

W.P.No.1951 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

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RESERVED ON : 17.04.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No.1951 of 2021
and
W.M.P. No.2207 of 2021

The Management,
Dharmapuri District Co-operative Bank Ltd,
Dharmapuri – 636 701.Petitioner

Vs.

1. The Appellate Authority
Under the Payment of Gratuity Act, 1972
(Additional Commissioner of Labour)
Dr.Balasundaram Road,
Coimbatore – 18.

2. Controlling Authority
Under Payment of Gratuity Act, 1972
Salem – 636 008.

3. G.Pushpam,
D/o. Gnanaiah,
5/997, Perumal Maistry Street,
Senthil Nagar,
Collectorate (PO),
Dharmapuri – 636 705

....Respondents

Prayer in W.P.

To issue a writ under Article 226 of Constitution of India in the nature of certiorari or other appropriate writ or order or direction, call for the records in



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AGA 45/2019 on the file of the Appellate Authority Under Payment of Gratuity Act, 1972 (Additional Commissioner of Labour), Dr.Balasundaram Road, Coimbatore – 18, the 1st respondent herein, quash the final order dated 30.06.2020 passed therein and pass such other or further orders as this Hon'ble Court deem fit and proper in the circumstances of the case.

Prayer in W.M.P.

To grant an interim stay of the order dated 30.06.2020 in AGA 45/2019 passed by the Appellate Authority Under Payment of Gratuity Act, 1972, (Additional Commissioner of Labour), Dr.Balasundaram Road, Coimbatore – 18 the 1st respondent herein pending disposal of the writ petition.

Appearance of Parties:

For Petitioner : M/s. P.Anbarasan, A.Karthikesan, A.Praveen Kumar
and M.Meeenatchi, Advocates
For Respondents 1 & 2 : Mr.K.Suresh, GA
For Respondent 3 : Mr.R.Thamaraiselvan, Advocate

J U D G M E N T

Heard.

2.The present writ petition has been filed by the District Central Co-operative Bank, Dharmapuri, challenging the order passed by the first respondent—Appellate Authority under the Payment of Gratuity Act, 1972—in A.G.A. No. 45 of 2019. By the said order, the Appellate Authority allowed the appeal filed by the third respondent, set aside the order of the second



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respondent dated 22.01.2019 in P.G. Case No. 73 of 2018, and directed the petitioner bank to pay a sum of Rs. 5,41,025/- to the third respondent within 30 days. The order further stipulated that, in the event of default, interest at the rate of 10% per annum shall be payable on the delayed amount.

3. When the writ petition was taken up for admission on 02.02.2021, notice was accepted on behalf of respondents 1 and 2, and the Court directed issuance of notice to the third respondent. The third respondent has since entered appearance through counsel. Pending the writ petition, an interim stay was granted for a period of four weeks. When the matter was listed on 23.04.2024, this Court directed that the case be referred to the National Lok Adalat scheduled for 08.06.2024, for an attempt at amicable resolution. However, as no settlement could be arrived at, the matter was returned to this Court for final adjudication.

4. Subsequently, when the matter was listed on 05.11.2024, this Court directed that it be referred to the Tamil Nadu Mediation and Conciliation Centre for resolution. However, the mediation efforts were unsuccessful, and no settlement could be reached between the parties. Accordingly, the matter was



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returned to this Court with a covering letter dated 09.01.2025.

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5. The primary contention advanced by the petitioner bank is that the third respondent joined its service on 09.01.1992 and retired on 31.01.2016. Shortly before her retirement, she submitted a letter dated 28.01.2016 stating that she had availed a loan of Rs. 5,00,000/- from the Co-operative Thrift and Loan Society, and that monthly instalments towards the loan were being deducted from her salary. As on 28.01.2016, an outstanding sum of Rs. 4,97,795/- remained payable by her to the society. In the same letter, the third respondent further agreed that if any surcharge was imposed on her in the pending proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act, the same could be recovered from the terminal benefits payable to her, and the remaining balance disbursed thereafter.

6. In its reply dated 29.01.2016, the petitioner bank informed the third respondent that upon conclusion of the surcharge proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act, and after determining the amount due from her, the dues would be adjusted against her terminal benefits, and the remaining balance would be paid to her. The third respondent, by her communication dated 30.01.2016, agreed to abide by this condition. However,



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she subsequently submitted another letter dated 14.02.2016, stating that she had received a sum of Rs. 1,45,000/- from the bank, but had not paid interest on the same. She accordingly requested the bank to adjust the said amount from her terminal benefits and release the balance due to her.

7.In response to the third respondent's letter dated 10.08.2016, the bank informed her that payment of the terminal benefits would be made upon completion of the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. Pursuant to this, the Deputy Registrar, who conducted the enquiry, by letter dated 05.10.2016, informed the bank that the third respondent was liable to pay a sum of Rs. 7,25,000/- to the society under three separate heads. Based on this communication, the third respondent was informed that, after adjusting a sum of Rs. 3,141/- towards an outstanding housing loan, the net amount payable to her was Rs. 5,37,870/- towards gratuity and Rs. 3,13,043/- towards earned leave wages for 235 days, aggregating to Rs. 8,05,913/-. However, considering the liability of Rs. 7,25,000/- to the society, and interest accrued up to 31.10.2016 amounting to Rs. 5,56,326/-, the bank gave credit for the said liability while adjusting the terminal benefits. The third respondent was therefore advised to approach the bank to obtain a receipt for



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the said adjustment.

