



W.P.No.34365 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.34365 of 2017  
and  
WMP.No.38205 of 2017

The Managing Director,  
Villupuram District Central Co-operative Bank,  
No.2, Hospital Road, Villupuram – 605 602.

...Petitioner

Vs.

1. The Appellate Authority,  
Under the Payment of Gratuity Act, 1972  
The Joint Commissioner of Labour,  
DMS Compound, Chennai-6.
2. The Controlling Authority,  
Under the Payment of Gratuity Act, 1972,  
The Assistant Commissioner of Labour,  
Vellore.
3. S.Sampath (*deceased*)
4. Indirani
5. Mahesh Kumar
6. Anandhakumar

...Respondents

(R4 to R6 substituted as LR's of the deceased R3, vide order dated 02.03.2022 made in WMP.No.4841 of 2022 in W.P.No.34365 of 2017.)



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Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 1<sup>st</sup> respondent, the Appellate Authority, (Under the Payment of Gratuity Act, 1972), The Joint Commissioner of Labour, Chennai made in P.G.A.No.116 of 2016 dated 07.08.2017 and to quash the same.

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents : Mr.V.Ravi, Spl.GP, for R1 & R2  
: R3-Died  
: Mr.A.S.Thambusamy, for R4 to R6

### **ORDER**

This Writ petition has been filed seeking to quash the order of the 1<sup>st</sup> respondent dated 07.08.2017 passed in P.G.A.No.116 of 2016.

2. The case of the petitioner is that, the 3<sup>rd</sup> respondent joined the services of the petitioner as an Assistant on 02.05.1997. On the date of his superannuation i.e.,30.9.2013, when he was working as an Assistant Manager, in view of the pendency of the departmental action contemplated against him, he was not permitted to retire. When the 3<sup>rd</sup> respondent was working as a Field Manager and In charge of various primary agricultural cooperative societies during the period from 04.6.2012 to 30.09.2013, various misappropriation took place on huge scale in Kandamanady and



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V.Brammadesam Primary Agricultural Cooperative Societies. Pursuant to

that, a departmental inquiry was conducted and the report of the Enquiry Officer revealed that the 3<sup>rd</sup> respondent was not responsible for the losses incurred in Kandamanady Primary Agricultural Cooperative Society and as such, he was exonerated from the charges concerned. However, in respect of the irregularities found in V.Brammadesam Primary Agricultural Cooperative Society, as the inquiry was stayed by orders passed in W.P.No.26312 of 2013, which was filed by one Mr.P.Chandran, the petitioner was not able to proceed with the inquiry and only after disposal of the said writ petition on 04.07.2016, the petitioner proceeded with the inquiry. In the meantime, the 3<sup>rd</sup> respondent filed a statutory revision petition before the Joint Registrar of Cooperative Societies, Villupuram Region, challenging the order refusing to permit him to retire from service. However, by order dated 08.08.2014, the Revisional Authority rejected the claim of the 3<sup>rd</sup> respondent in view of the pendency in respect of the irregularities found in V.Brammadesam Primary Agricultural Cooperative Society. Aggrieved by the said order dated 08.08.2014, the petitioner filed W.P.No.25884 of 2014 before this Court to direct the petitioner to pay all retirement benefits due to



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him together with interest at 12% from the date of retirement till date of payment and the same was allowed by order dated 04.02.2015 setting aside the order dated 08.08.2014 and directing the petitioner to pass a consequential order permitting him to retire from service and a further direction was issued that the 3<sup>rd</sup> respondent should be paid the retirement benefits and that it was open to the petitioner and the Joint Registrar of Cooperative Societies, Villupuram Region to take further action against the 3<sup>rd</sup> respondent to recover the loss even after retirement in case there was a finding that he was also responsible for causing loss to the society and to pass a consequential order of quantification of such loss. Pursuant to the directions of this Court in the said order dated 04.02.2015, the petitioner paid to the 3<sup>rd</sup> respondent the terminal benefits along with gratuity to the tune of Rs.5,82,944/- on 02.06.2015 after execution of an affidavit-cum-indemnity bond dated 14.05.2015. After receiving the payment of gratuity, the 3<sup>rd</sup> respondent filed a petition before the 2<sup>nd</sup> respondent in P.G.No.220 of 2015 seeking to direct the petitioner to pay a sum of Rs.1,06,344/- together with interest at the rate of 12% per annum on the delayed payment of gratuity with effect from 03.06.2015 under Section 4 of the Payment of



