

W.P.No.5328 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2025

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.5328 of 2020

V.Janagambal

...Petitioner

-Vs-

1.The Deputy Registrar (Co-op) Society,
Deputy Registrar Office,
Tindivanam,
Villupuram District.

2.The Sathambadi Primary Agricultural Co-operative
Credit Society Limited,
Represented by its Secretary,
Sathambadi & Post,
Gingee Taluk,
Villupuram District – 604 204.

3.The Secretary,
Co-operative Bank – CL-SPL-139,
Kannalam,
Melmalaiyanur Taluk,
Villupuram District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, call for the records regarding the impugned order in Na.Ka.No.2538/2018/PAS dated 05.08.2019 on the file of the 1st respondent



W.P.No.5328 of 2020

and quash the same and directing the respondents to pay the terminal benefits including the gratuity for the period of service rendered by the petitioner as sales woman in the third respondent cooperative society from 08.01.1985 to 10.09.1989 and pass such further orders.

For Petitioner : Mr.R.Rajarajan
For R1 : Mr.S.Ravi Kumar
Special Government Pleader
For R2 & R3 : Mr.P.Singaram

ORDER

This writ petition is filed to quash the impugned order passed by the first respondent in Na.Ka.No.2538/2018/PAS dated 05.08.2019 and directing the respondents to pay the terminal benefits including the gratuity for the period of service rendered by the petitioner as saleswoman in the third respondent cooperative society from 08.01.1985 to 10.09.1989.

2. The case of the petitioner is that she was appointed as a saleswoman in the 3rd respondent society through employment exchange in the year 1985. The appointment of the petitioner is the regular one and not through any back door. The petitioner was working as sales woman from 08.01.1985 to 10.08.1989 in the 3rd respondent co-operative credit society. On 12.08.1989,



W.P.No.5328 of 2020

the petitioner was transferred from the 3rd respondent co-operative credit society to the 2nd respondent co-operative credit society vide order dated 10.08.1989 in Na Ka.No.11/1989 on the file of 3rd respondent. Since the date of transfer, the petitioner continued to work as a saleswoman in the 2nd respondent co-operative credit society till her superannuation. The petitioner attained her age of superannuation on 31.10.2018 and she was permitted to retire by the 2nd respondent society with effect from 31.10.2018. The terminal benefits including gratuity to the tune of Rs.10,34,292/- was granted to the petitioner. However the gratuity was not paid for the period of service rendered by the petitioner from 08.01.1985 to 10.08.1989 and was rejected by the first respondent vide order in Na.Ka.No.2538/2018/PAS dated 05.08.2019. Hence the writ petition is filed.

3. Learned counsel appearing for the petitioner would submit that while computing and disbursing the terminal benefits due to the petitioner, the respondents failed to compute the period of service rendered by the petitioner from 08.01.1985 to 10.08.1989 i.e, for four years ten days in the 3rd respondent society and granted the terminal benefits including gratuity to the tune of Rs.10,34,292/- (Rupees ten lakhs and thirty four thousand and two



W.P.No.5328 of 2020

hundred and ninety two only). The terminal benefits including the amount of gratuity were not computed including the period of service rendered by the petitioner in the 3rd respondent co-operative credit society from 08.01.1985 to 10.08.1989. Therefore, the petitioner made a representation to the 1st respondent requesting him to pay the terminal benefits including gratuity by computing the service period from 08.01.1985 to 10.08.1989.

4. Learned counsel further submitted that the 1st respondent had received the said representation and passed the impugned order in Na.Ka. No.2538/2018/PAS dated 05.08.2019, thereby rejecting the request of the petitioner stating that the petitioner was under consolidated pay of Rs.250/- (Rupees two hundred and fifty only) during the period from 08.01.1985 to 10.08.1989 and therefore no provision has been made by the 3rd respondent for payment of gratuity to the employees working under consolidated pay. The impugned order passed by the 1st respondent rejecting the claim of the petitioner is per se arbitrary and illegal.