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8.The third respondent subsequently filed an application before the second respondent seeking payment of gratuity in the sum of Rs. 6,24,259/-, calculated based on her revised wages, along with interest. As there was a delay of 645 days in filing the application, she also submitted a petition for condonation of delay in P.G.I.A. No. 10 of 2018. The authority allowed the condonation petition and condoned the delay by order dated 24.08.2018. The main gratuity application was thereafter taken on file as P.G. Case No. 73 of 2018, and notice was issued to the petitioner bank. In response, the petitioner bank filed its counter statement dated 26.02.2018.

9.Before the second respondent, the third respondent examined herself as PW1, though she did not file any documentary evidence in support of her claim. On behalf of the petitioner bank, K. Govindaraju, Manager (Establishment), was examined as RW1, and thirteen documents were filed, which were marked as Exhibits R1 to R13. The authority, taking note of the letter submitted by the third respondent wherein she had agreed to the adjustment of her gratuity against the amounts due to the Co-operative Thrift and Loan Society, computed



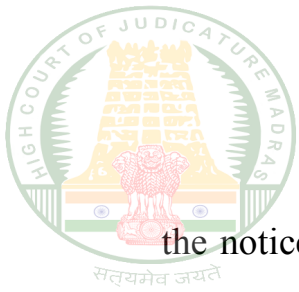
the gratuity amount at Rs. 5,41,025/-. However, relying on her willingness for

such adjustment, the authority ultimately held that she was not entitled to receive gratuity, and by order dated 22.01.2019, rejected the claim. In the operative portion of the order, the following finding was recorded:—

“மனுதாரருக்கு தகுதியான மேற்கண்ட பணிக்கொடைத் தொகை முழுவதும் மனுதாரர் எதிர்மனுதாரர் நிருவாகத்தின் பணியாளர் கூட்டுறவு சிக்கன மற்றும் கடன் சங்கம் லிமிடெட்டில் பெற்ற கடன் தொகைக்காக மனுதாரரின் ஒப்புதலுடன் நேர் செய்துகொண்டபடியால் மனுதாரர் மேலும் எதிர்மனுதாரர் நிருவாகத்திலிருந்து பணிக்கொடை பெற முகாந்திரம் ஏதும் இல்லை என முடிவு செய்து மனுதாரர் மனுவை தள்ளுபடி செய்து உத்தரவிடுகிறேன்.”

10. Aggrieved by the order of the second respondent Controlling Authority dated 22.01.2019, the third respondent preferred an appeal dated 04.04.2019 under Section 7(7) of the Payment of Gratuity Act, 1972. The appeal was taken on file as A.G.A. No. 45 of 2019, and notice was issued to the petitioner bank. In response, the petitioner bank filed a counter statement dated 29.08.2019 and submitted fifteen documents, which had earlier been marked before the Controlling Authority as Exhibits R1 to R15. The third respondent filed a rejoinder dated 24.09.2019. Both parties also submitted written arguments in support of their respective positions.

11. In addition to the earlier contentions, the third respondent brought to



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the notice of the Appellate Authority—both in her appeal grounds and written

submissions—the fact that she had filed a writ petition in W.P. No. 9426 of 2018 and had obtained an interim stay in W.M.P. No. 11243 of 2018 dated 18.04.2018. It was submitted that, in light of the interim order granted by the High Court, the surcharge proceedings initiated against her had become unenforceable.

12.The Appellate Authority, after hearing both parties, allowed the appeal by order dated 30.06.2020 and awarded gratuity in favour of the third respondent to the tune of Rs. 5,41,025/-, along with interest, as already noted. While doing so, the Appellate Authority did not accept the objections raised by the petitioner bank and proceeded to grant relief by relying on Section 4(6) of the Payment of Gratuity Act, 1972, as well as the decisions in **Jaswant Singh Gill v. M/s. Bharat Coking Coal Ltd. & Others, (2007) 1 SCC 663**, and **Union Bank of India v. C.G. Ajay Babu, (2018) 9 SCC 529**. The authority rejected the effect of the undertaking given by the third respondent—wherein she had agreed to an adjustment of the dues from her terminal benefits—and held that such an undertaking could not defeat her statutory entitlement to gratuity.



