IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 18.06.2024

Order delivered on 20.09.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
and
THE HONOURABLE Mr.JUSTICE.P.DHANABAL

W.A.Nos.3299, 3304 & 3306 of 2023
and
C.M.P.Nos.26824, 26830, 26845, 26847, 26848, 26857 & 26859 of 2023

W.A.Nos.3299 & 3304 of 2023

J.Mathavaraj ....Appellant in both the Appeals

Vs

The General Manager - Admin
Tamilnadu Grama Bank,
No.6, Yercaud Road,
Hasthampatti,
Salem - 636 007. ..Respondent in both the Appeals

Prayer: Writ Appeal filed under Clause 15 of Letter Patent as against the order passed by this Court in W.P.No.20808 of 2021 and W.P.No.13200 of 2021 respectively dated 25.09.2023

W.A.No.3306 of 2023

J.Mathavaraj ....Appellant

vs.

1. The Chairman,
   Tamil Nadu Grama Bank,
   Head Office,
   6, Yercaud Road, Hasthampatti,
   Salem - 636 007.

2. The Appellate Authority under the
   Payment of Gratuity Act, 1972 &
   Dy.Chief Labour Commissioner (Central)
   Chennai
   O/o Dy.Chief Labour Commissioner (Central),
   5th floor, Shastri Bhawan,
   Chennai - 600 006.

3. The Controlling Authority under the
   Payment of Gratuity Act, 1972
   & Regional Labour Commissioner (Central)
   Madurai (I/C),
   O/o the Labour Commissioner (Central),
   Kanaga Apartments, Suite No.III, I Floor,
   13-A, Lady Doak College Road,
   Chinnachokkikulam,
   Madurai - 625 002. ..Respondents.

Prayer: Writ Appeal filed under Clause 15 of Letter Patent as against the order passed by this Court in W.P.No.19792 of 2023 dated 25.09.2023

For Appellant in
all the Appeals : Mrs.D.Geetha

For Respondent

in W.A.No.3299 & 3304/2023 : Mr.S.N.Parthasarathy

For Respondents in
W.A.No.3306/2023 : Mr.P.Raghunathan
for T.S.Gopalan & Co. for R1
Mr.S.N.Parthasarathy for R2 & R3

COMMON JUDGMENT

(The judgment of this Court was delivered by J.Nisha Banu,J.)

These writ appeals have been filed by the appellant/employee of the Bank challenging the common order dated 25.09.2023 passed in W.P.Nos.19792 of 2023 and W.P.Nos.13200 and 20808 of 2021 respectively.

2. W.P.No.19792 of 2023 was filed by the Bank challenging the order passed by the Appellate Authority confirming the order passed by the Controlling Authority and to direct the Appellate Authority to refund Rs.18,06,746/- deposited with the Controlling Authority. W.P.No. 13200 of 2021 was filed by the employee challenging the order passed by the Bank dated 30.04.2021 and to direct the Bank to settle all the terminal benefits with interest within a time frame. W.P.No.20808 of 2021 was filed by the employee to direct the respondent to disburse the terminal benefits including Pension, Gratuity and encashment of earned leave by considering his

representation dated 30.06.2021 within a time frame. The Writ Court, allowed W.P.No.19792/2023 filed by the Bank by setting aside the order passed by the Appellate Authority and the Controlling Authority and directed to conclude the disciplinary proceedings and pass final orders within a period of six months and dismissed W.P.Nos.3304 & 3306 of 2023 filed by the employee.

3. The brief facts of the case of the appellant are as follows:

(i) The appellant entered the service of the erstwhile Pandyan Grama Bank as Office Assistant on 01.12.1983. The Pandyan Grama Bank and the Pallavan Grama were merged and merged entity was renamed as Tamil Nadu Grama Bank by Union of India Notification No.363 dated 28.01.2019. The appellant has been associated with the erstwhile Pandyan Grama Bank Employees Association (hereinafter called as 'PGBEA') and held various positions in the Association and was elected as the General Secretary in the year 1990. The said 'PGBEA' was amalgamated with Pallavan Grama Bank Employees Association under the Trade Union Act and was renamed as Tamil Nadu Grama Bank Workers Union. The appellant was elected as the General Secretary after amalgamation and continued in the said post till January 2021. As the office bearer of the Union, the appellant had several negotiations with the officials of the respondent Bank on various issues pertaining to the rights and welfare of workers.

