



W.P.(MD)No.14422 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:31.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.14422 of 2020
and
W.M.P(MD)No.12066 of 2020

The Management,
Madurai District Central Cooperative Bank Ltd.,
Rep. by the Managing Director/Joint Registrar,
187, North Veli Street, Madurai – 625 001.

... Petitioner

Vs.

1.The Controlling Authority under
Payment of Gratuity Act, 1972,
Deputy Commissioner of Labour,
O/o.the Joint Commissioner of Labour,
Madurai – 625 002.

2.P.R.Subramanian

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order passed in P.G.No.106/2017, dated 10.03.2020 by the Controlling Authority under the Payment of Gratuity Act/Deputy Commissioner of Labour, Madurai and quash the same.



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For Petitioner : Mr.D.Shanmugaraja Sethupathi

For R-1 : Mr.S.P.Maharajan,
Special Government Pleader

ORDER

This writ petition has been filed to quash the impugned order passed by the Controlling Authority under the Payment of Gratuity Act/Deputy Commissioner of Labour, Madurai in P.G.No.106/2017, dated 10.03.2020.

2. The case of the petitioner Management is that the second respondent was working as Assistant in the petitioner Bank. While so, during the month of February, 2000, he sent a telegram seeking casual leave for two days on 01.03.2000 and 02.03.2000. Subsequently, he has requested for unearned leave from 01.03.2000 to 30.03.2000 based on a medical certificate. Thereafter, he had not reported duty and he had been continuously under unauthorized absence. Hence, the petitioner management issued a charge-memo on 10.08.2020. Subsequently, after conducting enquiry, in pursuance of the disciplinary proceedings, the



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second respondent was dismissed from service vide order dated 19.10.2002. The second respondent had not challenged the order of the Controlling Authority in the manner known to law. However, he had filed an application before the first respondent Controlling Authority claiming gratuity after a lapse of fourteen year from the date of dismissal from service. The Controlling authority under the Payment of Gratuity Act/Deputy Commissioner of Labour, Madurai, vide the impugned order, dated 10.03.2020, allowed the application filed by the second respondent. Challenging the same, the petitioner management has filed this writ petition, with the aforesaid prayer.

3. The learned counsel appearing for the petitioner would submit that admittedly the petitioner was removed from service by the petitioner management. Once the petitioner management dismissed the petitioner from service, unless the the order of dismissal is set aside in the manner know, the petitioner is not entitled to claim gratuity. Further, the second respondent was dismissed from service on 19.10.2002 and after a lapse of one decade, the second respondent has made an application claiming



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payment of gratuity, which is not sustainable one. However, without considering the said fact, the first respondent has passed the impugned order, which is liable to be set aside and hence, prayed for allowing of this writ petition.

4. Though notice was not served on the second respondent, since no adverse order is going to be passed, notice to the second respondent is dispensed with.

5. Admittedly the second respondent made an application before the Controlling Authority and the said application was allowed in his favour. As against the said order, there is an effective appeal remedy. Instead of exhausting the appeal remedy, filing of this writ petition by the petitioner management under Article 226 of the Constitution of India, is not sustainable one. However, this Court, without expressing any opinion on the merits of the matter, directs the petitioner to file an appeal before the Appellate Authority within a period of eight weeks from the date of receipt of a copy of this order. If any such appeal is filed, the



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Appellate Authority is directed to decide the appeal on merits and in accordance with law, after providing opportunity to the petitioner, within a period of twelve weeks thereafter. It is made clear that the period during which the writ petition was pending before this Court may be excluded for the purpose of limitation.

6. The writ petition is disposed of in the above terms. No Costs. Consequently, connected miscellaneous petition is closed.

7. The Registry is directed to return the original impugned order to the petitioner, to enable them to file an appeal before the Appellate Authority.

31.01.2023

PM

NCS:Yes/No

Index:Yes/No

Internet:Yes/No



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Payment of Gratuity Act, 1972,
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M.DHANDAPANI,J.

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