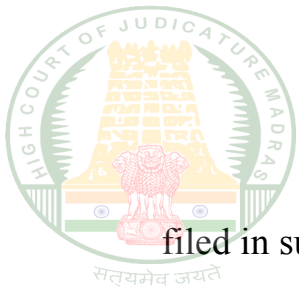
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13. In light of the above findings, the Appellate Authority set aside the order of the Controlling Authority dated 22.01.2019 in P.G. Case No. 73 of 2018 and directed that gratuity be paid to the third respondent as specified. The petitioner bank had raised a twofold objection before the Appellate Authority regarding the interim stay granted in the writ petition challenging the surcharge proceedings. These contentions have been extracted and recorded by the Appellate Authority in the impugned order at pages 8 and 9, and are as follows:-

“...விருப்ப கடிதங்களின் பேரில்தான் அவரது ஓய்வுகால நிதி பயன்கள் பிடித்தம் செய்து கடன் கணக்கிற்கு வரவு வைக்கப்பட்டதே தவிர, பிரிவு 87-ன் தண்டக்கட்டண ஆணையை அடிப்படையாக கொண்டு பிடித்தம் செய்து வழங்கப்படவில்லை என்றும், கடன் கணக்கினை ஒத்திசைவு செய்து கொள்ள வேண்டிய பொறுப்பும் கடமையும் மேல்முறையீட்டாளருக்கே உரியதாகும்....”

“...பிரிவு 87-ன் கீழ் வழங்கப்பட்ட தண்டத்தீர்வை ஆணையை உயர்நீதிமன்றம் பிறப்பித்துள்ள தடை உத்தரவினை மேல்முறையீட்டாளர் தாக்கல் செய்யவில்லை...”

14. It appears that the petitioner bank was not a party to W.P. No. 9426 of 2018, in which only the Central Co-operative Thrift and Credit Society was arrayed as a respondent. This may explain why the petitioner bank made the aforementioned statement and also why there is no reference in the affidavit



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filed in support of the present writ petition to the said writ proceedings or to the

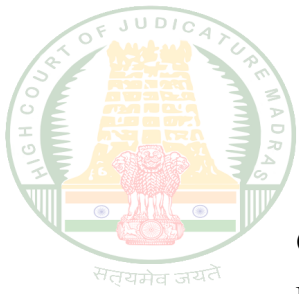
interim stay obtained by the third respondent from this Court. In view of this omission, this Court undertook an exercise to ascertain the status and outcome of the said writ petition.

15.It is found that the third respondent filed W.P. No. 9426 of 2018 challenging the surcharge proceedings only after she had instituted P.G. Case No. 73 of 2018 on 03.02.2018. In the said writ petition, while issuing notice on 18.04.2018, this Court passed the following interim order:—

“Learned counsel for the petitioner submitted that by the proceedings dated 29.1.2016, the petitioner was permitted to retire from service on reaching the age of superannuation on 31.1.2016. After permitting the petitioner to retire from service, the relationship of master and servant ceased to exist. Hence, the respondent society cannot initiate proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, as per the settled legal position holding that after the retirement of any staff of the cooperative society, no such proceedings under Section 87 shall be allowed to take place.

2. Ms.T.Girija, learned Government Advocate, taking notice on behalf of the respondents, submitted that in pursuance of the enquiry report filed under Section 81 on 25.7.2016, the proceedings under Section 87 were initiated against the petitioner.

3. But, even if the contention made by the learned



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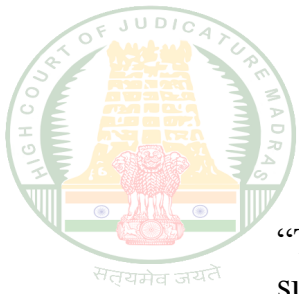


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Government Advocate for the respondents that the report under Section 81 of the Act was made available against the petitioner on 25.7.2016, she should not have been permitted to retire from service by the proceedings dated 29.1.2016. When the petitioner has been permitted to retire from service on reaching the age of superannuation on 31.1.2016, this Court, prima facie, finds that the proceedings under Section 87 cannot be continued. Therefore, there shall be an order of interim stay of the impugned order. Call after four weeks for filing of counter affidavit.”

16.However, when the matter was listed again on 14.11.2024, it is indeed surprising that the counsel appearing for the Co-operative Thrift and Credit Society—which had obtained the surcharge order against the third respondent—submitted before this Court that the writ petition was not maintainable, and that the appropriate remedy would lie by way of a Civil Revision Petition under Article 227 of the Constitution, in view of the Division Bench decision in **E.S. Sundara Mahalingam v. Special Tribunal, reported in 2020 (1) CWC 417**. Notably, the present counsel for the third respondent, who had also appeared as counsel for the writ petitioner in that matter, did not raise any objection to the said submission. Accordingly, with the consent of both parties, the learned Judge passed the following order on 14.11.2024:—

“The learned counsel for the respondents placed reliance on the order in W.P.No.22274 of 2019 dated 28.01.2022 wherein, in a similar matter, a learned Single Judge of this Court had opined as follows:



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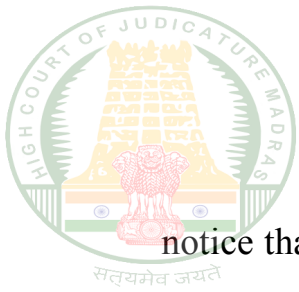
“The learned counsel for the petitioner/management would submit that in view of the latest decision reported in 2020 (1) C.W.C Pg.417 (E.S.Sundara Mahalingam Vs. Special Tribunal), the writ petition is not maintainable and it is only a C.R.P that is maintainable. According to him several writ petitions have been converted as C.R.P after the above judgment of the Division Bench. Therefore, he would request this Court to convert this writ petition into C.R.P and post before the roster judge.

