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**W.P.(MD)Nos.16714, 17225, 20679,
20681 and 21320 of 2014**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.12.2023

PRONOUNCED ON : 16.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.16714, 17225, 20679, 20681 and 21320 of 2014

and

M.P.(MD)Nos.2, 2, 2, 2, 2, 3, 3, 3, 3, and 3 of 2014

W.P.(MD)No. 16714 of 2014:

Indian Overseas Bank,
Through its Branch Manager,
N.Paraippatti Branch,
Vedachendur Taluk,
Dindigul district.

... Petitioner

vs.

1. M/s.Thiruchendur Murugan Spinning Mills,
through its managing Director,
N.Paraippatti (Post)
Karur Road,
Dindigul District.



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2. Baluchamy
3. T. Rajendran
4. R. Murugesan
5. M. Padmanabhan
6. S. P. Ramuthai
7. R. Ramuthai
8. C. Marimuthu
9. C. Savarior
10. A. Arumugam
11. N. Muthammal
12. Anandaraj
13. M. Subramani,
14. T. A. Mathiyalagan
15. A. Arumugam
16. R. Aachimuthu
17. M. Vellaichamy
18. A. Vasantha
19. K. Vellaichamy
20. P. Alagumalai
21. S. P. Murugesan
22. Bommusami
23. K. Muniyandi
24. S. Manickam
25. C. K. Laksmi
26. M. Murugan
27. K. Kaliammal
28. Thangam
29. M. Vijaya



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- 30.V.Annadurai
- 31.S.Palanichamy
- 32.M.Mathalaimuthu
- 33.V.Subramani
- 34.A.Muthusamy
- 35.P.Balasubramaniam
- 36.V.Ponraj
- 37.K.Marimuthu
- 38.A.Karuppaya
- 39.B.Sheik Hussain
- 40.A.Murugan
- 41.M.S.Ganesan
- 42.K.P.Murugan
- 43.K.Ramakrishnan
- 44.R.Paramasivan
- 45.S.Kamaraj
- 46.P.Gunasekaran
- 47.P.Thirugengadam
- 48.S.Palanichamy
- 49.V.Krishnamurthy
- 50.Radha
- 51.The Assistant Commissioner of
Labour,
Controlling Authority under the Payment
of Gratuity Act,
Dindigul District.



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**W.P.(MD)Nos.16714, 17225, 20679,
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52.The Joint Commissioner of
Labour/ Appellate Authority under
Payment of Gratuity Act,
Tiruchirappalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the respondent No.52 in P.G.Appeal Nos.102/2013 to 150/2013, dated 03.01.2014, on the file of the respondent no.52, to quash the same, thereby to allow the appeal filed by the petitioner.

For Petitioner	: Mr.M.Senthil Kumar
For R1	: No appearance
For R2 to R50	: Mr.S.Sarvagan Prabhu
For R51 and 52	: Mr.N.Muthuvijayan Special Government Pleader

W.P.(MD)No. 17225 of 2014:

Indian Overseas Bank,
Through its Branch Manager,
N.Paraippatti Branch,
Vedachendur Taluk,
Dindigul district.

... Petitioner

vs.



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**W.P.(MD)Nos.16714, 17225, 20679,
20681 and 21320 of 2014**

1. M/s.Thiruchendur Murugan Spinning Mills,
through its managing Director,
N.Paraippatti (Post)
Karur Road,
Dindigul District.

- 2.P.Veluchamy
3. K.Palanichamy
4. A.Rengasamy
- 5.P.Murugesan
- 6.C.John Peter
- 7.P.Muthuraj
- 8.K.Aathimoolam
- 9.M. Vijayarajan
10. Suseela
- 11.M.Alagarsamy
- 12.Sivakami
- 13.T.M.Subbaiya
- 14.A.Subramani
- 15.M.Rajeswari
- 16.T.Palanisamy
- 17.S.Veerappan
18. A.Johnraj
- 19.A.Sundararaj
- 20.M.Radhakrishnan
- 21.K. Veerasami
- 22.A.Marudhanayagan