5. It is contended by the learned counsel for the petitioner that the provisions of the Payment of gratuity Act is applicable to all employees and

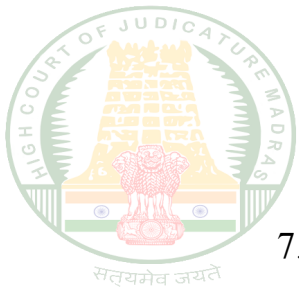


W.P.No.5328 of 2020

it does not make any distinction or differentiation of persons working under the timescale of pay and under consolidated pay. Therefore, the rejection of the petitioner's claim for the gratuity by the 1st respondent on the ground that she was working under consolidated pay during the relevant period from 08.01.1985 to 10.08.1989 is untenable and unjustified. The impugned order rejecting the claim of the petitioner is ultra vires the provisions of the Payment of Gratuity Act, 1972.

6. Learned counsel drew the attention of this Court to the term employees defined under section 2(e) of the Act, which reads as follows:

"(e) "employee" means any person (other than an apprentice) employed on wages, [***] in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi- skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, [and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

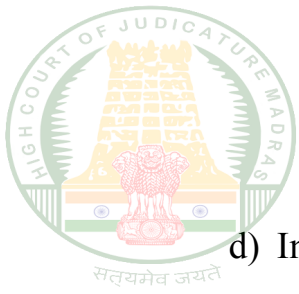


W.P.No.5328 of 2020

7. It is seen that the only person who has been excluded from the ambit and purview of the definition of the employees is an apprentice. The petitioner admittedly is not an apprentice during the relevant period of service and therefore she would come under the definition of the word of employee and therefore she is entitled for gratuity for her service rendered during her period from 08.01.1985 to 10.08.1989 in the 3rd respondent co-operative society.

8. Learned counsel for the petitioner would then place reliance on the following rulings:

- a) In the judgment of the Hon'ble Supreme Court of India reported in **2023 Live Law (SC) 70 (M/s.Godrej Sara Lee Ltd., Vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors.)**
- b) In the judgment of the Hon'ble Supreme Court of India in W.P.No.12202 of 2023 (**Mercedes-Benz India Pvt. Ltd., and Ors. Vs. Noshir Nani Desai**) dated 15.01.2024.
- c) In the judgment of the Hon'ble Supreme Court of India in Civil Appeal Nos.3153 of 2022 (**Maniben Maganbhai Bhariya Vs. District Development Officer Dahod & Ors**) dated 25.04.2022.



W.P.No.5328 of 2020

d) In the order passed by this Court in W.P.(MD)No.17695 of 2019

WEB COPY (Tamil Nadu Civil Supplies Corporation, Through its Regional Manager, Regional Office, Collectorate Campus, Virudhunagar – 626 002 Vs. The Appellate Authority under the Payment of Gratuity Act, Housing Board Office Buildings, Ellis Nagar, Madurai – 625 016) dated 17.08.2023.

9. A counter affidavit was filed on behalf of the first respondent dated 19.03.2020.

10. Learned Special Government Pleader appearing for the first respondent would submit that the writ petition is not maintainable either in law or on facts in terms of Full Bench judgment of this Court which was reported in 2006 (4) CTC 689 of Marappan case.

11. Learned Special Government Pleader further submitted that the petitioner was recruited through District Employment Exchange and appointed as Sales Woman on 03.12.1985 by the then Special Officer, Kannalam Primary Agricultural Coop Credit Society / 3rd respondent herein



W.P.No.5328 of 2020

for a monthly salary of Rs.175/-. While working in 3rd respondent Society, the petitioner exercised Mutual transfer to Sathambadi Primary Agricultural Coop Credit Society / 2nd respondent herein and one Thiru Chinna Durai who was working as Salesman in Sathambadi Primary Agricultural Coop Credit Society / 2nd respondent herein has also exercised Mutual transfer to Kannalam Primary Agricultural Coop Credit Society / 3rd respondent herein. Both the 2nd and 3rd respondents Management approved the Mutual transfer and hence the 1st respondent issued orders in 5851/89/PoVe dated 09.08.1989 for Mutual Transfer to the Petitioner and one Thiru.Chinna Durai. Accordingly, the petitioner joined in the 2nd respondent Society on 14.08.1989 and worked as Saleswoman till her superannuation on 31.10.2018. In 2nd respondent Proc No.Nil dated 31.10.2018 the petitioner was permitted to retire from Service. In pursuance of superannuation, the terminal benefits were settled to the petitioner.

