

W.P.No.14003 of 2020

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

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RESERVED ON : 18.03.2025
PRONOUNCED ON : 23.04.2025

PRESENT:

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

W.P.No.14003 of 2020
and
W.M.P.Nos. 17389 and 17390 of 2020

M.Arumugham,
S/o. Meenakshi Sundaram,
No.30/12, Tharangambadi Road,
Mayiladuthurai – 609 001.
Nagapattinam Dist.

.... Petitioner

Vs.

1.The Joint Commissioner of Labour
Appellate Authority under P.G.Act,
Tiruchirapalli – 620 020.

2. The Assistant Commissioner of Labour
Controlling Authority under P.G.Act
Tiruchirapalli 620 020.

3. The Management / President
Z.309, Perunjeri Primary Agricultural Cooperative
Society Ltd, Perunjeri (Po) 609 404.
Kuttalam Tk. Nagapattinam Dist.

.... Respondents

Prayer in W.P.

To issue a writ, order, or direction more particularly a writ in the nature of Writ of Certiorarified Mandamus to call for the records relating to the impugned



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order issued by the 1st Respondent in No.P.G.A.No.23/2016 dated 20.03.2017 confirming the impugned order passed by the 2nd Respondent in No.P.G.A.No.02/16 dated 11.03.2016 and to quash the same and consequently directing the Respondents to pay the retirement benefits to the Petitioner as on date like EPF accumulations, Leave Salary and Gratuity etc., along with interest for the belated payment @10% as per section 7(3A) of P.G.Act, from 01.07.2009 and up to final payment and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Prayer in WMP No. 17389 of 2020

To dispense with the production of original impugned order issued by the 1st Respondent in No.P.G.A.No.23/2016 dated 20.03.2017 confirming the impugned order passed by the 2nd Respondent in No.P.G.A.No.02/16 dated 11.03.2016, for the present Writ Petition.

Prayer in WMP No. 17390 of 2020

To grant an order of interim direction directing the Respondents to pay the retirement benefits like EPF accumulation, Leave Salary, Gratuity etc., in favour of the Petitioner forthwith, pending disposal of Writ Petition.

Appearance of Parties:

For Petitioner : Mr.J.Jayamalan, Advocate

For Respondents 1 & 2 : Mr.R.Kumaravel, AGP

For Respondent 3 : Mr.Bala Ramesh, Advocate.



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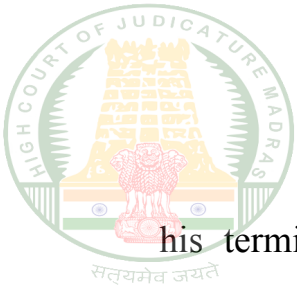
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JUDGMENT

Heard.

2. The writ petitioner was employed as a Secretary in the 3rd Respondent Society, serving from 15.07.1980 until 30.06.2009, when he attained the age of superannuation. During his tenure, he was issued a charge memo dated 17.07.2008. Despite attaining superannuation on 30.06.2009, he was not permitted to retire and was instead relieved from his duties. Following an enquiry into the charges, he was ultimately dismissed from service by an order dated 20.10.2009, retrospectively effective from the date of his superannuation.

3. The Petitioner preferred a Revision Petition under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983, before the Revisional Authority, namely the Joint Registrar of Cooperative Societies, Nagapattinam. The said Revision Petition was allowed by order dated 11.04.2011, whereby the order of termination dated 25.10.2009 was set aside. Pursuant to the said order, the 3rd Respondent Society passed an order dated 27.08.2012, permitting the Petitioner to be deemed as having retired on attaining the age of superannuation on 30.06.2009. However, despite the said recognition, the Petitioner was not paid

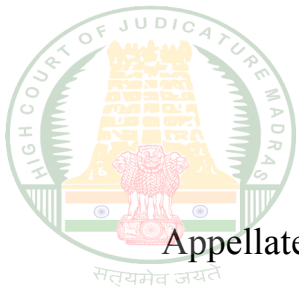


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his terminal benefits. Consequently, he issued a notice in Form-I seeking gratuity, and thereafter filed a claim before the 2nd Respondent, which was registered as P.G. Case No. 2 of 2016. The Controlling Authority, i.e., the 2nd Respondent, dismissed the said claim by order dated 11.03.2016.

4. Aggrieved by the said order, the Petitioner preferred an appeal before the 1st Respondent Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972. The appeal was taken on file as P.G.A. No. 23 of 2016, dated 20.03.2017. Upon receipt of notice from the Appellate Authority, the 3rd Respondent Society filed its counter statement on 19.12.2016, to which the Petitioner filed a reply statement on 06.02.2017. The Appellate Authority, by order, dismissed the appeal holding that the Petitioner was not entitled to gratuity on the ground that the 3rd Respondent Society employed only seven persons and, therefore, the provisions of the Payment of Gratuity Act were not applicable to it. The Appellate Authority further observed that whatever amount of gratuity was due to the Petitioner had already been credited to his bank account, and thus, found no reason to interfere with the order of the Controlling Authority.

5. It is against the order dated 20.03.2017 passed by the 1st Respondent



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Appellate Authority that the present writ petition has been filed. When the writ

petition came up for admission on 05.10.2020, a learned Judge of this Court recorded that the counsel appearing for TANGEDCO had taken notice. Thereafter, on 12.10.2020, the counsel for the 3rd Respondent also entered appearance and took notice. Subsequently, on 30.11.2020, it was recorded that both parties had expressed their willingness to file a memo of calculation with respect to the Petitioner's last drawn wages.