(ii) The appellant reached the age of superannuation on 30.04.2021. On the date of his retirement, he did not receive any intimation from the respondent bank pertaining to settlement of his terminal benefits till 5 p.m. The appellant served a letter to the Branch Manager, Minnampalli Branch that there has been no intimation from the Management relieving him from service and the appellant deemed to have been relieved from service from 5.00 p.m. on 30.04.2021. The Branch Manager also acknowledged the said letter at 5.10 p.m. on 30.4.2021. Thereafter, the appellant left the service of the Bank. In the said acknowledgement, there was nothing stated that the Bank contemplated cessation of the appellant's service or that the appellant was not being relieved on that date.

(iii) On the same date of retirement at 7.36 p.m., the appellant received an e-mail communication from the Human Resource Department stating that *“Further to the intimation about your cessation given to you through your Branch Manger, please find attached letter regarding cessation of your service in the bank.”* Along with the said e-mail, a letter dated 30.04.2021 in HO/HRM/114/2021-22 issued by the Bank was attached stating that his service in the bank will cease on 30.04.2021, on attaining superannuation in view of disciplinary proceedings pending against him. The appellant will be entitled to payment of retirement benefits only after the disciplinary proceedings were concluded and final order passed thereof.

(iv) The respondent Bank issued a show cause notice dated 10.03.2021 to the appellant called for explanation for certain action mentioned therein and the appellant also submitted a detailed explanation on 16.03.2021. Thereafter, a charge sheet was issued on 30.03.2021 alleging that the appellant participated in a dharna organised by the Bank's Retirees Sangam and that the appellant trespassed into the Bank and obstructed the Chairman. The appellant reached the age of superannuation on 30.04.2021 and no intimation about retaining him in service was served on him during the office hours on 30.04.2021.

(v) The appellant approached the Controlling Authority under Payment of Gratuity Act 1972 for disbursal of gratuity dues and an order was passed on 18.10.12022 allowing the appellant's claim. The statutory appeal against the order was disposed of vide order dated 26.03.2023 confirming the order of the Controlling Authority.

(v) Against the order of the appellate authority, the Bank preferred

W.P.No.19792 of 2023 for the relief as stated supra. The said writ petition was taken up together along with the writ petitions filed by the appellant in W.P.No. 13200 of 2021 and W.P.No.20808 of 2021 and a common order was passed by the Writ Court, allowing W.P.No.19792/2023 filed by the Bank and dismissing W.P.Nos.3304 & 3306 of 2023 filed by the appellant/employee. Hence, these appeals are filed by the appellant/employee, challenging the common order passed in the said three writ petitions.

4. (i) Learned counsel for the appellant would state that the learned Judge has not given any specific finding to sustain the order of cessation dated 30.04.2021. The learned Judge ought to have first dealt with the question as to whether the order of cessation dated 30.04.2021 issued to the appellant is *void ab initio* or not and whether the appellant could be said to be notionally retained in service for the purpose of disciplinary proceedings before adverting to the consequential issue of whether the appellant is entitled to gratuity payment. The learned Judge had decided the issue of gratuity first and consequently, dismissed the appellant's writ petitions.

(ii) Learned counsel would further state that there is no dispute to the fact that the respondent reached the age of superannuation. At the end of office hours on 30.04.2021, the appellant served a letter to his Branch Manager at 5.00 p.m. stating that he shall be deemed to be returned from service on 30.04.2021 at 5.00 p.m. and the Branch Manager received the letter and acknowledged the same at 5.10 p.m. The appellant left the Bank premises at 5.15 p.m. The appellant received email from the respondent at 7.36 pm. stating that *"Further to the intimation about your cessation given to you through your Branch Manger, please find attached letter regarding cessation of your service in the bank."*

