



W.P.No.32961 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17/4/2024

CORAM :

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.32961 of 2019

a n d

W.M.P.No.33398 of 2019

J.J.186 Manjakaranai Primary Agricultural
Co-operative Credit Society
rep. By its President
Manhanaranai Village & Post
Uthukottai Taluk
Tiruvallur District.

...

Petitioner

Vs

1. The Authority under the
Payment of Gratuity Act/
Assistant Commissioner of Labour (i/c)/
Deputy Commissioner of Labour
Teynampet
Chennai.

2. E. Vasanthakumar

...

Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of certiorari to call for the records of the order passed by the first respondent in P.G.No.28 of 2015 dated 5/7/2019 and quash the same.



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of the second respondent to the tune of Rs.2,51,903/- were withheld by the petitioner Society.

3. The second respondent, after a lapse of 1780 days from the date of retirement has approached the first respondent Authority under Payment of Gratuity Act and filed application under 7 (1) of the Payment of Gratuity Act, claiming gratuity. As per Section 10 (1) of the Payment of Gratuity Act, an application for claiming gratuity has to be filed within 30 days from the date of cause of action. The second respondent has not given any reasons for approaching the first respondent authority with a delay of 1780 days. However, the first respondent authority, without appreciation of facts has condoned the delay of 1780 days by allowing PGIA No.39 of 2014 dated 23/6/2015 holding that the petitioner Society has not raised any objection.

4. Aggrieved by condoning the delay of 1780 days, the petitioner Society has filed W.P.No.38072 of 2015 to quash the order passed by the first respondent in PGIA No.39 of 2014 dated 23/6/2015. The said writ petition was disposed of on 3/3/2016 by way of the following order:-



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“6. Learned counsel for the petitioner submitted that a sum of Rs.1,65,045/-is due and liable to be paid by the second respondent pursuant to the orders of surcharge proceedings, dated 30.06.2009, 05.10.2009 and 01.04.2015 and the petitioner being a Co-operative Society, their interest may be safeguarded and it may be permitted to retain the sum of Rs.1,65,045/- and release the balance amount of Rs.86,858/-.

7. Considering the peculiar facts and circumstances of the case and also taking note of the fact that the second respondent has not questioned the surcharge proceedings till-date, while dismissing the Writ Petition, there will be a direction to the petitioner to pay the second respondent a sum of Rs.86,858/-, by retaining the sum of Rs.1,65,045/-, with liberty to the second respondent to challenge the surcharge proceedings in the manner provided under the Tamil Nadu Co-



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operative Societies Act, and if such proceedings are challenged within a period of thirty days 4 from the date of receipt of a copy of this order, the authority under the Act shall consider the petition, without rejecting the same, on the ground of limitation.

8. With the above direction and observation, this Writ Petition is dismissed. No costs. Consequently, the connected M.P.No.1 of 2015 is closed.”

5. After receipt of the order referred above, the petitioner Society has addressed a letter dated 16/4/2016 asking the second respondent to receive Rs.86,858/-. The second respondent though has acknowledged the letter on 19/4/2016, has failed to come forward to receive the money of Rs.86,858/-. The petitioner Society has always been ready to pay the said amount, as directed by the High Court.



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6. The second respondent without receiving the money of Rs.86,858/- has filed an application in PGIA No.155 of 2017 before the first respondent authority to reopen P.G.28 of 2015. The petitioner has filed a detailed counter in the said petition. However, the first respondent authority has allowed the said application directing the petitioner to pay an amount of Rs.1,85,027/- with 10% interest passed on 30/6/2009 within 30 days. Aggrieved by the same, present writ petition is filed.

7. No counter affidavit is filed.

8. Heard both sides and perused the materials available on record.

9. The petitioner, retired from service, after attaining the age of superannuation on 31/5/2009 and subsequent to his retirement, basing on the audit report, surcharge proceedings were initiated against the second respondent holding that the petitioner has to pay an amount of Rs.1,65,045/-. On account of such surcharge proceedings, petitioner Society has not disbursed Rs.2,51,903/- towards retirement benefits.