2. Accordingly, the Registry is directed to covert this writ petition into C.R.P and post the same before the judge concerned after obtaining necessary orders from My Lord Hon'ble Acting Chief Justice.”

2. It is uniformly stated by both the learned counsels that similar order could be passed in the present writ petition also. The writ petition is therefore converted as Civil Revision Petition.

3. Accordingly, the Registry is directed to convert this writ petition into Civil Revision Petition and list the same before the roster Judge after obtaining necessary orders from the Hon'ble Chief Justice.”

17. It must be emphasised that counsel appearing before this Court bear a duty of responsibility and candour, particularly when making submissions that are accepted and acted upon by the Court. The Division Bench decision relied upon in the order dated 14.11.2024—**E.S. Sundara Mahalingam v. Special Tribunal, reported in 2020 (1) CWC 417**—arose from a writ petition challenging an order passed by a Co-operative Tribunal under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983. It is also a matter of judicial



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notice that, in lieu of constituting a Special Tribunal, the State Government had designated all Principal District Courts as Co-operative Tribunals under the said Act. In **Sundara Mahalingam's case (cited supra)**, the maintainability of the writ petition was questioned through a writ appeal, which came to be decided by the Division Bench.

18. In **Sundara Mahalingam's case (cited supra)**, the Division Bench, while considering the writ appeal, examined whether the writ petition in question had been filed under Article 226 or Article 227 of the Constitution. The Bench held that since the writ petition was directed against an order of the Co-operative Tribunal—presided over by a Principal District Judge—the nature of the relief sought and the forum involved indicated that the matter was, in substance, a Civil Revision Petition (CRP) under Article 227. Consequently, it was held that if a matter is effectively a CRP, then an intra-court appeal under Clause 15 of the Letters Patent would not be maintainable. On that basis, the writ appeal was dismissed. Thus, the decision in **Sundara Mahalingam's case (cited supra)** serves as authority solely for the proposition that where a writ petition is filed against the order of a Co-operative Tribunal, it must be treated as a CRP under Article 227 and not as a writ petition under Article 226.

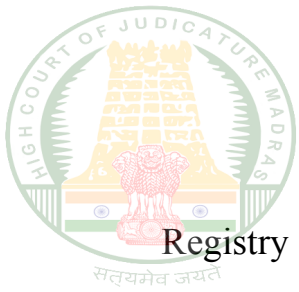


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19. It is unclear how the decision in **Sundara Mahalingam's case (cited supra)** can be applied to the case of the third respondent, who sought to challenge a surcharge order passed under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 by the Deputy Registrar of Co-operative Societies. The proper course available to the third respondent was to file an appeal under Section 152 before the Co-operative Tribunal, and if still aggrieved, to approach this Court by way of a Civil Revision Petition under Article 227 of the Constitution, as laid down by the Division Bench in **Sundara Mahalingam's case (cited supra)**. The reliance on that decision to sustain the interim order in the present context was clearly misplaced, and the submission made by learned counsel to that effect appears to be a misstatement, aimed at continuing the benefit of the interim stay through an incorrect procedural route.

20. Although the order in question is dated 14.11.2024, in order to ascertain whether W.P. No. 9426 of 2018 was ever converted into a Civil Revision Petition (CRP) and to verify the current status of such a proceeding, this Court directed the Registry to submit a report. The Registry has informed that, to date, the petitioner in W.P. No. 9426 of 2018 (who is the third respondent in the present writ petition) has not taken any steps to move the



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Registry by filing proper grounds of revision, and the CRP remains unnumbered. It is a matter of concern that even after the lapse of more than six months since the order of the learned Judge dated 14.11.2024, no further action has been taken to regularise the matter. What compounds the issue is that the said order was obtained on a clearly erroneous statement of law. The intention behind such inaction appears evident: to perpetuate the benefit of an unsustainable interim stay order that has remained in force for over seven years.

21.However, learned counsel for the petitioner bank submitted that, notwithstanding the provisions of Section 4(6) of the Payment of Gratuity Act, 1972, the recovery mechanism provided under the Tamil Nadu Co-operative Societies Act, 1983 would prevail by virtue of the non-obstante clause contained in Section 48(7) of the said Act. In support of this contention, reliance was placed on the judgment of a Division Bench of this Court in **The Secretary, Government Regional Workshop Employees Co-operative Thrift and Credit Society Ltd., Salem v. G. Pandurangan, Deputy Registrar of Co-operative Societies, Salem Circle, in W.A. No. 2126 of 2022, dated 01.08.2024**. Particular emphasis was placed on the observations contained in paragraphs 12 to 16 of the said judgment, which were cited in support of the argument.



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“12. Thus, the said Act will prevail over all other general laws.

13. The endorsement made by the Pay Disbursing Officer in the loan application would be binding on the Department. Therefore, the competent authorities of the Government Department are duty bound to recover the loan dues from the principal borrower or guarantor and settle the same to the Cooperative Society concerned. The said undertaking has been agreed by the principal borrower and guarantor. That being the nature of loan transaction, now the first respondent-guarantor cannot turn around and say that employer/Government Department cannot recover the gratuity and settle the loan dues. Section 48 [as stated supra] would squarely apply in respect of the loan transactions in Cooperative Societies and more specifically, where the Government employees or the employees of other sectors borrowing loan from the Cooperative Societies.