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- 23.M.Vasudevan
24. R.Vijayarajan
- 25.P.Perumal
- 26.K.Venkadesh
- 27.Santhiyagu
- 28.P.Logamani
- 29.P.Govindaraj
- 30.M.Muniyammal
- 31.P.Sundaralingam
- 32.K.Selvaraj
- 33.S.Murugesan
- 34.M.Ramu
- 35.S.K.Murugan
- 36.N.P.Murugan
- 37.K.Lakshmi
- 38.K.Shanmugam
- 39.M.Kurumban
- 40.S.Malliga
- 41.S.Thangadurai
- 42.Louis Raja
- 43.S.Vincent
- 44.R.Ramasamy
- 45.Valarmathi
- 46.T.Manivel
- 47.P.Alagar
- 48.A.Palanichamy
- 49.Karuppaiya
- 50.S.John Peter



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51.S.Alagumalai

52.The Assistant Commissioner of
Labour,
(Controlling Authority under the Payment
of Gratuity Act),
Dindigul District.

53.The Joint Commissioner of
Labour/ Appellate Authority under
Payment of Gratuity Act,
Tiruchirappalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the respondent No.52 in P.G.Appeal Nos.151/2013 to 200/2013, dated 03.01.2014, on the file of the respondent no.53, to quash the same, thereby to allow the appeal filed by the petitioner.

For Petitioner	: Mr.M.Senthil Kumar
For R1	: No appearance
For R2 to R51	: Mr.S.Sarvagan Prabhu
For R52 and 53	: Mr.N.Muthuvijayan Special Government Pleader



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**W.P.(MD)Nos.16714, 17225, 20679,
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W.P.(MD)No. 20679 of 2014:

Indian Overseas Bank,
Through its Branch Manager,
N.Paraippatti Branch,
Vedachendur Taluk,
Dindigul district.

... Petitioner

vs.

1. M/s.Thiruchendur Murugan Spinning Mills,
through its managing Director,
N.Paraippatti (Post)
Karur Road,
Dindigul District.

2. K.P.Murugan
- 3.Girija
- 4.Muthukrishnan
- 5.R.Alagarsamy
- 6.Pappathi
- 7.P.Ponnusamy
- 8.V.Selvaraj
- 9.V.Thiyagarajan
- 10.P.Rengasamy
- 11.A.Yagappan
- 12.M.Mamundi
- 13.C.Ramasamy
- 14.B.Selvaraj



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- 15.P.Ganesan
- 16.R.Perumal
- 17.N.Palraj
- 18.K.Jayabarathi
- 19.N.Sengodan
- 20.C.Periyasamy
- 21.R.Sekar
- 22.S.Sekar
- 23.K.Marimuthu
- 24.M.A.Murugan
- 25.R.Mohan
- 26.S.Radhakrishnan
- 27.M.Murugan
- 28.R.Kumar
- 29.C.Paramasivam
- 30.P.Mohanraj
- 31.A.Santhanam
- 32.P.Muthurakku
- 33.R.Mariammal
- 34.V.Ganesan
- 35.C.Rukumani
- 36.M.Subramani
- 37.P.Venkatachalam
- 38.R.Rajendran
- 39.M.Vijayan
- 40.k.Ramamurthy
- 41.K.Kaliyappan
- 42.M.V.Murugan



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- 43.M.Palaniyammal
- 44.P.Ramalatchumi
- 45.K.Murudhai
- 46.S.Sikanan
- 47.V.Subramani
- 48.B.Thangaraj
- 49.G.Kasthuri
- 50.Chandru
- 51.M.Subbaiya
- 52.P.Udhayakumar
- 53.P.Mani
- 54.P.Muthusamy
- 55.K.Raman
- 56.N.Deivendran
- 57.A.Jothimurugan
- 58.S.A.Periyasamy
- 59.M.Pitchaimuthu
- 60.K.Paramasivam
- 61.P.Parthiban
- 62.Sakthivel
- 63.S.John Britto
- 64.S.Govindaraj
- 65.T.Dhandapani
- 66.P.Mariyappan
- 67.M.Chandrasekaran



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68.The Assistant Commissioner of Labour,
(Controlling Authority under the payment
of Gratuity Act),
Dindigul District.

69.The Joint Commissioner of Labour /
Appellate Authority under payment
of Gratuity Act,
Thiruchirapalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the respondent No.69 in P.G.Appeal Nos.251/2013 to 316/2013, dated 03.01.2014 on the file of the respondent no.69, to quash the same, thereby to allow the appeal filed by the petitioner.