12. Learned Special Government Pleader would contend that the petitioner made a representation to the 1st respondent requesting him to pay the terminal benefits including gratuity by computing the service period from 08.01.1985 to 10.08.1989. The 1st respondent passed impugned order in



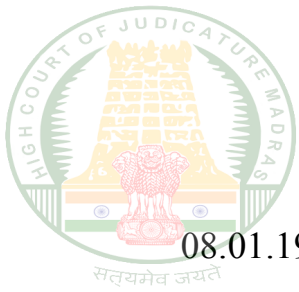
W.P.No.5328 of 2020

Na.Ka 2538/2018 PACCS dated 05.08.2019 and thereby rejected the request

of the petitioner stating that the petitioner was under consolidated pay of Rs.250/- during the period from 08.01.1985 to 10.08.1989 and therefore no provision has been made by the 3rd respondent for payment of gratuity to the employees working under consolidated pay.

13. It is submitted by the learned Special Government Pleader that if the petitioner aggrieved by the order of rejection of her claim for gratuity and seeks payment of gratuity, then it is open to the petitioner to avail the statutory remedy by way of filing revision petition under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983 before the Joint Registrar of Cooperative Societies, Villupuram Region, Villupuram District. The first respondent is not a competent authority to settle issue of non-payment of gratuity to the petitioner.

14. Learned Special Government Pleader submitted written instruction from the third respondent society, in which it is stated that the petitioner was working as a salesman under the third respondent from 08.01.1985 to 01.08.1989 and she was not given retirement benefits during this period. During the period of their employment as salesman in third respondent from

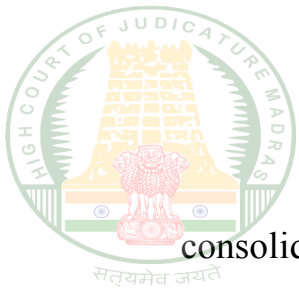


W.P.No.5328 of 2020

08.01.1985 to 10.08.1989, they were paid only Rs.250/- as consolidated pay and no gratuity has been allocated to the employee and there is no pending monetary benefits to be settled to the petitioner.

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

16. In the case on hand, it is an admitted fact that the petitioner has rendered service from 08.01.1985 to 10.08.1989 i.e, for four years ten days under the 3rd respondent society. While computing and disbursing the terminal benefits due to the petitioner, the respondents failed to compute the period of service rendered by the petitioner from 08.01.1985 to 10.08.1989 and granted the terminal benefits including gratuity to the tune of Rs.10,34,292/-. The terminal benefits including the amount of gratuity were not computed including the period of service rendered by the petitioner in the 3rd respondent co-operative credit society from 08.01.1985 to 10.08.1989. Therefore, the petitioner made a representation to the first respondent requesting him to pay the terminal benefits including gratuity by computing the service period from 08.01.1985 to 10.08.1989 and the same was rejected by the first respondent stating that the petitioner paid a sum of Rs.250/- as

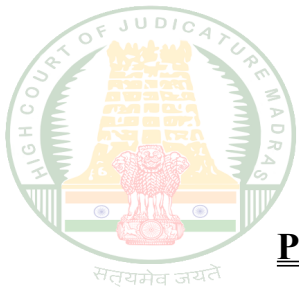


W.P.No.5328 of 2020

consolidated pay for the said period. Hence, she is not eligible for gratuity to the persons who are working under consolidated pay.

17. The main contention of the learned counsel for the petitioner is that as per Section 2(e) of the Payment of Gratuity Act, 1972 as stated supra, the only person who has been excluded from the ambit and purview of the definition of the employees is an apprentice. The petitioner admittedly is not an apprentice during the relevant period of service and therefore she would come under the definition of the word of employee and therefore she is entitled for gratuity for her service rendered during her period from 08.01.1985 to 10.08.1989 in the 3rd respondent co-operative society.