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Gratuity Act, 1972 and the 2<sup>nd</sup> respondent dismissed the petition by order dated 02.08.2016. Aggrieved by the said order dated 02.08.2016, the 3<sup>rd</sup> respondent filed an appeal before the 1<sup>st</sup> respondent in P.G.A.No.116 of 2016, who in turn, vide present impugned order set aside the order dated 02.08.2016 and directed the petitioner to pay interest to the 3<sup>rd</sup> respondent for the belated payment of gratuity at the rate of 10% from 30.09.2013 to 02.06.2015. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that, admittedly, due to pendency of the departmental action contemplated against him, the 3<sup>rd</sup> respondent was not permitted to retire and his terminal benefits and gratuity amount was withheld by the petitioner. However, pursuant to the order of this Court dated 04.02.2015 made in W.P.No.25884 of 2014, the petitioner paid to the 3<sup>rd</sup> respondent the terminal benefits along with gratuity to the tune of Rs.5,82,944/- on 02.06.2015. Since the departmental proceedings as against the 3<sup>rd</sup> respondent was pending, his terminal benefits and gratuity amount was not paid till the conclusion of departmental proceedings, for which period he is not entitled for any interest. While so, after receiving the



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entire amount from the petitioner, the 3<sup>rd</sup> respondent filed a petition before the 2<sup>nd</sup> respondent in P.G.No.220 of 2015 seeking payment of Rs.1,06,344/- together with interest at the rate of 12% per annum on the delayed payment of gratuity, however the same was rightly dismissed by the 2<sup>nd</sup> respondent on 02.08.2016. Aggrieved by the same, the 3<sup>rd</sup> respondent filed an appeal before the 1<sup>st</sup> respondent in P.G.A.No.116/2016, who in turn, without considering any of the above said facts, by impugned order, had mechanically set aside the order of the 2<sup>nd</sup> respondent dated 02.08.2016 and directed the petitioner to pay interest to the 3<sup>rd</sup> respondent for the belated payment of gratuity at the rate of 10% from 30.09.2013 to 02.06.2015, which is not sustainable. He further relied upon the judgment of the Apex Court in the case of ***H.Gangahanume Gowda Vs. Karnataka Agro Industries Corporation Ltd.*** [reported in ***2003 LLR 354***] to contend that interest on delayed payment of gratuity would be payable by the employer only when the delay was not because of fault on the part of the employee. Accordingly, he prayed for appropriate orders.

4. Learned counsel appearing for the 3<sup>rd</sup> respondent submitted that,



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though the 3<sup>rd</sup> respondent attained the age of superannuation as early as on 30.09.2013, he was not permitted to retire and was not paid with the terminal benefits and gratuity amount, solely on the ground that enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act was pending against him. However, the report of the Enquiry Officer clearly revealed that the 3<sup>rd</sup> respondent was not responsible for any of the said losses and he was exonerated from the charges concerned and the same was also not disputed by the petitioner. Further, it is pertinent to note that, despite affording sufficient time to the petitioner to produce materials to show that the 3<sup>rd</sup> respondent was a party to the act of misconduct committed by the officials of the societies concerned, the petitioner failed to produce even a single document to show that the 3<sup>rd</sup> respondent was a privy to the transaction. Even then, the petitioner did not pay the terminal benefits and gratuity amount to the 3<sup>rd</sup> respondent and the same was paid to him only on 02.06.2015, that too only pursuant to the order of this Court dated 04.02.2015. Though, the petitioner bank itself admitted that there was a delay in paying the gratuity amount, it did not pay any interest to the 3<sup>rd</sup> respondent for the delayed payment and as the petitioner purposely and