(iii) Learned counsel would further state that in view of the above said factual aspect, it has to be seen whether the appellant is deemed to be in service even after the age of superannuation as per Regulation 45. Regulation 45(1) contemplates, an officer or employee who is under suspension on a charge of misconduct to be deemed to be in service even after the age of superannuation. The appellant was never placed under suspension on the charge of misconduct. Therefore, without placing an employee under suspension as contemplated under Regulation 45, the appellant cannot be considered to be in service even after superannuation for the purpose of continuation and conclusion of disciplinary proceedings. On attaining superannuation, no written communication was handed over to the appellant by the Branch Manager either about the cessation of service pending disciplinary proceedings or an order of suspension. Even in the acknowledgement of the letter given by the appellant, no such entry or communication or intimation about pendency of any departmental proceedings is noted by the Branch Manager. The impugned order retaining him from service was issued at 7.36 p.m. by way of e-mail after the office hours and the appellant left the office premises. The appellant had retired from service at 5.00 p.m. and he lost the character of the employee of the Bank.

(iv) Learned counsel would further state that section 7 of Payment of Gratuity Act contemplates the situation where the employee is facing disciplinary proceedings at the time of superannuation and provides for the procedure to be followed by the employer. Section 7(2) casts a duty upon the employer to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined. On such determination and after issuing notice to the employee and the controlling authority, the procedure to be followed thereafter is specified under sub-section (4) of section 7.

(v) Learned counsel would further state that Section 7(4) is a comprehensive procedure prescribed when there is any dispute as to the amount of gratuity payable or as to the admissibility of any claim of payment of gratuity. Hence, the Act do provide for such a circumstance when the employer disputes the admissibility of any claim of gratuity and further under Section 7(4)(b) stipulates that the employer may make an application to the controlling authority for deciding the dispute after the deposit under Section 7(4)(a). The respondent Management failed to follow the provisions of PG Act and continued to state that the Service Regulations provides for withholding of the gratuity payable and the writ court upheld the same without considering the provisions under section 7 of the PG Act.

(vi) Learned counsel would further state that even assuming without admitting that a disciplinary proceedings was pending against the appellant at the time of his superannuation and that the Service Regulation prevail upon the PG Act, it is submitted that Regulation 72 will come into the aid of the appellant. Regulation 72 empowers the appellant to forfeit gratuity on account of misconduct where such misconduct causes financial loss to the Bank and in that case to that extent only. It is nobody's case that the appellant has causes any monetary loss to the respondent Bank for the respondent to deny gratuity to the appellant on the ground of pendency of disciplinary proceedings. Hence, he would pray to allow the appeals and to provide all the terminal benefits with interest at the rate of 12% of the appellant.

5. (i) Per contra, learned counsel appearing for the 1st respondent bank/contesting respondent would state that the Bank sent email dated 30.04.2021 addressed to the appellant annexing a letter dated 30.04.2021 specifically referring to the intimation of cessation given through the Bank Manager at 4.30 p.m that "to all interests and purposes you are deemed to be in the service of the bank until the above disciplinary proceedings is disposed of".

(ii) Learned counsel for the 1st respondent would further state that Section 45(3) of the banks Service Regulations provides that "*The officer or employee against whom disciplinary proceedings has been initiated shall cease to be in service on the date of superannuation, but the disciplinary proceedings shall continue as if he was in service until proceedings are concluded and final order is passed in respect thereof.*" This regulation makes it clear that continuation of disciplinary action is automatic, even after superannuation, and cessation of service and that for the purpose of disciplinary action, it shall continue "as if" he was in service until proceedings are concluded and final orders are passed.

(iii) Learned counsel would further state that having regard to the mandatory nature of the Regulation, which binds both the bank and the employee, there is no necessity of any intimation muchless prior intimation. The bank is bound to continue disciplinary action. Therefore, notice of intimation to continue disciplinary action was not mandated. However, while preferring the appeal, on 06.12.2022, the Bank had deposited the amount of gratuity with the 2nd respondent/Controlling Authority under the Payment of Gratuity Act.

(iv) Learned counsel would further state that only if the bank could terminate disciplinary action, the discontinuance of disciplinary action should have to be intimated. The email and letter dated 30.04.2021 sent by the bank was a mere intimation of factual position based on Regulation 45(3) and not a notice of intention to continue disciplinary action.

