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W.P.No.3029 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2025

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.3029 of 2022
and W.M.P.Nos.3191 of 2022 and 4308 of 2024

The Management,
Pallipalayam Farmers Service Co-operative Society Limited,
Rep.by its Secretary,
Sankari Road,
Pallipalayam (P.O),
Komarapalayam (Tk),
Namakkal-638 006.

...Petitioner

Vs.

1.The Additional Commissioner of Labour, Coimbatore,
(Appellate Authority under the Payment of Gratuity Act, 1972),
No.43, Balasundaram Road,
ATT Colony,
Gopalapuram,
Coimbatore-641 018.

2.S.Ganesan

...Respondents

Writ Petition filed under Article 226 of Constitution of India, praying
for issuance of Writ of Certiorari, to call for the records in
P.G.A.No.13 of 2021 on the file of the first respondent dated 16.12.2021 and

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quash the same.

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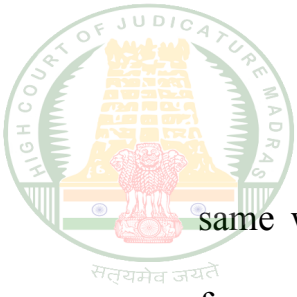
For Petitioner : Mr.S.Kaithamalaikumaran

For Respondent : Mr.K.Surendran
Additional Government Pleader for R1
Mr.K.V.Shanmuganathan for R2

ORDER

The petitioner, who is the Management of the Co-operative Society, challenges the award dated 16.12.2021 passed in P.G.A.No.13 of 2021 by the first respondent.

2. The second respondent was an employee of the petitioner Society and was suspended from service on the ground of breach of trust and misconduct and embezzlement of funds to the tune of Rs.30,05,000/-. Disciplinary proceedings were initiated and based on the report of the Enquiry Officer, wherein the charges were proved, the second respondent was terminated from service on 31.10.2015. However, the second respondent has not challenged the termination order and, he has filed P.G.No.99 of 2018 before the Controlling Authority under the Payment of Gratuity Act, 1972, seeking payment of gratuity of Rs.7,42,500/- from the petitioner Society. The



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same was dismissed on 04.12.2020 on the ground that he was terminated from service for committing serious misconduct. The second respondent filed an appeal before the first respondent in P.G.A.No.13 of 2021, wherein the order passed by the Controlling Authority was reversed, directing the petitioner Society to pay gratuity to the second respondent. Aggrieved by the same, the present Writ Petition has been filed by the petitioner Management.

3. The learned counsel appearing for the petitioner Management submits that the petitioner Management has filed this writ petition mainly challenging the impugned order on the ground that the second respondent has been terminated from service for having committed serious offences involving moral turpitude in the course of his employment under Section 4(6)(b)(ii) of the Payment of Gratuity Act. Therefore, the offence committed by the second respondent is a grave offence involving forgery of signature and fabrication of withdrawal slips. Therefore, the order passed by the Appellate Authority is erroneous and needs to be interference by this Court.



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4. The learned counsel appearing for the second respondent submits that the Payment of Gratuity Act being a special provision for payment of gratuity, unless there is any provision therein which excludes its applicability to an employee, the benefits have to be paid under the provisions of the Act. Therefore, the order passed by the Controlling Authority is justifiable and needs no interference.

5. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the first respondent and the learned counsel appearing for the second respondent.

6. It is seen from the records that the second respondent herein was terminated from service, however, it is an admitted case that the delinquent employee has repaid back the amount embezzled by him and therefore, the question of forfeiture of gratuity does not arise. The Labour Court had exactly allowed the appeal on this ground. It is also pertinent to note that the delinquent employee served in the petitioner Management for long service of



26 years. Right to receive the gratuity cannot be simply brushed aside on the basis of an order of dismissal. In the case of **Allahabad Bank and others v. All India Allahabad Bank Retired Employees Association and others** reported in **[2010 (1) AWC 931 (SC)]**, the Hon'ble Supreme Court held as follows:

"14. Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on superannuation or retirement or resignation etc. being a statutory right cannot be taken away except in accordance with the provisions of the Act whereunder an exemption from such payment may be granted only by the appropriate Government under Section 5 of the Act which itself is a conditional power. No exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act."

7. In view of the said decision, this Court finds no reason to interfere with the order dated 16.12.2021 passed in P.G.A.No.13 of 2021 by the first respondent.



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8. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Connected miscellaneous petitions are closed.

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ssb

NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

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