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wantonly delayed the payment of gratuity, it is the duty cast upon it to pay the interest for the delay period. Hence, the 1<sup>st</sup> respondent, after taking into consideration all the said facts, by impugned order dated 07.08.2017, had rightly set aside the order of the 2<sup>nd</sup> respondent dated 02.08.2016 and directed the petitioner to pay interest for the belated payment of gratuity at the rate of 10% from 30.09.2013 to 02.06.2015, which is perfectly in order and the same does not warrants interference of this Court and accordingly, he prayed for dismissal of this Writ petition.

5. Heard learned counsel on either side and perused the material documents placed on record.

6. Admittedly, the 3<sup>rd</sup> respondent entered into the services of the petitioner in the year 1997 and for certain alleged misappropriation, since departmental proceedings were initiated and enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act was pending against him, the 3<sup>rd</sup> respondent was not permitted to retire on the date of his superannuation i.e., on 30.09.2013 and his terminal benefits and gratuity amount was withheld



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by the petitioner. However, that facts remains that, after conclusion of the departmental proceedings, the Enquiry Officer held that, the 3<sup>rd</sup> respondent was not responsible for the losses incurred and he was exonerated from the charges concerned, which was also not disputed by the petitioner. Thereafter, pursuant to the order of this Court dated 04.02.2015 made in W.P.No.25884 of 2014, the petitioner paid to the 3<sup>rd</sup> respondent the terminal benefits along with gratuity to the tune of Rs.5,82,944/- on 02.06.2015 after execution of an affidavit-cum-indemnity bond dated 14.05.2015.

7. However, the major issue arises for consideration in this Writ petition is whether the 3<sup>rd</sup> respondent is entitled for interest for the belated payment of the gratuity amount from the date of superannuation till the date of payment made by the petitioner. i.e., for the period from 30.09.2013 till 02.06.2015?

8. A perusal of Section 7 of the Payment of Gratuity Act, 1972 reveal that, if the gratuity amount is not paid by the employer within the period specified, the employer shall pay the same with interest from the date on



which the gratuity becomes payable to the date on which it is paid. For

better appreciation, the relevant section is extracted hereunder:-

**“Section 7: Determination of the amount of gratuity:**

(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify.”

9. In view of the above, this Court is of the view that, the delay caused in payment of the gratuity amount to the 3<sup>rd</sup> respondent is wholly due to the



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inaction on the part of the petitioner and the petitioner, wilfully and wantonly retained the gratuity amount and paid it belatedly after the effort of the 3<sup>rd</sup> respondent, for which it is bound to pay interest. Hence, this Court is of that view that, the 1<sup>st</sup> respondent had rightly set aside the order of the 2<sup>nd</sup> respondent dated 02.08.2016 and directed the petitioner to pay interest to the 3<sup>rd</sup> respondent for the belated payment of gratuity at the rate of 10% from 30.09.2013 to 02.06.2015, in which this Court does not find any fault with and is not inclined to interfere with the same. Further, the decision relied on in the case of **Gangahanume Gowda (supra)**, leans more in favour of the 3<sup>rd</sup> respondent.

10. The petitioner is directed to pay the amount of interest as ordered by the 1<sup>st</sup> respondent to the respondents 4 to 6, the legal heirs of the 3<sup>rd</sup> respondent within a period of two weeks from the date of receipt of a copy of this order.

11. For the reasons aforesaid, this Writ petition stands dismissed. No



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costs. Consequently, the connected miscellaneous petition stands closed.

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**29.08.2023**

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Index : Yes (or) No  
Neutral Citation : Yes (or) No  
Speaking Order : Yes (or) No

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**M.DHANDAPANI, J.**

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