14. Question of issuance of show cause notice in such matters would not arise at all in view of the fact that the principal borrower and the guarantor are very much aware of the nature of transactions and the agreements signed by them, which is a contract. The agreement, loan applications are governed under the provisions of the Tamil Nadu Cooperative Societies Act and therefore, ignorance in respect of the conditions is not a ground to seek exoneration. Under Section 48, gratuity is recoverable for the purpose of settling the loan dues to the Cooperative Societies. Thus, the ground that no show cause notice was issued to the first respondent is untenable and such notice is not required in view of the contractual obligations as established, under the Statute, which was agreed in the loan application both by the principal borrower and the guarantor.

15. Regarding the other ground that under the Gratuity Act, the



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gratuity is not recoverable, Section 48(7) of the Tamil Nadu Cooperative Societies Act states that the provisions of this Section shall apply notwithstanding any law to the contrary for the time being in force. Therefore, the Cooperative Societies Act would prevail over all other general laws. Thus, the order passed by the competent authority of the Government Automobile Workshop in proceedings dated 22.01.2013 is well within the powers conferred under Section 48 of the Tamil Nadu Cooperative Societies Act and there is no infirmity. The Writ Court proceeded by considering the provisions of the Gratuity Act and the relevant provisions of the Tamil Nadu Cooperative Societies Act, which is a special enactment was not brought to the notice of the Writ Court, which resulted in allowing of the writ petition. Thus, we are inclined to interfere.

16. Accordingly, this Writ Appeal stands allowed and consequently, the writ order impugned dated 04.03.2022 passed in WP.No.16488 of 2013 is set aside.”

In light of the above submissions, learned counsel contended that the impugned order passed by the authority is liable to be set aside.

22.In response, learned counsel for the third respondent placed reliance on an earlier Division Bench judgment of this Court in **N. Ponmudi & Others v. Villupuram District Central Co-operative Bank Ltd. & Others**, rendered in **W.A. No. 57 of 2022 dated 16.12.2022**. Particular reference was made to the observations contained in paragraphs 5 to 13 of the said judgment, which were relied upon to support the respondent’s case. The relevant excerpts are as follows:—



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“5. The learned Single Judge, on hearing both sides, proceeded to hold that the Tamil Nadu Co-operative Societies Act alone will govern the matter, as the Tamil Nadu Co-operative Societies Act is a special enactment and the Payment of Gratuity Act is a general law. Once the Management has decided to have a separate Scheme, approved by the Registrar of Cooperative Societies, the grievance will have to be addressed only under the provisions of the Tamil Nadu Co-operative Societies Act and the Payment of Gratuity Act would not be applicable to the employees of a Co-operative Society.

6. The learned Single Judge has further held that in terms of Sections 153 and 154 of the Tamil Nadu Co-operative Societies Act, the aggrieved persons will have to work out their remedy only before appropriate forum and not under the Payment of Gratuity Act.

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

8. It is not in dispute that if an employee has attained the age of superannuation on completion of sufficient years of service, he was an employee under the Tamil Nadu Co-operative Societies Act.

9. For the sake of convenience, Section 4(5) of the Payment of Gratuity Act needs to be referred to, which is extracted as follows:

"Section 4: Payment of gratuity:

.. ..

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer."

10. Section 4(5) clearly stipulates that in case the Management gives the better benefit than what has been provided under the Tamil Nadu Co-operative Societies Act, the employees are entitled



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to get the benefits. It does not mean that the employees who are working in Co-operative Society, cannot get the benefits of the provisions of the Payment of Gratuity Act. In case the Scheme gives lesser benefit than what has been provided under the Act, the employees cannot be prevented from approaching the authority under the provisions of the Payment of Gratuity Act. When there are two forums available to an employee, he is entitled to choose the forum which is beneficial to him. The Apex Court in the decision reported in 1991 (1) LLJ 111 (SC) = 1990 (2) LLN 3 = MANU/SC/0652/1990 (Nirchiliya Vs. The Management of Safire Theatre) has held that the employee can choose the forum. Though it has been rendered in the context of denial of employment, the same principle will apply here also.

11. In this case, the provisions of the Tamil Nadu Co-operative Societies Act, so also the Payment of Gratuity Act, 1972, are applicable to a Co-operative Society. There is no evidence before the authority concerned to show that the Management is giving for better benefits than what has been provided for under the Payment of Gratuity Act to drive the employees to get the relief invoking Section 153 or Section 154 of the Tami Nadu Cooperative Societies Act.

12. It may be true that the Payment of Gratuity Act is a general Act and the Tamil Nadu Co-operative Societies Act is a special enactment. It does not mean that the employees are precluded from approaching the authority claiming gratuity when the Payment of Gratuity Act gives a better benefit than the one provided under the Scheme.

13. Hence, we are of the view that the impugned order passed by the learned Single Judge needs to be interfered with. The order of the Controlling Authority, as confirmed by the appellate authority, is restored and the amount if any lying in deposit with the



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Controlling Authority, shall be credited to the account of the writ petitioners by the authority within four weeks from the date of receipt of a copy of this order. In case the amount has been withdrawn by the Co-operative Bank, it shall be remitted to the employees within a period of eight weeks together with interest @ 10% per annum on the gratuity amount in terms of Section 7(3-A) of the Payment of Gratuity Act, 1972.”

