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W.A.No.3421 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2024

CORAM :
THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.A.No.3421 of 2024

K. Gnanavel .. Appellant
Vs.

1. The Chairman Common Cadre Committee/
Joint Registrar of Co-operative Societies
Namakal Regional, Namakal.

2. No.622 Mohanur Primary Agricultural
Co-operative Credit Society
Rep. By its Administrator / President
Mohanur Post and Taluk
Namakal District.

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent, against the order made in W.P.No.32208 of 2023 dated 05.08.2024 insofar as declined to grant interest on belated payment of retirement benefits of the appellant's from 30.05.2023 to 12.09.2024 for a period of 468 days on the file of this Court.

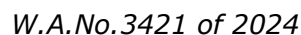
For the Appellant : Mr.M.S.Palaniswamy

For the Respondents : Mrs.Geetha Thamarai Selvan
Special Government Pleader

JUDGMENT

(Judgment of the Court was authored by R.SURESH KUMAR, J.)

This intra-Court appeal has been directed against the order passed by the Writ Court dated 05.08.2024 made in W.P.No.32208 of 2023.

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2.2. Therefore, without prejudice to the disciplinary proceedings already been initiated, the appellant has been relieved from duty. Subsequent to the relieving order dated 30.05.2023, after conducting a Domestic Enquiry, based on the Domestic Enquiry report, a show-cause notice, along with a report, have been issued against the appellant on 09.10.2023.

2.3. It is also to be noted that in the enquiry proceedings dated 08.09.2023, there has been no directions to initiate surcharge proceedings. However, the appellant/writ petitioner challenged both the charge memo dated 15.05.023 as well as the consequential show-cause notice dated 09.10.2023 in the writ petition. The said writ petition, having been heard, was decided by the Writ Court on 05.08.2024 through the impugned order.

2.4. In the impugned order, though the Writ Court was pleased to quash the charge memo dated 15.05.2023 as well as the consequential second show-cause notice dated 09.10.2023, directed the retrial benefits, that is Gratuity, Leave salary and etc., payable to the appellant employee, to be paid within a period of six weeks from the date of receipt of a copy of the order and if that is not complied with, it would carry interest, which is the order that is



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impugned herein.

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3.1. In this context, even though the charge memo and the consequential show-cause notice were quashed and relief has been granted by the learned Single Judge through the impugned order, nevertheless, the appellant/writ petitioner, according to *Mr.M.S.Palaniswamy*, learned counsel appearing for the writ petitioner/appellant, is still aggrieved by the small portion of the order, where, statutory interest payable under the Payment of Gratuity Act, 1972, also with the interest to be fixed and payable for the belated payment of leave salary and also the interest payable under the provisions of the Employees' Provident Fund Act, 1952, since has been denied and only interest has been allowed, if there would be further delay beyond the six weeks' period from the date of receipt of a copy of the impugned order, the appellant has filed the present intra-Court appeal.

3.2. In that line, arguments have been advanced by the learned counsel appearing for the appellant/writ petitioner, who heavily relied upon the Division Bench judgment of this Court in the case of ***The Registrar of Co-operative Societies and Ors. vs.***



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A.Venkatachalam¹, where, similar facts were confronted by the Division Bench. The Division Bench confirmed the Writ Court order, hence the learned counsel for the appellant/writ petitioner seeks indulgence of this Court against the order impugned only in respect of denial of interest under the Statute.

4.1. However, *Mrs.Geetha Thamarai Selvan*, learned Special Government Pleader appearing for the respondents would contend that at the time when the appellant reached superannuation on 31.05.2023, since Disciplinary Proceedings were pending against him and as charge memo was issued on 15.05.2023, even though he was allowed to be relieved from service on 31.05.2023 by passing the order dated 30.05.2023, such relieving order is only a conditional relieving order, thereby, without causing prejudice to the Disciplinary Proceedings as has been initiated against the writ petitioner/appellant.