For Petitioner	: Mr.M.Senthil Kumar
For R1	: No appearance
For R2 to R67	: Mr.S.Sarvagan Prabhu
For R68 and 69	: Mr.N.Muthuvijayan
	Special Government Pleader



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**W.P.(MD)Nos.16714, 17225, 20679,
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W.P.(MD)No. 20681 of 2014:

Indian Overseas Bank,
through its Branch Manager,
N.Paraippatti Branch,
Vedachendur Taluk,
Dindigul district.

... Petitioner

vs.

1. M/s.Thiruchendur Murugan Spinning Mills,
through its managing Director,
N.Paraippatti (Post)
Karur Road,
Dindigul District.

2. Chitra
- 3.M.Theethai
- 4.P.K.Kannan
- 5.R.Muniyandi
- 6.M.Samidass
- 7.M.C.Pandiyan
- 8.P.Ramukalai
- 9.S.Pandiyammal
- 10.M.Kanagaraj
- 11.A.Periyasamy
- 12.B.Chinnakaman
- 13.Sesuraj
- 14.M.Ganesan



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- 15.T.Parthasarathy
- 16.T.Venkittan
- 17.N.Muthukalai
- 18.V.Palanichamy
- 19.A.Jeyaraj Devasahayam
- 20.L.Raj
- 21.Mookayee Ammal
- 22.P.Alagumalai
- 23.A.Suresh
- 24.E.Subedhar Lane
- 25.C.Manickam
- 26.V.Ponram
- 27.K.Durayappa
- 28.S.Murugan
- 29.C.Paramasivam
- 30.S.M.Sivakumar
- 31.K.Soundararajan
- 32.N.Muthukrishnan
- 33.P.Easwaran
- 34.Kalavathi
- 35.Savadai Ammal
- 36.P.Murugesan
- 37.V.Perumal
- 38.P.Muthuraj
- 39.R.Manoharan
- 40.K.Thangavel
- 41.P.Mahalingam
- 42.M.Shanmugaraj



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43.S.Ramasamy
44.N.V.Subramani
45.T.Gopalakrishnan
46.R.Soundararajan
47.B.Chinnaponnu
48.N.Rajendran
49.Jeyalakshmi
50.K.Perumal
51.S.Prabavathi

52.The Assistant Commissioner of Labour,
(Controlling Authority under The payment
of Gratuity Act),
Dindigul District.

53.The Joint Commissioner of Labour /
Appellate Authority under payment
of Gratuity Act,
Thiruchirapalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the respondent No.53 in P.G.Appeal Nos.201/2013 to 250/2013, dated 03.01.2014 on the file of the respondent no.53, to quash the same, thereby to allow the appeal filed by the petitioner.



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For Petitioner : Mr.M.Senthil Kumar
For R1 : No appearance
For R2 to R51 : Mr.S.Sarvagan Prabhu
For R52 and 53 : Mr.N.Muthuvijayan
Special Government Pleader

W.P.(MD)No. 21320 of 2014:

Indian Overseas Bank,
Through its Branch Manager,
N.Paraippatti Branch,
Vedachendur Taluk,
Dindigul district.

... Petitioner

vs.

1. M/s.Thiruchendur Murugan Spinning Mills,
through its managing Director,
N.Paraippatti (Post)
Karur Road,
Dindigul District.

2. K.Muthuraj
3.D.Kamatchi
4.M.Ramu
5.S.Jeyamani
6.S.Joseph
7.K.Arumugam
8.D.Govindaraj



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- 9.K.Ravichandran
- 10.A.Lazar
- 11.P.Kalyanasundaram
- 12.B.Dass
- 13.P.James
- 14.V.Alagiriswamy
- 15.M.K.Thangavel
- 16.S.Ravichandran
- 17.B.Vinotha
- 18.R.Saraswathi
- 19.P.Selvaraj
- 20.A.Arockiyadass
- 21.Soosaimanickam
- 22.S.Rathinam
- 23.L.Sagaya Shanthi
- 24.M.Subbaya
- 25.P.Chidambaram
- 26.S.Selvam
- 27.V.Murugan
- 28.A.Jayaraj
- 29.Manokaran
- 30.P.Murugan
- 31.S.Irudhayam
- 32.P.Arockiyasamy
- 33.V.Veerappan
- 34.K.Sellampandi
- 35.S.Mariyalouis
- 36.K.Muthukrishnana