23.Once again, learned counsel failed to ascertain that the above Division Bench judgment is presently under challenge before the Hon’ble Supreme Court at the instance of the Central Co-operative Bank and is presently stayed. The matter is pending in Special Leave Petition (Civil) Diary No. 23579 of 2023, and the interim order dated 24.07.2023 reads as follows:—

“Delay condoned.

Issue notice, returnable in six weeks. Until further orders, operation of the impugned order dated 16.12.2022 passed by the Madras High Court shall remain stayed.”

24.Learned counsel for the third respondent also relied on a decision of a learned Single Judge of this Court in **The Special Officer (now the Managing Director), Madurai Kamaraj University Co-operative Printing Press Limited, Madurai v. The Appellate Authority under the Payment of Gratuity Act & Another, in W.P. (MD) No. 6425 of 2018, dated 10.02.2023.** In support of his submission, he referred to and relied upon the following



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observations made in paragraph 6 of the said judgment:—

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“The petitioner Press claims that they have withheld the gratuity amount of the third respondent's husband on the ground that he has not cleared the loan availed from the Co-operative Society and as per Section 48 of the Tamil Nadu Co-operative Societies Act, they can retain the gratuity amount of the employee..... except Section 4(6)(1) of the Payment of Gratuity Act, the employer have no right to withhold the gratuity amount of the employee. Further, in this regard, the Co-operative Society has not made any claim before the Petitioner Press to recover the loan amount from the third respondent's husband and the petitioner Press, on its own decision, has withheld the gratuity amount. Hence, this Court is not inclined to interfere with the impugned orders passed by the first and second respondent. The petitioner is directed to settle the gratuity amount to the third respondent within a period of six weeks from the date of receipt of a copy of this order.”

25.Learned counsel further referred to the judgment of the Full Bench of this Court in **E. Gopal v. Arulmigu Dhandayuthapaniswamy Temple, Palani, reported in 2013 (3) CTC 689**, wherein the following observations were made in paragraph no.28:—

“28.The Payment of Gratuity Act, 1972 is a self contained and complete code by itself and its provisions impliedly exclude recourse to any other statute. Section 14 of the Payment of Gratuity Act has overriding effect over the provisions of any other enactment. It is not in dispute that the Central Act is more advantageous than that of the State Rules. In other words, the benefit availed by the employees of the Devasthanam under the State Rules is meager compared to the Gratuity payable under the Payment of Gratuity Act. Section 4(5) of the Act protects the right



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of the employee to receive better terms of gratuity under any award or agreement contract with the employer. The proviso to Rule 26 of the Rules provides that said Rule will not apply to any institution where the Contributory Provident Fund Scheme is in force. By imposing a restriction, the Rules prohibit the employees enjoy the fruits of the beneficial Central Act and to that extent the Rules are inconsistent with the Central Act. Therefore, we have no hesitation in holding that the Rules are repugnant to the Central Act to the extent indicated above.”

26. Reference was also made to a judgment of the Division Bench of the Kerala High Court in **State of Kerala v. Omana S.N., rendered in Writ Appeal No. 1569 of 2017 dated 16.08.2017**. Learned counsel relied upon the following passage from paragraph 10 of the said judgment in support of his submissions:—

“10. A Division Bench of this Court has considered the effect of the above provision in the context of Part III KSR in relation to an employee of the Kerala State Electricity Board (KSEB for short). As per [the said judgment](#) (Exhibit P4 in the Writ Petition) dated 08.01.2008, disposing of W.A.No.1062 of 2003 and W.A.No.1938 of 2004 speaking for the Bench, Dattu CJ (as he then was) has held as follows:

15. [Section 14](#) of the Payment of Gratuity Act provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act or in any instrument or contract having effect by virtue of any enactment under the Act. The sweep of this Section clearly provides that the right to claim gratuity by an employee under the



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provisions of this Act is not based on any contract, but a right which arises out of the provisions of the Statute itself. The Apex Court in the case of ([Municipal Corporation of Delhi Vs. Dharam Prakash Sharma](#) AIR 1999 SC 293) has held that the [Payment of Gratuity Act, 1972](#) being a special provision, shall have an overriding effect over any scheme that might have been adopted by the concerned employer, and even if the benefit is availed of under the concerned scheme, the employee would be entitled for payment of gratuity under the Act.”

27. Lastly, learned counsel referred to a recent decision of a two-Judge Bench of the Hon’ble Supreme Court in **Western Coal Fields Ltd Vs. Manohar Govinda Fulzele reported in 2025 INSC 233**. In this decision, the Supreme Court referred to the earlier judgments in **Jaswant Singh Gill's case and C.G. Ajay Babu's case (cited supra)** —both of which were relied upon by the Appellate Authority in the impugned order. Specific reference was made to paragraphs 8 and 9 of the judgment, which read as follows:—

“8. Further Jaswant Singh Gill⁴ was overruled by a three Judge Bench in [Mahanadi Coalfields Ltd. vs. Rabindranath Choubey](#) wherein it was held that even when an employee retires during the pendency of disciplinary proceedings, the services are deemed to be continued, for the purpose of continuation of the proceedings, as per rules. The delinquent employee since deemed to be in service, even a major penalty of termination could be imposed on the delinquent employee, who has superannuated during the pendency of the proceedings. We cannot but reiterate that, Jaswant Singh Gill⁴ had not considered the issue as to



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whether there could be a forfeiture of gratuity if the delinquent employee is found to have committed an offence involving moral turpitude; even when there is no conviction entered by a Criminal Court on the very same offence.