4.2. Therefore, the learned Special Government Pleader would contend that pursuant to the order dated 30.05.2023, relieving the appellant/writ petitioner conditionally, a Domestic Enquiry was conducted by appointing an Enquiry Officer and based on the report

¹ W.A.No.2908 of 2021, dated 15.02.2022.



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submitted by the Enquiry Officer, second show-cause notice was issued on 09.10.2023, seeking show-cause as to why punishment shall not be imposed against the appellant/writ petitioner.

4.3. Learned Special Government Pleader would submit that when the right of the respondent employer is protected under the relieving order dated 30.05.2023 to proceed against the appellant/writ petitioner by way of Disciplinary Proceedings, whereby, after Domestic Enquiry, a show-cause notice was issued, the same ought not to have been questioned before the Writ Court, but, the learned Special Government Pleader would further contend that, anyhow, since the Writ Court has come to the conclusion that, for the reasons stated in the impugned order itself, the impugned charge memo, as well as the consequential show-cause notice, would not be put under legal scrutiny and accordingly, though it has been set aside, directions have been given by the learned Single Judge to the employer to settle the retrial benefits of the writ petitioner within a period of six weeks from the date of receipt of a copy of the impugned order. That order, since was passed on 05.08.2024, within six weeks' period, such benefits have been fully paid on 12.09.2024. Therefore, the impugned order has been fully complied with.



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4.4. When that being so, there is no question of paying any interest, as absolutely there has been no delay for even a single day in dispersing the retrial benefits. In view of that, the learned Special Government Pleader seeks dismissal of this intra-Court appeal.

4.5. The learned Special Government Pleader, in support of her contentions, would rely upon the decision of the Supreme Court of India in the case of ***H. Gangahanume Gowda vs. Karnataka Agro Industries Corpn. Ltd.***².

5. We have considered the said rival submissions made by learned counsel appearing for both sides and have perused the materials placed before this Court.

6.1. The only issue that is to be decided is as to whether the appellant/writ petitioner is entitled to get the statutory interest under the Payment of Gratuity Act, 1972, as well as the reasonable interest for the belated payment of the Leave Salary. As far as Provident Fund is concerned, there is no dispute as the amount has been received by the appellant/writ petitioner.

² AIR 2003 SC 1526



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6.2. In order to delve into this issue, even though it was argued by the learned Special Government Pleader appearing for the respondents that after the impugned order was passed by the Writ Court, within a period of six weeks, as directed by the Writ Court, since the amount has been dispersed, there is no delay, We are not impressed upon the said argument by the learned Special Government Pleader for the simple reason that insofar as the claim made by the appellant/writ petitioner to get the interest from the date of superannuation is nothing but the interest flowing from the Statute.

6.3. This question has been considered by the Division Bench of this Court in the case of **A.Venkatachalam** (cited *supra*). For better appreciation, the relevant portion of the order is extracted hereunder:

"7. A reading of the provisions of the Payment of Gratuity Act, 1972 and the Employees-Provident Fund Act, 1952 makes it clear that, the employee will be entitled to interest as per the Statute. In terms of Section Section 7(3A) of the Payment of Gratuity Act, 1972, arrears of Gratuity shall fetch interest at 10% per annum and in terms of the Employees- Provident Fund Act, 1952, the rate of interest is 12% per annum. However, the learned Single Judge has ordered payment of Provident Fund and Gratuity to the



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Writ Petitioner at 10% per annum from 31.05.2012, i.e. from the date of retirement till the date of actual payment.