18. One of the contentions of the respondents is that there is a statutory appeal under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 and the petitioner has not exhausted such remedy and directly approached this Court by way of filing this writ petition. This Court is not inclined to accept the above contention for the reason that since the writ petition filed in the year 2020, it has been pending for the last four years and at this juncture, to relegate the petitioner to go for another round of litigation by preferring the appeal before the Appellate Authority.



W.P.No.5328 of 2020

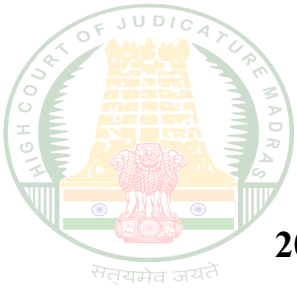
Points for consideration:

WEB COPY

The issue to be decided in this present writ petition is “whether an employee like the petitioner, who is on a consolidated basis is entitled for payment of gratuity” for the service rendered by her during the period from 08.01.1985 to 10.08.1989 or not?

19. It is pertinent to mention that Section 2(e) of the Act defines the employee and it says all are employees except the apprentice. The section 2(e) of the Payment of Gratuity Act, 1972, is extracted hereunder:

"(e) "employee" means any person (other than an apprentice) employed on wages, [*] in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi- skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, [and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.**



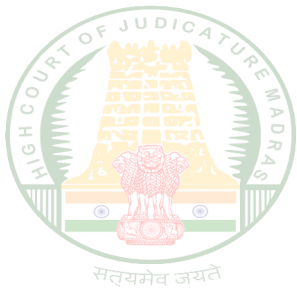
W.P.No.5328 of 2020

20. According to the above definition, the petitioner is an employee and no where in the Act it is distinguished between the employee on consolidated pay or an employee under regular basis.

21. Hence the contention of the respondents that the petitioner was on consolidated pay for the period from 08.01.1985 to 10.08.1989 (4 years) is not eligible for payment of gratuity by the respondents and no gratuity has been allocated to the petitioner is unsustainable or untenable in law.

22. It is no where in the Payment of Gratuity Act, 1972, it is mentioned that an employee who was working on a consolidated period is not entitled for gratuity.

23. For the reasons stated above, this Court is of the considered view that the petitioner is entitled for gratuity and terminal benefits for the period she was under consolidated pay, i.e., from 08.01.1985 to 10.08.1989 (4 years).



W.P.No.5328 of 2020

WEB COPY 24. The first respondent is directed to pay/settle the terminal benefits including the gratuity for the period from 08.01.1985 to 10.08.1989 within a period of eight (8) weeks from the date of receipt of a copy of this order.

In the result, the writ petition stands disposed of with the above observations and direction. No costs.

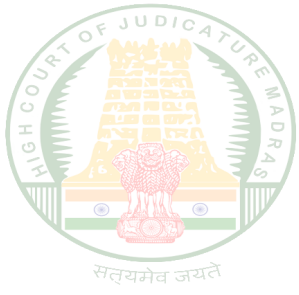
10.01.2025

cda

Index : Yes

Speaking Order

Neutral Citation : Yes

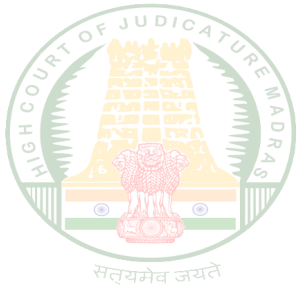


W.P.No.5328 of 2020

WEB COPY

To

- 1.The Deputy Registrar (Co-op) Society,
Deputy Registrar Office,
Tindivanam,
Villupuram District.
- 2.The Secretary,
The Sathambadi Primary Agricultural Co-operative
Credit Society Limited,
Sathambadi & Post,
Gingee Taluk,
Villupuram District – 604 204.
- 3.The Secretary,
Co-operative Bank – CL-SPL-139,
Kannalam,
Melmalaiyanur Taluk,
Villupuram District.



WEB COPY



W.P.No.5328 of 2020

J.SATHYA NARAYANA PRASAD, J.

cda

W.P.No.5328 of 2020

10.01.2025