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W.A. Nos.272 & 274 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN
and
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. Nos.272 and 274 of 2024 and C.M.P. Nos.1703 and 1708 of 2024

D.D.9 Uthangarai Agricultural Producers
Cooperative Marketing Society
represented by its Managing Director
Uthangarai Post
Krishnagiri District
Appellant in both appeals

v

1	A. Radhakrishnan	1 st appellant in W.A. No.272 of 2024
1	K. Murugan	1 st appellant in W.A. No.274 of 2024
2	The Authority under the Payment of Gratuity Act/ Assistant Commissioner of Labour (In-charge) Salem	2 nd appellant in both appeals

Writ Appeals filed under Clause 15 of the Letters Patent challenging the separate orders dated 08.02.2023 passed in W.P. Nos.741 and 742 of 2017, respectively.

For appellant in
both the appeals Mr. P. Sanjai Gandhi



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W.A. Nos.272 & 274 of 2024

COMMON JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

For the sake of clarity, the appellant, the first respondents and the second respondent will be adverted to as the society, workmen and the authority, respectively.

2 In view of commonality of issue involved, both the writ appeals are considered and decided by this common judgment.

3 The necessary and germane facts giving rise to the filing of these writ appeals could be succinctly stated as under:

3.1 The workmen, who were permitted to retire from the services of the society, approached the authority under Sections 7(4)(b) and 10(1) of the Payment of Gratuity Act, 1972, seeking computation of Gratuity amount. The latter, by orders dated 31.08.2015, determined the Gratuity amount payable to the workmen and directed the society to release the same to the workmen within a period of 30 days and in default, it was observed that the society shall pay interest @ 10% per annum.



3.2 Albeit the said orders of the authority, the workmen were deprived of their Gratuity and other retirement benefits, by the society, on the ground of pendency of surcharge proceedings against them for their failure to recover sums of Rs.81,80,105/- and Rs.1,60,75,887.93, respectively, during their stint as Marketing Officers.

3.3 Aggrieved, the workmen filed writ petitions seeking a writ of mandamus directing the society to pay them their entitlement of Gratuity with interest at 10% per annum, as ordered by the authority.

3.4 The Single Bench, taking note of Section 79 of the Tamil Nadu Cooperative Societies Act and relying on an order passed by a Single Bench of this Court in **N. Ravichandran v The Registrar of Cooperative Societies (Housing)**¹ and also the judgment of a Coordinate Bench of this Court in **The Registrar of Cooperative Societies v A. Sengodan**², holding that the issue is no longer *res integra*, and also taking cognizance of the fact that the orders dated 31.08.2015 of the authority had become final, since the same were not appealed against by the society, allowed the writ petitions, as prayed for.

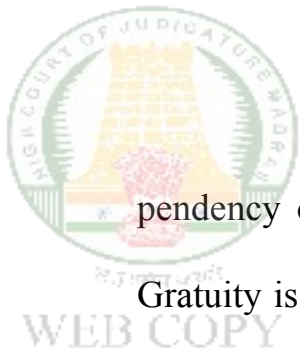


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3.5 Thereagainst, the society has preferred the instant writ appeals.

4 According to the learned counsel for the society, even now, the surcharge proceedings are pending against the workmen and hence, the Gratuity amount cannot be released to the workmen.

5 The contention of the learned counsel for the society that Gratuity amount can be withheld in view of pendency of surcharge proceedings does not cut ice with us. In our view, the society, de hors the surcharge proceedings, should have initiated departmental proceedings against the workmen and after a full-fledged enquiry, should have come to the conclusion that the workmen had committed a grave lapse by not recovering sums of Rs.81,80,105/- and Rs.1,60,75,887.93, respectively, which attracts Section 4(6) of the Payment of Gratuity Act. As has been rightly observed by the Single Bench, the society has not chosen to challenge the order of the authority before the appellate authority, thereby, allowing the order of the authority to attain finality. Once the authority has determined the amount payable as Gratuity, the society is left only with two options, *i.e.*, either to pay the Gratuity determined by the authority to the workmen, alternatively, to appeal against the order of the authority before the appellate authority. Having allowed the order of the authority to attain finality, the society cannot deprive the legitimate claim of the workmen on the ground of



pendency of surcharge proceedings, which is illegal. Be it noted, payment of Gratuity is neither a bounty nor gratis and the same will have to be paid in terms of the Payment of Gratuity Act, unless there is a prohibition or restraint in terms of the said Act or any other Rules, as may be applicable to the parties.

6 It is submitted by Mr. Sanjai Gandhi that in view of contempt proceedings initiated by the workmen, the officials have appeared before this Court thrice.

7 Since we are of the view that the Single Bench is perfectly justified in not interfering with the orders of the authority, thereby, allowing the writ petitions preferred by the workmen, we direct the society to release the Gratuity together with interest, as computed by the authority, to the workmen, within a period of thirty days from the date of receipt of a copy of this judgment. It is made clear that in the event of the society's failure to make payment, as aforesaid, the society will be liable to pay interest @ 15% p.a. in terms of Section 8 of the Payment of Gratuity Act.

8 Before parting, we hasten to add that it is open to the society to initiate disciplinary proceedings against the official(s) for his/their failure to initiate disciplinary proceedings against the workmen, who had failed to recover



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sums of Rs.81,80,105/- and Rs.1,60,75,887.93, respectively, during their stint as Marketing Officers. It is made clear that in the event of the surcharge proceedings ending against the workmen, the society can very well recover the amount due from the workmen, in accordance with the procedure contemplated and in any event, the society cannot cleverly resort to the tactic of adjusting the Gratuity amount payable to the workmen.

With the above direction and observations, these writ appeals stand dismissed, however, sans costs. Connected C.M.Ps. are closed.

(S.V.N., J.) (K.R.S., J.)
11.01.2024

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To
The Authority under the Payment of Gratuity Act/
Assistant Commissioner of Labour (In-charge)
Salem



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S. VAIDYANATHAN, J.

and

K. RAJASEKAR, J.

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