8. *Almost, ten years have gone by from the date of retirement of the Writ Petitioner and the terminal benefits due to him under the heads -Gratuity- and -Provident Fund- have not yet been disbursed to him. Hence, we find that, there is no error in the order passed by the learned Single Judge, as, surcharge proceedings pending against the Writ Petitioner were dropped and no other proceedings are pending against him, for withholding of terminal benefits due to him.*

9. *It is made clear that, terminal benefits due to the Respondent/Writ Petitioner shall be extended to him within a period of six weeks from the date of receipt of a copy of this judgment. It is further made clear that, if any amount had already been paid to the Writ Petitioner, the same can be adjusted and the remaining amount shall be paid to him together with interest, as ordered by the learned Single Judge.*

10. *In case of default in payment of terminal benefits due to the Respondent/Writ Petitioner within the time stipulated, the gratuity amount due will fetch interest at 15% per annum in terms of Notification under Section 8 of the Payment of Gratuity Act, 1972, which reads as under:*

□O.1032(E). ~ In exercise of the powers conferred by Section 8 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies 15 per cent per annum as the rate of compound interest, recoverable by the Collector for the time being, along with the amount of gratuity and payable to the person entitled thereto.□”



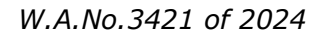
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6.4. Though the judgment of the Supreme Court of India in the case of **H.Gangahanume Gowda** (cited *supra*) has been relied upon by the learned Special Government Pleader, on perusal of the said judgment and the law declared therein, we find that the said judgment would not advance the case of the respondent employer, instead, would advance the case of the appellant/writ petitioner.

6.5. More over, the Supreme Court of India has made it clear that the interest of delayed payment of Gratuity was denied only on the ground that there was doubt as to whether the appellant was entitled to Gratuity, Cash Equivalence to Leave, etc. and in view of the divergent opinion of the Courts during the pendency of the enquiry.

6.6. However, in the present case in hand, that doubt has not arisen. The reason being that, the employee otherwise would be entitled to get Gratuity, Leave Salary, Provident Fund and etc., if the Disciplinary Proceedings initiated against him at the verge of his retirement ended in favour of the employee. As expected by the employee, the Disciplinary Proceedings initiated against him ended in favour of the employee by quashment of the charge memo as



6.7. It is also to be noted that as against the impugned order, no appeal has been preferred by the respondent employer, which means that the impugned order dated 05.08.2024 has attained finality and the respondent employer wanted to execute the same and accordingly, within six weeks' period, the payment payable to the employee also has been dispersed. That means what has been stated or held by the learned Single Judge in the impugned order is, *in toto*, accepted by the respondents.

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employee is not entitled to get the interest on the basis of the Statute, especially, under the provisions of the Payment of Gratuity Act, 1972, that is Section 8 of the Act, followed by the notification issued in this regard.

6.9. This has been fully dealt with by the Division Bench in the case of **A.Venkatachalam** (cited *supra*) and we are in full agreement with the said view expressed by the Coordinate Bench of this Court.

6.10. When that being so, the denial of interest payable to the employee from the date of superannuation till the date of appeal is fully against the provisions of the Payment of Gratuity Act, 1972, and also against the Division Bench Judgment cited *supra*, as well as the principle enunciated by the Supreme Court of India in the case of **H.Gangahanume Gowda** (cited *supra*).

7. In that view of the matter, we are inclined to allow this writ appeal to the following effect:

- (i) There shall be a direction to the respondent Department to calculate the interest at the rate of 15% for payment of Gratuity from the date of



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superannuation till the date of payment and also to calculate the interest for Leave Salary at the rate of 6% from the date of due till the date of payment and such an interest amount shall be calculated and be paid to the appellant/writ petitioner by the respondent Department within a period of eight weeks from the date of receipt of a copy of this order.

8. To that extent, the impugned order stands modified and the writ appeal, accordingly, stands allowed to the extend as indicated above. There shall be no order as to costs.

(R.S.K., J.) (C.S.N, J)
11.12.2024

Neutral Citation:Yes/No

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To:

1. The Chairman Common Cadre Committee/
Joint Registrar of Co-operative Societies
Namakal Regiona, Namakal.
2. No.622 Mohanur Primary Agricultural
Co-operative Credit Society
Rep. By its Administrator / President
Mohanur Post and Taluk



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Namakal District.

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R. SURESH KUMAR, J.
AND
C. SARAVANAN, J.

(drm)

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