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- 37.A.Ganesan
- 38.K.Kalimuthu
- 39.Mariyamichael
- 40.P.Rathinam
- 41.S.Subramaniam
- 42.K.Kesavamurthy
- 43.P.Uppiliappan
- 44.P.Savoriyar
- 45.S.A.Palanichamy
- 46.D.M.Veerachamy
- 47.P.Mammari
- 48.P.Marudhai
- 49.G.Nagarajan
- 50.P.Nagarajan
- 51.P.Amudhavalli
- 52.K.Palanichamy
- 53.S.Mutthan
- 54.P.Natarajan
- 55.M.Palanivel
- 56.R.Balan
- 57.V.Raju
- 58.N.V.Ganesan
- 59.K.Karuppaiyee

- 60.The Assistant Commissioner of Labour,
(Controlling Authority under the payment
of Gratuity Act),
Dindigul District.



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61.The Joint Commissioner of Labour /
Appellate Authority under payment
of Gratuity Act,
Thiruchirapalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the respondent No.61 in P.G.Appeal Nos.39/2013 to 44/2013 and 50/2013 to 101/2013, dated 03.01.2014 on the file of the respondent no.61, to quash the same, thereby to allow the appeal filed by the petitioner.

For Petitioner	: Mr.M.Senthil Kumar
For R1	: No appearance
For R2 to R59	: Mr.S.Sarvagan Prabhu
For R60 and 61	: Mr.N.Muthuvijayan Special Government Pleader

COMMON ORDER

All these writ petitions are filed by Indian Overseas Bank and the issue in all these writ petitions are one and same, hence all the writ petitions are taken up and a common order is passed.



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2. The brief facts as stated in W.P.(MD)No.20679 of 2014 are that the petitioner bank granted financial assistance to the first respondent namely M/s. Thiruchendur Murugan Spinning Mills to the tune of Rs.2,20,00,000/- as early as 1994 for which the mill had mortgaged the immovable properties and also movable properties like machineries in favour of the Bank. The Bank has first charge over the movable and immovable properties. The first respondent mill became sick and closed from 04.12.1995. Since the loan amount was not repaid, the first respondent Mill loan account was declared as non performing asset. Thereafter, the Bank filed claim application in the Debts Recovery Tribunal, Madurai to recover a sum of Rs.2,79,88,741.10 paise in T.A.No.459 of 2007. The said the petition was pending and the Bank also initiated recovery proceedings by invoking the provisions under SARFAESI Act. Since the mill was not running, the Bank took physical possession of the movable and the immovable properties.



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3. It was seen that before the Bank took possession, the employees of the first respondent were made jobless and they did not take steps to recover the terminal benefits from the first respondent. But the contention of the petitioner is that the Bank has not taken over the business of the first respondent but has taken possession of assets which was hypothecated and mortgaged to the bank to recover the dues. In the meanwhile, the bank has recovered a sum of Rs. 1,40,53,000/- after auctioning the properties of the first respondent. Even after adjusting realizable value of all securities of the 1st respondent, the petitioner has to receive a sum of Rs.81,62,283/- from the first respondent. As such the bank is not liable to pay the alleged dues payable to the employees the 1st respondent. The respondents 2 to 67 have not initiated any action against the 1st respondent for recovery of the alleged terminal benefits. The respondents 2 to 67 along with other workmen had filed 273 Gratuity Applications claiming Gratuity from the respondent Mill and the petitioner. Since there is no employer employee



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relationship between the petitioner and the respondents 2 to 67, the petitioner bank is not liable to pay the same. The respondents 2 to 67 in order to harass the petitioner bank have created lot of obstacles while bringing the property for auction sale. In the Gratuity Application, the petitioner Bank had filed a counter affidavit. The 68th respondent who is the original authority under the Payment of Gratuity Act, without considering the legal and factual objection raised by the Bank has allowed the Gratuity Application, vide order, dated 28.10.2012. In the said order, the 68th respondent has given a finding that there is no direct employer employee relationship between the petitioner Bank and the Workmen but had held that there is a deemed employer employee relationship between the Bank and the Workmen, since the Bank is in control of the assets of the first respondent company. The contention of the bank is that the said finding is erroneous.