6. A counter affidavit dated 23.10.2020 was filed on behalf of the 3rd Respondent. In response, the Petitioner filed a reply affidavit dated 07.12.2020. In the memo filed by the Petitioner, he quantified the gratuity amount claimed by him as follows:

“Amount recovered as per the order passed by the Respondent Society is Rs.9,882/-

Salary after revision of wages

Basic Pay : Rs.11,750/-

Personal Pay : Rs. 1,739/-

D.A. : Rs. 2,968/-

Total number of service 29 years – Gratuity calculation as per Act is Rs.16,457 x 15 x 29 = Rs.2,75,338/-

Total Gratuity to be paid to the Petitioner is Rs.2,75,338/- as on 30.06.2020.”



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7. However, in the counter statement filed by the 3rd Respondent, it was specifically averred in paragraphs 12 and 13 as follows:

“The order of the Joint registrar of Co-operative Society, Ngapatinam has given effected by the 3rd respondent society. The monthly salary of the petitioner was a sum of Rs.17,017/- . The amount arises from the increment cut for three years come to a sum of Rs.6328/-. If the order of Joint registrar of Co-operative has given effected, and the amount arises from the three increments is deducted, the last drawn salary of the petitioner would be a sum of Rs.10,689/- Based on the last drawn salary, the third respondent has calculated the Gratuity a follows:-

$$\text{Rs.10689} + \frac{15 \times 29}{26} = \text{Rs.1,78,835/-}$$

I humbly submit that the petitioner has failed to deduct the amount arises from the increment cut for three years which he suffered as punishment in lieu of dismissal from service by order of the Joint registrar of Co-operative Society, Nagapatinam, from his salary. Moreover, the petitioner has added the House Rent Allowance with the salary for calculating the Gratuity amount. As per the Gratuity Act, the Basic Salary and Dearness Allowance alone has to be taken for calculating gratuity. But the petitioner wrongly took the Basic salary, Dearness Allowance and House Rent Allowance, it is a wrong calculation.”

8. The Petitioner once again reiterated his stand and, in his counter statement, asserted that the provisions of the Payment of Gratuity Act would be applicable to the 3rd Respondent Society by virtue of Special Bye-law No. 37.



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In paragraph 7 of his statement, he extracted the said Bye-law, which reads as

WEB follows:

“1.The Society shall pay Gratuity to the employees not exceeding to the maximum amount in accordance the provisions of the Payment of Gratuity Act, 1972, whether or not this Act is applicable to the Society.

2. The Board of Management shall at the option of the employees of the Society to implement a Group Gratuity Scheme in consultation with LIC of India or any other organization and terms and conditions in operation in such schemes shall apply to the employees of the Society.”

9. It is unclear how Special Bye-law No. 37 would render the provisions of the Payment of Gratuity Act applicable to the 3rd Respondent Society. Both the 1st and 2nd Respondents, being the Appellate Authority and the Controlling Authority respectively under the Act, have categorically found that the 3rd Respondent Society employs only seven persons, and as such, the Act is inapplicable. Consequently, they have held that they lack jurisdiction to entertain any claim filed by the Petitioner under the provisions of the Act. The copy of the Special Bye-laws produced by the Petitioner reflects the cadre strength of the Society, which is as follows:

“The cadre strength of the society shall be fixed by the board in consultation with Registrar of Co-operative Societies as follows:

Sl.No.	Category Post	No. of Post.
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1	Secretary	1
2	Clerk / Appraiser	1
3	Attender	1”

10. Section 1(3)(b) of the Payment of Gratuity Act, 1972 mandates that the Act shall apply to an establishment only if it employs ten or more persons.

The provision reads as follows:

“1(3) It shall apply to

1.Omitted

(b)every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.”

11. However, the sole exception where the Act applies to an establishment with fewer than ten employees is provided under Section 1(3A) of the Act, which reads as follows:

“A shop or establishment to which this act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.”

12. Despite the clear position of law and the concurrent findings of fact by both the Controlling and Appellate Authorities regarding the inapplicability of the Act to the 3rd Respondent Society, the counsel for the Petitioner persisted in



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advancing arguments in support of the applicability of the Payment of Gratuity

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Act. In this regard, he placed reliance on a judgment of a Division Bench of this Court in **K. Ambalanatha Doss v. The Special Officer, Kanyakumari District, Central Co-operative Bank & Another**, reported in MANU/TN/1469/2008, wherein K. Chandru, J., speaking for the Bench, held in paragraph 9 as follows:

“When a special law creates a right as well as remedy, the party must be directed to go before that Forum and not any other Forum. In our opinion even the reference to the provision of revision under Section 153 and review under Section 154 may not be a satisfactory Forum and there is a dispute relating to entitlement of gratuity including the difference in the gratuity amount. The Central law holds the field in respect of gratuity and there being no other provision under the said law excluding the operation of Central law the order of the learned Judge cannot be countenanced by this Court.”

13. That decision was rendered in the context of determining whether employees of cooperative societies, in the event of a dispute regarding gratuity, should seek relief under Section 33C(2) of the Industrial Disputes Act or approach the forum prescribed under the Payment of Gratuity Act. In that case, the applicability of the Payment of Gratuity Act to the 1st Respondent Bank, namely the Kanyakumari District Central Co-operative Bank, was never in



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question. Hence, the said judgment has no bearing on the present case.

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14. The writ petition is wholly misconceived and is accordingly dismissed. Consequently, both the connected WMPs shall also stand dismissed. However, considering that the Petitioner has continued to engage the time of this Court with a frivolous writ petition, a cost of Rs.5,000/- is imposed on the Petitioner, payable to the 3rd Respondent Society.

23.04.2025

ay

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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