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10. The second respondent who has kept quite for 1780 days has filed an application under Section 7 (1) of the Payment of Gratuity Act before the Payment of Gratuity and it was taken up by the first respondent authority and condoned the delay of 1780 days and numbered the main petition as P.G.No.28 of 2015. Aggrieved by the same, petitioner has preferred W.P.No.38072 of 2015, wherein this Court, while dismissing the writ petition, has directed the petitioner to retain an amount of Rs.1,65,045/- out of Rs.2,51,903/- and directed to pay Rs.86,958/- to the second respondent out of the retirement benefits which he supposed to get. The petitioner Society has addressed a letter to the second respondent on 16/4/2016 to receive Rs.86,958/-. However, the second respondent has not responded, but filed an application in PGIA No.155 of 2017 to reopen P.G.No.28 of 2015. The said application was allowed by the first respondent authority and subsequently, orders were passed in P.G.No.28 of 2016 directing the petitioner Society to pay Rs.1,85,027/- with interest at the rate of 10%.

11. I have gone through the impugned order passed by the first respondent authority in P.G.No.28 of 2015 dated 5/7/2019 and also the



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orders passed by this Court in W.P.No.38072 of 2015 dated 3/3/2016.

Orders passed by the first respondent authority are contrary to and in violation of directions issued by this Court in W.P.No.38072 of 2015.

There is no dispute that the second respondent is expected to get Rs.2,51,903/- towards retirement benefits from the petitioner Society, however, the petitioner Society has not disbursed the said amount since surcharge proceedings to the tune of Rs.1,65,045/- were pending against him.

12. When the matter was considered by this Court in W.P.No.38072 of 2015, this Court has felt that since surcharge proceedings were only for a sum of Rs.1,65,045/-, thereby, the balance amount out of the retirement benefits of Rs.86,858/- out of Rs.2,51,903/- can be disbursed to the second respondent. Accordingly, the petitioner was directed to disburse the amount of Rs.86,858/-. The second respondent has participated in the writ petition proceedings. He is aware of the orders that this Court wherein directions were given to the petitioner to disburse Rs.86,858/-. However, in spite of receiving a letter addressed by the petitioner dated 16/4/2016, second respondent has not



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received the said amount of Rs.86,858/- to file a petition in PGIA No.155 of 2017 for reopen of P.G.No.28 of 2015 which is filed originally seeking gratuity.

13. It is to be noted that once this Court in W.P.No.38072 of 2015 has passed directions on 3/3/2016 asking the petitioner Society to pay only Rs.86,858/- by retaining Rs.1,65,045/- then, the first respondent cannot pass any other order contrary to the said orders. But unfortunately, the first respondent has gone to the extent of directing the first respondent to pay an amount of Rs.1,85,027/- when this Court has passed the order directing the petitioner to pay only Rs.86,858/-. These orders are contrary to the order passed by this Court.

14. Further, W.P.No.38072 of 2015 has already been disposed of, the issue raised by the second respondent in P.G.No.28 of 2015 is also deemed to have been closed. Therefore, P.G.No.28 of 2015 also should not have been reopened. If at all surcharge proceedings against the petitioner are disposed of in favour of the second respondent, then, the



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second respondent can approach the first respondent for payment of balance of amount of Rs.1,65,045/-.

15. Therefore, considering the discussion above, the impugned orders passed by the first respondent dated 5/7/2019 is contrary to the order passed by this Court in W.P.No.38072 of 2015 dated 3/3/2016 and therefore, deserves to be quashed.

16. Accordingly, this writ petition is allowed and the impugned order dated 5/7/2019 passed by the first respondent in P.G.No.28 of 2015 is quashed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index :Yes/No
Neutral Citation : Yes/No

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