4. The first respondent had closed down the Mill as early as 04.12.1995 and



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respondent that the Payment of Gratuity Act overrides the provisions of SARFAESI Act is false and legally incorrect and also against law and equity. The Appellate Authority had not considered the fact that the workmen are entitled to claim the wages and other benefits only from the employer company or from its liquidator at the time of winding up of the company. The respondents 68 and 69 have virtually not considered the Section 13 (9) of SARFEASI Act and the Section 529 A(1)(a) of the Indian Companies Act. The bank is liable to pay the alleged dues of the workmen only in the event of liquidation, since there is no winding up proceedings against the first respondent, the petitioner bank is not liable to pay the same. Hence, aggrieved over the same, the petitioner bank has filed this writ petition.

5. The respondents relied on the contents of the petition filed before the Payment of Gratuity authority. The workmen had filed the petitions as well as



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counter affidavit in the appeal before the appellate authority. The contention of the respondents 2 to 67 is that the first respondent Mill without any prior intimation had closed the Mill suddenly on 04.12.1995. The employees were under the impression that the Mill will start running shortly. Moreover, the management would provide all the monetary benefits applicable to the workers. The Bank had issued notice stating that for the recovery of debt, the properties would be sold through auction on 04.01.2008. On issuance of such notice, the workers had filed petition before the Assistant Commissioner of Labour. Before the Assistant Commissioner, the terms of settlement was issued on 10.03.2008, which is marked as Exhibit A 5 in which the Bank was directed to pay Rs.1000/- for each workmen. On such payment, the workers will not interfere in the auction of land and machineries and other moveable. It was also agreed that as far as the gratuity and statutory benefits are concerned, the workmen should approach the appropriate authority and initiate proceedings against the Mill Management and



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proceedings to sell the properties of the first respondent, the workmen have only demanded to pay the gratuity that is applicable to them. The Bank has agreed to pay the same at the time of negotiation. Now, the bank cannot turn around and say that the bank is not liable to pay the amount. After hearing the rival submissions of the 273 workers, a common order was passed by the Assistant Commissioner of Labour. Hence, the respondents 2 to 67 prayed to dismiss the writ petition.

6. Heard Mr.M.Senthil Kumar the Learned Counsel appearing for the petitioner Bank, Mr.S.Sarvagan Prabhu the Learned Counsel appearing for the respondents 2 to 67 and Mr.N.Muthuvijayan appearing for the respondents 68 and 69 and perused the records.

7. The contention of the petitioner Bank is that the workers had filed



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workers are not entitled to claim salaries, gratuity and other statutory benefits from the Bank. If the company is under the winding up proceedings, then the claim of the workmen is absolutely right and whatever assets available in the defunct company will be distributed on the principle of pari passu. In the present case, there is no winding up proceedings initiated, hence the claim of the workmen under the principles of “pari passu” cannot be entertained.

8. In order to consider the claim of the petitioner Bank the provisions under Section 13 (9) of SARFEASI Act and the Section 529A(1)(a) of the Indian Companies Act are relevant and the same is extracted hereunder:

Section 13 (9) of SARFEASI Act:

13(9) 1[Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of] financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the



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rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than 2 [sixty per cent.] in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors: Provided that in the case of a company in liquidation, the amount realized from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956):

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realize his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act: Provided also that liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets



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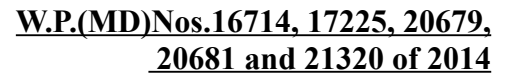


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after depositing the amount of such estimate dues with the liquidator: Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator: Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any. Explanation.—For the purposes of this sub-section,— (a) “record date” means the date agreed upon by the secured creditors representing not less than 2 [sixty per cent.] in value of the amount outstanding on such date; (b) “amount outstanding” shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

Section 529A(1) of Companies Act:

Section 529A. OVERRIDING PREFERENTIAL PAYMENTS (1)
Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company -
(a) workmen's dues; and (b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section



(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.”

“(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of—

- (i) the amount of workmen's dues; and
- (ii) the amounts of the debts due to the secured creditors.”