9. With all the respect at our command, the interpretation in C.G. Ajay Babu³ does not come out of the statutory provision; [Section 4\(6\)\(b\)\(ii\)](#) of the Act. Normally we would have referred the matter for consideration by a Larger Bench, but, as we noticed, the statutory provision does not make it a requirement that the misconduct alleged & proved in a departmental enquiry should not only constitute an offence involving moral turpitude, but also should be duly established in a Court of Law. The words "duly established in a Court of Law" cannot be supplied to the provision. Moreover, as we observed; the interpretation of sub clause (b)(ii) of subsection (6) of [Section 4](#) was uncalled for in C.G. Ajay Babu³ since the provisions of the [Section 4](#), including subsection (6) was found to be inapplicable to the employer Bank and its employee, by virtue of subsection (5) of [Section 4](#). The interpretation, hence, with due respect was an obiter making a reference unnecessary.”

28.It is unclear how the aforementioned judgment advances the case of the third respondent. On the contrary, the decision makes reference to the three-Judge Bench ruling in **Mahanadi Coalfields Ltd. v. Rabindranath Choubey**, reported in (2020) 18 SCC 71, wherein the *Mahanadi* case was explained in the following terms:—



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“It is true that while considering the very provisions of the CDA Rules, namely, Rule 34.2 and Rule 34.3 of the CDA Rules, this Court in the case of [Jaswant Singh Gill](#) (supra) has observed and held that once the employee is permitted to retire on attaining the age of superannuation, thereafter no order of dismissal can be passed. However, for the reasons stated hereinabove, we are not in agreement with the view taken by this Court in the case of [Jaswant Singh Gill](#) (supra). As observed hereinabove, if no major penalty is permissible after retirement, even in a case where the disciplinary proceedings were instituted while the employee was in service, in that case, Rule 34.2 would become otiose and shall be meaningless. On the contrary, there is a decision of three Judge Bench of this Court in the case of [Ram Lal Bhaskar](#) (supra) taking just a contrary view. In the case of [Ram Lal Bhaskar](#) (supra), Rule 19(3) of the State Bank of India Officers Service Rules, 1992 came up for consideration which was pari materia with Rule 34.2 of the CDA Rules. The said Rule 19(3) of the State Bank of India Officers Service Rules, 1992 also permits the disciplinary proceedings to continue even after the retirement of an employee if those were instituted when the delinquent employee was in service. In that case, chargesheet was served upon the respondent before his retirement. The proceedings continued after his retirement and were conducted in accordance with the relevant rules where charges were proved. Punishment of dismissal was imposed. The High Court allowed the petition and quashed the order of dismissal. This Court reversed the said decision of the High Court. In the said decision, it was specifically observed by this Court while considering the pari materia provisions that in case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceased to be in the bank's service by the operation of, or by virtue of, any of the rules or the provisions of the Rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by whom the proceedings were initiated in the manner provided for in the Rules



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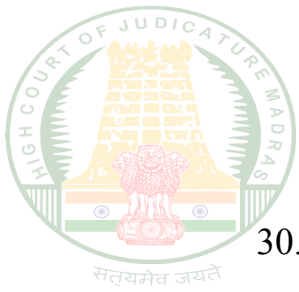
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as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings. In [the said decision](#), this Court also took note of another decision of this Court in the case of [Rajinder Lal Capoor](#) (supra) and it is observed even in [the said decision](#) that the UCO Bank Officer Employees' Service Regulations, 1979 which were also pari materia to the SBI Rules as well as the CDA Rules, could be invoked only when the disciplinary proceedings had been initiated prior to the delinquent officer ceased to be in service. It is to be noted that [Jaswant Singh Gill](#) (supra) was a judgment delivered by a two Judge Bench and the judgment in the case of [Ram Lal Bhaskar](#) (supra) is a judgment delivered by a three Judge Bench. Under the circumstances and even otherwise for the reasons stated above and in view of Rule 34.2 of the CDA Rules, even a retired employee who was permitted to retire on attaining the age of superannuation can be subjected to major penalty, provided the disciplinary proceedings were initiated while the employee was in service.”

29. Similarly, in **C.G. Ajay Babu's case (cited supra)**, the Hon'ble Supreme Court, in paragraphs 21 and 22, confined its findings to the following observations:—

“21. [That the Act](#) must prevail over the Rules on Payment of Gratuity framed by the employer is also a settled position as per [Jaswant Singh Gill](#) (supra). Therefore, the appellant cannot take recourse to its own Rules, ignoring the Act, for denying gratuity.