(v) In support of the above contentions, the learned counsel would also refer to the judgment of of the Hon'ble Supreme Court reported in ***(2007) 9 SCC 15 (Ramesh Chandra Sharma v. Punjab Nationl Bank and another).***

6. Heard the learned counsel for the appellant, the learned counsel for

the respondents and perused the materials available on record.

7. Admittedly, the appellant joined the service of the 1st respondent Bank on 0.12.1983 and worked for about 38 years and reached the age of superannuation on 30.04.2021. The dispute arose regarding the issuance of cessation order after the office hours on 30.04.2021 and withholding of gratuity payable to the appellant.

8. There is no dispute to the fact that the appellant reached the age of superannuation on 30.04.2021. At the end of office hours on 30.04.2021, the appellant served a letter to his Branch Manager at 5.00 p.m. stating that he shall be deemed to be relieved from service on 30.04.2021 at 5.00 p.m. and the Branch Manager received the letter and acknowledged the same at 5.10 p.m. The appellant left the Bank premises at 5.15 p.m. The appellant received email from the respondent at 7.36 pm.

9. According to the respondent Bank, the appellant has been a ceased staff due to pendency of Disciplinary Proceedings and thus, his gratuity has been withheld. Further, the Pension Regulation empowers the respondent

Bank to withhold the gratuity of the appellant during the pendency of the disciplinary action. According to the appellant, he was never placed under suspension on a charge of misconduct. Therefore, withholding of Gratuity is not acceptable as per the Payment of Gratuity Act, 1972. Further, the Regulation viz., Tamil Nadu Grama Bank (Officers and Employees) Regulation, which the respondent Bank relied upon, is not approved by the Central Government and neither notified under the Government Gazette.

10. It is not in dispute that this Court vide order dated 24.06.2021 made in W.P.No.13200 of 2021 has granted stay of the operation of the said cessation order dated 30.04.2021 issued by the respondent Management. When the employee was not in service, the bank cannot deny gratuity to the employee.

11. It is relevant to extract Section 4 (1) & 4(6) of the Payment of Gratuity Act, 1972, which reads as under:

Section: 4

***Payment of gratuity*.**

> ***(1)*** *Gratuity shall be payable to an employee on the termination of his employment after he has rendered*

continuous service for not less than five years, -

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

.....

.....

(6) *Notwithstanding anything contained in sub-section (1), -*

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited] -

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

12. It is also relevant to extract Regulation 72 which reads as follows:

72. Gratuity – (1) An officer or employee shall be eligible for payment of gratuity either as per the provisions of *the Payment of Gratuity Act, 1972(39 of 1972) or as per sub-regulation (2), whichever is higher.*

(2) Every officer or employee shall be eligible for gratuity on, -

(a) retirement,

(b) death,

(c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or

(d) resignation after completing 10 years of continuous service, or

(e) termination of service in any other way except by way of punishment after completion of 10 years of service:

Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.

13. Further, the Gratuity Act cannot be overruled by Bank's Staff Service Regulations. As per Gratuity Act, the gratuity of an employee, whose services have been terminated for any act, wilful omissions or negligence causing any damage or loss to, or destruction of property belonging to the employer shall be forfeited to the extent of the damage or loss so caused. In

the present case, there was no charge that the appellant had caused damage or loss to the bank due to his action.

14. Regulation 45(1) contemplates, an officer or employee who is under suspension on a charge of misconduct to be deemed to be in service even after the age of superannuation. The appellant was never placed under suspension on the charge of misconduct. Therefore, without placing an employee under suspension as contemplated under Regulation 45, the appellant cannot be considered to be in service even after superannuation for the purpose of continuation and conclusion of disciplinary proceedings. On attaining superannuation, no written communication was handed over to the appellant by the Branch Manager either about the cessation of service pending disciplinary proceedings or an order of suspension. Even in the acknowledgement of the letter given by the appellant, no such entry or communication or intimation about pendency of any departmental proceedings is noted by the Branch Manager. The impugned order retaining him from service was issued at 7.36 p.m. by way of e-mail after the office hours and the appellant left the office premises.