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10. All the provisions states if the company is under liquidation then the principle of pari passu would be applicable for the secured creditor and workmen's due. Admittedly in the present case the workmen had not filed any winding up petition and any other creditor / secured creditor of the Mill has not filed any winding up petition. But non filing of winding up petition cannot be a ground to decline the workmen's due. The workmen's due is a statutory liability. Even both the SARFEASI Act and the Indian Companies Act grant ample protection to the workmen's due. Also both the Acts places workmen's due and the secured creditor on par. Therefore the claim of the petitioner bank cannot be entertained.

11. The next contention of the petitioner bank is that under Section 529 of the Companies Act, the workmen portion in relation to security of the secured creditor of the company means the amount which appears to the value of the



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security, the same proposition as the amount of workmen due bears to the aggregate of the amount of the workmen's due and the amount of debts due to the secured creditor. Hence, the amount of the debt to the secured creditors ought to be added along with the workmen's due. Thereafter, based on the pari passu principle, the amount ought to be distributed. But this proportion cannot be taken into account, since there is an overriding provision under Section 529A. This contention of the petitioner bank cannot be accepted because even in the Section 529A the workmen's due is included and the workmen due is duly protected.

12. The next contention of the petitioner is that under the SARFAESI Act, the provisions of said Act will have overriding effect than other legislation. Since the SARFAESI Act is subsequent to the Payment of Gratuity Act, the SARFAESI Act will have overriding effect than the Payment of Gratuity Act, hence, the first charge should be granted to the bank alone. This contention of the bank is refuted

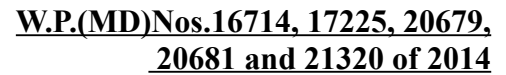


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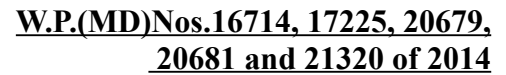


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by the respondents since the Payment of Gratuity Act is having overriding effect than any other debts of the management and the wellness of the workmen should be prioritised than any other debt. This Court is of the considered opinion that the bank is dealing with the public money. On the other side the workmen are entitled to the gratuity which is a statutory payment. In the present case, the workmen without initiating any recovery proceedings from the management of the mill is making the entire claim against the Bank alone which is incorrect. As seen from the records, the bank has given the loan in the year 1994 and the mill was closed in the year 1995, from 1995 to 2008 the workmen have not initiated any action against the management. The workmen have only stalled the proceedings of the Bank whenever the Bank has initiated proceedings under SARFAESI Act for taking physical possession and for selling the property, etc. It is also to be noted that the Bank has already paid Rs.1000/- for each employee and has also deposited a sum of Rs.8,90,000/- for the arrears of salary applicable to the



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13. It is seen the bank is having a decree in its favour to the tune of Rs. 2,79,88,741.10/-. Based on the auction of the properties, the bank has recovered Rs.1,40,53,000/-. After adjusting to the loan, the balance payable to the bank is Rs.81,62,283/-. As per the official order, an amount of Rs.10,65,24,593/- with the future interest of 15.25% from 01.03.2015 is due to the bank. On the other side, 281 gratuity applications were filed before the Assistant Commissioner of Labour. Based on the order of the Assistant Commissioner of Labour, the Bank has deposited Rs.43,85,474/-. Thereafter, filed a statutory appeal before the Appellate Authority. The bank has also deposited to the tune of Rs.75,45,461/- in some other proceedings for salary. Since the employers have already received Rs.1000/- and some of the employees have received the arrears of salary, the bank cannot be burdened further. Therefore, in order to give quietus to the entire issue, the



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workmen are entitled to Rs.42,00,000/- as gratuity, the Bank is entitled to the balance amount of Rs.1,85,474/- from Rs.43,85,474/-.

14. Therefore, this Court is fixing the amount as Rs.42,00,000/- to the workmen and the balance amount from the deposit of gratuity amount of Rs. 1,85,474/- shall be paid back to the bank. From the Rs.42,00,000/- that was deposited to the Assistant Commissioner of Labour, the said the authority shall disburse the same. Since the said amount is carrying interest based on interest, the workmen would be getting the same amount as claimed in their original application. Therefore, the workmen would not be at loss.

15. With the above said observation, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No
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To

- 1.The Assistant Commissioner of Labour,
(Controlling Authority under the payment
of Gratuity Act),
Dindigul District.
- 2.The Joint Commissioner of Labour /
Appellate Authority under payment
of Gratuity Act,
Thiruchirapalli.



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S.SRIMATHY, J

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