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W.P.No.36972 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM :

**THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER
KUMAR**

W.P.No.36972 of 2015

and

M.P.No.1 of 2015

G.Baskaran

... Petitioner

Vs.

1.The President / C.S.R.Administrator
Cordite Factory Cooperative Bank Ltd
Aravankadu, Nilgiris District - 643 202.

2. The Joint Registrar / Revision Officer,
Cooperative Societies,
Nilgiris Region, Uthagamndalam.

3. The Controlling Authority,
Payment of Gratuity,
Nilgiris.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent relating to the impugned order dated 31.08.2015 passed in Revision Petition No.2 of 2014 (Na.Ka.No.5065/2014 Aa4), and quash the same, and consequently directing the 2nd respondent herein to disburse the gratuity amount as well as the employers contribution of



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provident fund accrued to the petitioner's credit with interest.

For Petitioner : Mr.M.Ramalingam
For R1 : Mr.L.P.Shanmuga Sundaram
Special Government Pleader
For R2 : Mr.A.Anandan, Government Advocate
For R3 : Mr.M.Murali, Government Advocate

ORDER

The petitioner herein, while working as a Senior Clerk-cum-Cashier in the first respondent-Cordiate Factory Cooperative Bank, he was subjected to disciplinary proceedings besides initiating criminal proceedings. In the said criminal proceedings vide C.C.No.5 of 1999 on the file of the Judicial Magistrate No.4, Coimbatore, the petitioner was convicted and sentenced to undergo 9 months Rigorous Imprisonment and imposed a fine of Rs.2000/- by a judgment dated 24.12.2003. Consequent upon the said conviction, the petitioner was dismissed from service on 21.06.2003. It was thereafter, the petitioner filed Crl.A.No.149 of 2003 and batch., against the conviction on the file of the Court of the Additional District and Sessions Judge (FTC-1), Coimbatore and in the said Crl.A., the petitioner was acquitted by the judgment dated 05.01.2004. It was thereafter, the respondent No.1 reinstated



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the petitioner into the service and thereafter, initiated fresh disciplinary proceedings by issuing charge memo dated 06.06.2005 which culminated in passing an order of dismissal from service. The said order of dismissal from service attained finality. Thereafter, the petitioner made a claim for payment of gratuity and the Employers Contribution Provident Fund, but the said claim was rejected by the respondent No.1 and thereafter, the petitioner filed revision under Section 153 of Tamil Nadu Co-operatives Societies Act, 1983 unsuccessfully before the second respondent. The second respondent rejected the claim of the petitioner by passing an order dated 31.08.2015 in Revision Petition No.2 of 2014. It is aggrieved by the said order passed by the second respondent, the petitioner approached this Court by filing a present writ petition. Contending that, not with standing the order of dismissal from service, the petitioner is entitled for payment of gratuity as well as the Employers Contribution of Provident Fund.

2. The learned counsel for the petitioner placed reliance on the decision of the High Court of Delhi in LPA.907 of 2024 [Punjab National Bank Vs.SH NIRAJ GUPTA AND ANR], dated 12.09.2024, in support of his contention to say that, the petitioner is entitled for payment of gratuity due and payable



to him and the provision contained in Section 4 under clause a & b of Sub Section 6 (4) of Payment of Gratuity Act 1972, is not a bar for payment of gratuity to the petitioner.

3. On the other hand, the respondent No.1 filed a counter affidavit and contended in terms of Section 4 (6) (a) and (b) of the Payment of Gratuity Act 1972, and the provisions of EPF Act, 1952, the petitioner is not eligible to claim gratuity and employer contribution towards Provident Fund by virtue of the order of dismissal passed by the respondent.

4. This Court carefully perused the records and also considered the submissions made on the either side.

5. On perusal of Section 4(6) of the Payment of Gratuity Act 1972, it is clear that in terms of the clause (a) in spite of termination of services of an employee for any act of wilful omission or negligence causing any damage or any loss to, or destruction of property belonging to the employer, the gratuity shall be forfeited to the extent of the damage or loss so caused.



6. Thus, it is clear that the entire gratuity amount cannot be forfeited, in spite of the termination of the services of an employee, but the same can be forfeited only to the extent of damage or cause to the employer. Under clause (b) of sub Section 6, Gratuity payable to an employee may be wholly forfeited, if the services of an employee have been terminated under the circumstances enumerated under sub clause (i) of clause (b). Sub clause (ii) of clause (b) of sub section 6(4) also enable the employer to forfeit the gratuity payable wholly or partially under certain circumstances enumerated therein.

7. In the instant case, in the considered view of this Court, the petitioner does not fall under clause (b) of sub Section 6 Whether the case of the petitioner would fall under clause (a) or not is not clear from the facts of this case before this Court. Even assuming that the case of the petitioner would fall under clause (a) sub section (6), an employer is entitled to forfeit the amount of gratuity only to the extent of loss or damage caused to the society, but not to forfeit the entire amount of gratuity. In the circumstances, the action of the respondent No.1 in refusing to pay the gratuity amount due and payable to the petitioner by placing reliance on sub section (6) of section



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(4) of Act 1972 cannot be sustained. So also the impugned order passed by the respondent No.1.

8. Then coming to the aspect of the Employers of Provident Fund is concerned, the learned counsel for the petitioner fairly submitted that the petitioner was already paid Employees Contribution of Provident Fund and by virtue of the dismissal from service, petitioner is not entitled for Employers Contribution of Provident Fund.

9. In the light of the above, the impugned order is hereby quashed with a further direction to the respondent No.1 to pay the entire amount of gratuity payable to the petitioner after deducting amount if any filing under clause (a) of sub Section (6) of Section 4 of the Payment of Gratuity Act 1972, together with interest @ 6% per annum within a period of eight weeks from the date of receipt of a copy of this order.

10. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected M.P is closed.



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Speaking Order : Yes/No

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