22. To sum-up, forfeiture of gratuity is not automatic on dismissal from service; it is subject to sub-Sections (5) and (6) of [Section 4](#) of The Payment of Gratuity Act, 1972.”



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30.The upshot of the above discussion is that the Payment of Gratuity Act, 1972 is a special legislation, and with regard to forfeiture of gratuity, it is Section 4(6) of the Act that exclusively governs the field. The authoritative pronouncement on this issue is found in the judgment of a three-Judge Bench of the Hon'ble Supreme Court in **Mahanadi Coalfields Ltd. v. Rabindranath Choubey, reported in (2020) 18 SCC 71**. The legal position has been conclusively summarised in paragraphs 10.31 and 11 of the said judgment, which read as follows:—

“10.31 Several service benefits would depend upon the outcome of the inquiry, such as concerning the period during which inquiry remained pending. It would be against the public policy to permit an employee to go scotfree after collecting various service benefits to which he would not be entitled, and the event of superannuation cannot come to his rescue and would amount to condonation of guilt. Because of the legal fiction provided under the rules, it can be completed in the same manner as if the employee had remained in service after superannuation, and appropriate punishment can be imposed. Various provisions of the [Gratuity Act](#) discussed above do not come in the way of departmental inquiry and as provided in [Section 4\(6\)](#) and Rule 34.3 in case of dismissal gratuity can be forfeited wholly or partially, and the loss can also be recovered. An inquiry can be continued as provided under the relevant service rules as it is not provided in the [Payment of Gratuity Act, 1972](#) that inquiry shall come to an end as soon as the employee attains the age of superannuation. We reiterate that the Act does not deal with the matter of disciplinary inquiry, it contemplates recovery from or forfeiture of gratuity wholly or partially as per misconduct



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committed and does not deal with punishments to be imposed and does not supersede the Rules 34.2 and 34.3 of the CDA Rules. The mandate of [Section 4\(6\)](#) of recovery of loss provided under [Section 4\(6\)\(a\)](#) and forfeiture of gratuity wholly or partially under [Section 4\(6\)\(b\)](#) is furthered by the Rules 34.2 and 34.3. If there cannot be any dismissal after superannuation, intendment of the provisions of [Section 4\(6\)](#) would be defeated. The provisions of [section 4\(1\)](#) and [4\(6\)](#) of Payment of Gratuity Act, 1972 have to be given purposive interpretation, and no way interdict holding of the departmental inquiry and punishment to be imposed is not the subject matter dealt with under the Act.

10.32 Thus considering the provisions of Rules 34.2 and 34.3 of the CDA Rules, the inquiry can be continued given the deeming fiction in the same manner as if the employee had continued in service and appropriate punishment, including that of dismissal can be imposed apart from the forfeiture of the gratuity wholly or partially including the recovery of the pecuniary loss as the case may be.

11. In view of the above and for the reasons stated above and in view of the decision of three Judge Bench of this Court in [Ram Lal Bhaskar](#) (supra) and our conclusions as above, it is observed and held that (1) the appellant – employer has a right to withhold the gratuity during the pendency of the disciplinary proceedings, and (2) the disciplinary authority has powers to impose the penalty of dismissal/major penalty upon the respondent even after his attaining the age of superannuation, as the disciplinary proceedings were initiated while the employee was in service.”

31. In light of the legal precedents discussed above, the case of the third respondent may be summarised thus: Prior to her retirement, the third



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respondent submitted a letter expressly consenting to the adjustment of her gratuity against the loan she had availed from the Co-operative Thrift Society, with the request that the balance, if any, be disbursed to her. She was also subjected to a surcharge order, which she sought to challenge by filing a writ petition that was subsequently directed to be converted into a Civil Revision Petition (CRP), based on a misrepresentation. In any event, the interim stay granted in the writ petition merely rendered the surcharge order unenforceable against her; it did not extinguish the underlying liability. As clarified by the Hon'ble Supreme Court in **Rabindranath Choubey's case (cited supra)**, an employer is empowered to deduct from the gratuity any loss caused by the employee. The third respondent retired only after voluntarily furnishing a written undertaking permitting such adjustment. Having done so, she cannot now resile from the terms of her own representation.

32. In view of the foregoing discussion, this Court is of the considered opinion that the order passed by the first respondent Appellate Authority in A.G.A. No. 45 of 2019 dated 30.06.2020 is liable to be set aside, and is accordingly quashed. The writ petition is allowed. As a consequence, the order of the second respondent in P.G. Case No. 73 of 2018 dated 22.01.2019 shall stand restored. The connected miscellaneous petition is dismissed. Although the



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third respondent may be liable to bear costs, considering that she has already

been deprived of her gratuity amount, this Court refrains from imposing costs.

Hence, there shall be no order as to costs.

29.05.2025

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NCC : Yes / No

Index : Yes / No

Speaking Order / Non-speaking Order

To

1. The Appellate Authority
Under the Payment of Gratuity Act, 1972
(Additional Commissioner of Labour)
Dr.Balasundaram Road,
Coimbatore – 18.
2. Controlling Authority
Under Payment of Gratuity Act, 1972
Salem – 636 008.



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P.No.1951 of 2021
and
W.M.P. No.2207 of 2021

29.05.2025