advised to refer item no 14 and 15 related to issue of notification of Pension and Service Regulation in case of amalgamated RRBs.*
>
> *It is advised/clarified that amendment in these regulation for the amalgamated RRB will be passed and adopted by BOD of RRB only. No further notification in Gazette is necessary as the notification of GOI on amalgamation covers all aspects of transfer of asset, liabilities, duties and obligation of transferor bank to transferee bank."*

38. From the above communication, it is evident that the first condition with regard to consultation with National Bank, viz., NABARD had taken place and insofar as the second condition with regard to previous sanction of Central Government is concerned, NABARD has clearly spelt out that the Central Government, even in the notification on amalgamation had covered all

the aspects with respect to the transferor and transferee bank and, therefore, no separate previous sanction is required from the Central Government. Therefore, the claim of the workman that the Service Regulation and Pension Regulation do not have statutory force is wholly misconceived and erroneous, as the said Regulations do have statutory force, as the same has been approved by the Central Government as well as by NABARD even as early as at the time of passing the notification for amalgamation.

39. Further, one other aspect also which emerges from the above letters of NABARD is that the name of the transferor bank in the Service Regulations should be changed has been clearly spelt out by NABARD, which clearly reveals that the Regulations which were enforced by the transferor bank and the transferee bank were one and the same and only the name of the newly amalgamated Bank, viz., Tamil Nadu Grama Bank is to be incorporated in the Service Regulations. Therefore, when Regulation 45 was all along available even in the transferor Bank, clause 7 of the Notification would come into play, even otherwise, as the workman would be covered by the earlier Service Regulations with the transferor bank, thereby, Regulation

45 presently available, which was even available with the transferor bank would still stand attracted in the case of the workman.

40. The issue now revolves around the payment of gratuity, which, as per the finding rendered by the authorities, is based on the Payment of Gratuity Act and Regulation 72 of the Service Regulations. It is also to be pointed out that the authorities had relied on Regulation 45 relating to disciplinary proceedings, which is the root, which had led to the withholding of gratuity under Regulation 72 and, therefore, Regulation 45 and 72, for an in-depth consideration are quoted hereunder :-

> ***"45. Disciplinary Proceedings after retirement –*** *(1) An officer or employee, who is under suspension on a charge of misconduct and who attains the age of superannuation, shall be deemed to be in service even after the age of superannuation for the specific purpose of continuation and conclusion of disciplinary proceedings and issue of final orders thereon.*
>
> *(2) The officer or employee who is under suspension shall not be eligible for any subsistence allowance for the period beyond the date of superannuation.*
>
> *(3) The officer or employee against whom disciplinary proceeding has been initiated shall cease to be in service on*

the date of superannuation but the disciplinary proceeding shall continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof.

(4) The officer or employee against whom disciplinary proceedings has been initiated shall not receive any pry and/or allowances after the date of superannuation and also not be entitled for the payment of retirement benefits till the proceeding is completed and final order is passed thereon except his own contribution to Contributory Provident Fund (CPF).

Explanation : For the purposes of this regulation, the normal retirement benefits such as encashment of privilege leave and gratuity may be withheld till the completion of the disciplinary proceeding and passing of final order by the Competent Authority and the release of benefits shall be as per the final order of the Competent Authority.

72. Gratuity – *(1) An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 (39 of 1972) or as per sub-regulation (2), whichever is higher.*

(2) Every officer or employee shall be eligible for gratuity on, -

(a) retirement,

(b) death,

(c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or

(d) resignation after completing 10 years of continuous service, or

(e) termination of service in any other way except by way of punishment after completion of 10 years of service:

Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.

**　*　*　*　*　*　*"*

(Emphasis Supplied)

41. A finding has been rendered by the authorities below that the workman was never placed under suspension on a charge of misconduct and, therefore, denial of gratuity is not acceptable as per Payment of Gratuity Act. However, this Court is at a loss to understand as to how such a finding has been arrived at, without taking into consideration Regulation 45.

42. As extracted supra, Regulation 45 (1) pertains to an employee who is placed under suspension pursuant to a charge of misconduct. In case the employee is not placed under suspension, yet disciplinary proceedings are undertaken, the same stands covered under Regulation 45 (3), which provides

that the employee against whom disciplinary proceeding has been initiated, the said employee would cease to be in service on the date of superannuation but the disciplinary proceeding shall continue as if he was in service until the proceedings are concluded and final order is passed. Therefore, there is no necessity for keeping an employee under suspension to enforce Regulation 45. Even if an employee is continued in service, invoking Regulation 45 (3), the employee could be proceeded with on a disciplinary charge. Therefore, the said finding of the authorities is wholly perverse and is against the Regulation of the petitioner.