15. Section 7(2) casts duty upon the employer to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined. On such determination and after issuing notice to the employee and the controlling authority, the procedure to be followed thereafter is specified under sub-section (4) of section 7. Further, Payment of Gratuity Act do provide that when the employer disputes the admissibility of any claim of gratuity, under Section 7(4)(b), the employer may make an application to the controlling authority for deciding the dispute after the deposit under Section 7(4)(a). The respondent Management failed to follow the provisions of PG Act and continued to state that the Service Regulations provides for withholding of the gratuity payable and the writ court upheld the same without considering the provisions under section 7 of the PG Act. Therefore, we are of the view that since the appellant was not placed under suspension on a charge of misconduct, the denial of gratuity is not acceptable as per Payment of Gratuity Act, 1972.

16. It is not the case that the appellant has caused any monetary loss to the respondent Bank for the respondent to deny gratuity to the appellant on

the ground of pendency of disciplinary proceedings. In the present case, the appellant was encountered with charge memo at the verge of his retirement for participating in dharna conducted by the Tamil Nadu Grama Bank Retirees Sangam. Tamil Nadu Grama Bank Retirees Sangam sent prior notice to the Chairman of the Bank on 25.02.2021 for staging one day Dharna in front of Head Office on 01.03.2021 and the appellant, being the General Secretary of Tamil Nadu Grama Bank Workers Union, greeted the dharna in a representative capacity. The charge memo was issued stating that the appellant had committed breach of discipline, failed to maintain the required decorum and discipline in the office and that the appellant resorted to violent and unruly behaviour etc. The appellant had given reply to the charge memo denying that all the allegations are completely baseless.

17. It is seen from the available materials that no order of suspension was passed before the date of the appellant's retirement. Further, it is evident from the email communication dated 30.04.2021 that the order of cessation of service was sent to the appellant through email only at 7.36 p.m., after the retirement hours. The contention of the Management that intimation about the order of cessation was given to the appellant through Branch Manager at

4.30 p.m., cannot be countenanced for the reason that if such intimation was given, the Branch Manager, while acknowledging the receipt of the letter from the appellant at 5.00 p.m. on 30.04.2021, would have informed the appellant about the same or he would not have received the letter from the appellant. Further, there is no necessary to send email to the appellant at 7.36 p.m. on the retirement date. Mere participation in dharna itself would not amount to misconduct. Only to harass the appellant at the verge of his retirement for participating in dharna, the Management has passed the order of cessation of service on the date of his retirement, that too, after working hours. The said order would certainly prejudices the interest of the appellant, by not allowing him to retire and receiving his terminal benefits, during his old age, within the appropriate period of time, which in our opinion, is not justifiable. Therefore, on consideration of the entire materials available on record, we are of the opinion that the order of the Controlling Authority which was upheld by the Appellate Authority has to be confirmed, accordingly, the same is confirmed.

18. In the result, the Writ Appeals are allowed. The common order passed in W.P.Nos.13200 and 20808 of 2021 are set aside. The cessation

order passed by the respondent Bank dated 30.04.2021 is hereby set aside. Consequently, the appellant is permitted to retire from service with all attendant benefits. The respondent Bank is directed to disburse all the terminal benefits with interest at the rate of 6% p.a. from the date of retirement till the date of realisation. In respect of payment of gratuity, the order dated 26.05.2023 passed by the Appellate Authority is confirmed and as directed by the Appellate Authority, the appellant is entitled for disbursement of gratuity with simple interest at the rate of 10% p.a. from the date of payment till the actual date of disbursement of gratuity. Such exercise shall be done by the respondent Bank within a period of twelve weeks from the date of receipt of a copy of the order.

(J.N.B.,J.) (P.D.B.,J.)
20.09.2024

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Index : Yes / No
Internet : Yes / No

To

1. The Appellate Authority under the
   Payment of Gratuity Act, 1972 &
   Dy.Chief Labour Commissioner (Central)
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J. NISHA BANU, J.

and
P.DHANABAL,J.

vsi

Pre-delivery order in W.A.Nos.3299, 3304 & 3306 of 2023

20.09. 2024