43. The appellate authority has gone on to hold that the petitioner herein could invoke Section 4 (6) (a) and (b) of the Payment of Gratuity of Act for recovering the damage caused to the property of the bank, but since no property damage is pointed out, the appellate authority has held that withholding of gratuity is impermissible and to sustain the said finding, certain decisions of the Supreme Court have been taken aid of.

44. However, the said finding arrived at by the appellate authority, in the present context of the case, is wholly fallacious and unacceptable. The above finding of this Court is referenced to Section 4 (6) (a) and (b) of the Payment of Gratuity Act, which is quoted hereunder :-

> *"4. Payment of Gratuity – Gratuity shall be payable to an employee .....*
>
> * * * * * * *
>
> *(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) <u>if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part</u>, 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."*
>
> *(Emphasis Supplied)*

45. The charge of misconduct is pending disciplinary enquiry at the hands of the petitioner. Due to writ petitions filed by the workman, the disciplinary proceedings have been stayed and pursuant to the stay, the aforesaid applications have been moved before the authorities for payment of gratuity. When the disciplinary proceedings have not reached its logical conclusion, which alone could form the basis for forming an opinion with regard to the punishment to be imposed on the workman by the petitioner, the finding rendered by the authorities that no damage or loss to the property has been claimed by the respondent bank is wholly unacceptable. It is a matter, which is to be deliberated in the enquiry, when witnesses would be examined and documents would be marked, which would go to show the acts perpetrated by the workman. Foreclosing the case in the disciplinary proceedings by holding that no damage has been caused as no claim has been made by the petitioner is nothing but putting the cart before the horse.

46. Further, the act of the workman would squarely fall u/s Section 4 (6) (b)(i) of the Payment of Gratuity Act. The main charge laid against the

workman is *“riotous and disorderly behaviour in the office premises and during the working hours”*. The conduct of the workman is squarely within the four corners of Section 4 (6)(b)(i) of the Payment of Gratuity Act and it is for the petitioner to prove the same in the enquiry. Pursuant to the enquiry report, it is for the disciplinary authority to take a call on the punishment that is to be imposed on the workman, if the delinquency is made out and if the gratuity is allowed to be released to the workman before the conclusion of the disciplinary proceedings, it would cause grave prejudice to the petitioner, as it would not be able to recover any amount, if any, falls due, on account of the act of the workmen relatable to the charge proved against him.

47. Further, it is to be pointed out that though explicitly Regulation 72 has not spelt out that if there is no financial loss caused to the bank, gratuity could not be forfeited, but the same finds strength from Section 4 (6) (a) and (b) of the Payment of Gratuity Act, as what is not available explicitly in the Regulation would stand imported from the Payment of Gratuity Act, as Regulation 72 is premised based on the provisions of the Payment of Gratuity Act, as is evident from Regulation 72 (1). Therefore, even if in explicit terms,

riotous and disorderly behaviour has not been shown to be one of the reasons in the Service Regulation for withholding the gratuity, the same would stand transposed from Section 4 (6) (a) and (b) of the Payment of Gratuity Act and the Payment of Gratuity Act being applicable to the workman in the petitioner establishment as well, the petitioner would be justified in withholding the gratuity.

48. The Apex Court, in *Mahanadhi Coalfields case (supra)*, a case relating to withholding of gratuity where the employee was allowed to retire, but pending a disciplinary proceedings, held as under :-

> *"10. It is to be noted that Jaswant Singh Gill (supra) was a judgment delivered by a two Judge Bench and the judgment in the case of Ram Lal Bhaskar (supra) is a judgment delivered by a three Judge Bench. Under the circumstances and even otherwise for the reasons stated above and in view of Rule 34.2 of the CDA Rules, even a retired employee who was permitted to retire on attaining the age of superannuation can be subjected to major penalty, provided the disciplinary proceedings were initiated while the employee was in service.*
>
> *11. Once it is held that a major penalty which includes the dismissal from service can be imposed, even after the employee has attained the age of superannuation and/or was*

<u>permitted to retire on attaining the age of superannuation, provided the disciplinary proceedings were initiated while the employee was in service, subsection 6 of Section 4 of the Payment of Gratuity Act shall be attracted and the amount of gratuity can be withheld till the disciplinary proceedings are concluded</u>.

11.1 Even otherwise, Rule 34.3 of the CDA Rules permits withholding of the gratuity amount during the pendency of the disciplinary proceedings, for ordering recovering from gratuity of the whole or part of any pecuniary loss caused to the company if have been guilty of offences/misconduct as mentioned in sub section 6 of Section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the company by misconduct or negligence, during his service. It further makes clear that Rule 34.3 for withholding of such a gratuity would be subject to the provisions of Section 7(3) and 7(3A) of the Payment of Gratuity Act, 1972 in the event of delayed payment in the case of an employee who is fully exonerated. Rule 34.3 of the CDA Rules is in consonance with subsection 6 of Section 4 of the Payment of Gratuity Act and there is no inconsistency between subsection 6 of Section 4 of the Payment of Gratuity Act and Rule 34.3 of the CDA Rules. Therefore Section 14 of the Act which has been relied upon shall not be applicable as there is no inconsistency between the two provisions.

11.2 It is required to be noted that in the present case the disciplinary proceedings were initiated against the respondent employee for very serious allegations of misconduct alleging dishonestly causing coal stock shortages amounting to Rs.31.65 crores and thereby causing substantial loss to the employer. Therefore, if such a charge is proved and punishment of dismissal is given thereon, the provisions of subsection 6 of Section 4 of the Payment of Gratuity Act would be attracted and it would be within the discretion of the appellant employer to forfeit the gratuity payable to the respondent. Therefore, the appellant employer has a right to withhold the payment of gratuity during the pendency of the disciplinary proceedings."

(Emphasis Supplied)

49. From the above decision, the ratio laid down is abundantly clear, that it is within the prerogative of the employer to impose punishment, including dismissal from service, even on an employer, who has attained the age of superannuation, where disciplinary proceedings were concluded even after the employee was allowed to retire from service and in such a scenario, withholding of gratuity is permissible till the conclusion of the disciplinary proceedings. The above decision not only stands attracted squarely to the case on hand, but the present case is similar to the said case and, therefore,

the petitioner is well within its right to withhold the gratuity till the completion of the disciplinary proceedings.

50. Further, one other aspect also requires to be highlighted here. While Regulation 45 provides for continuance of disciplinary proceedings even after superannuation of the employee, Regulation 72 relates to gratuity, including withholding of the same pending disciplinary proceedings. However, with regard to payment of pension, the same is provided under the Pension Regulations. Regulation 44 of the Pension Regulation relate to payment of provisional pension in case of employee, who has been allowed to retire from service on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceeding is pending.

51. In the case on hand, there is due compliance of Regulation 44, in that the workman is being paid the provisional pension, which has not been disputed. Such being the case, when Pension Regulation is accepted and the workman is receiving provisional pension, based on Pension Regulation, without demur or contending that the said Pension Regulation has no

statutory force, the stand of the workman that Service Regulation has no statutory force cannot be accepted.

52. Further, when the workman is paid the provisional pension, the workman has to await the outcome of the disciplinary proceeding pending against him and cannot claim that he is entitled to the gratuity as a matter of right, when there is a clear embargo under the Payment of Gratuity Act from disbursal of gratuity, which has been accepted by the Supreme Court in *Mahanadhi Coalfields case (supra).*

53. For the reasons aforesaid, this Court is of the considered view that the orders impugned herein suffers the vice of perversity, illegality and non-application of mind and the same deserves to be set aside. Accordingly, W.P. No.19792 of 2023 is allowed setting aside the impugned orders passed by the 1st and 2nd respondent. Consequent upon allowing of W.P. No.19792/2023, the writ petitions in W.P. Nos.13200 and 20808/2021 are dismissed. The petitioner in W.P. No.19792/2023 is directed to conclude and pass final orders in the disciplinary proceedings within a period of six months from the date of

receipt of a copy of this order and the workman shall cooperate in the conclusion of the disciplinary proceedings. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

25.09.2023

Index : Yes / No

GLN

To

1. The Appellate Authority under
The Payment of Gratuity Act, 1972 &
Dy. Chief Labour Commissioner (Central)
Chennai, O/O of Dy. Chief Labour Commissioner
(Central), 5th Floor, Shastri Bhawan
Chennai 600 006.

2. The Controlling Authority under the
Payment of Gratuity Act, 1972 &
Regional Labour Commissioner (Central)
Madurai (I/C), O/O of the Labour
Commissioner (Central), Kanaga Apartments
Suite No.III, I Floor, 13-A Lady Doak
College Road, Chinna Chokkikulam
Madurai 625 002.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NO. 19792 OF 2023
W.P. NOS. 13200 & 20808 OF 2021

Pronounced on

25.09.2023