

WEB COPY

WP.No.16830 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.16830 of 2021

and

WMP.No.17820 of 2021

I.Savarinathan

... Petitioner

Vs.

1.The Deputy Chief Labour Commissioner (Central)
(Appellate Authority Under the payment of Gratuity Act, 1972)
5th Floor, Shastri Bhawan,
Haddows Road, Chennai- 600 006.

2.The Regional Labour Commissioner (Central)
(Controlling authority Under the payment of Gratuity Act, 1972)
TC.25/ 3453, Rama Nillayam, Uppalam Road,
Trivandrum-695001.

3.The Senior Regional Manager
Central Bank of India, Regional Office,
North R.S.Road, Ayyappankavu,
Ernakulam- 683018.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus Calling for the concerned record from the Respondents No.1 and 2, quash the order of the 2nd Respondent dated 22.11.2018 in Gratuity Application No. 36/24/ 2016/ RLC/ TVM in so far as restricting the



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gratuity payable to the petitioner as Rs.3,50,000/- and the order of the 1st Respondent dated 26.03.2021 in G.A.No.146 of 2019 as illegal, arbitrary and contrary to law and consequently, direct the 3rd Respondent to pay the petitioner the gratuity payable as Rs.11,15,236/- in terms of the central Bank of India (Officers') service regulations, 1979 along with interest at the rate of 10% from 30.09.2009 till the date of payment after deducting the payment already made viz., of Rs.6,88,876/- and pass such other orders or directions as this Hon'ble Court may deem fit in the circumstances of the case, award cost and render justice.

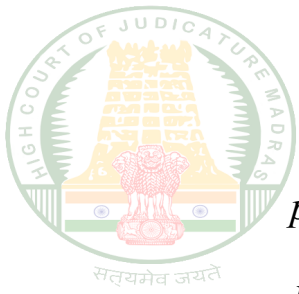
For Petitioner : M/s.C.S.Sreenedhi

For Respondents : M/s.P.Raghunathan
for M/s.T.S.Gopalan and Co.

ORDER

The above Writ Petition is filed for the following reliefs:-

"Calling for the concerned record from the Respondents No.1 and 2, quash the order of the 2nd Respondent dated 22.11.2018 in Gratuity Application No. 36/24/ 2016/ RLC/ TVM in so far as restricting the gratuity payable to the petitioner as Rs.3,50,000/- and the order of the 1st Respondent dated 26.03.2021 in G.A.No. 146 of 2019 as illegal, arbitrary and contrary to law and consequently , direct the 3rd Respondent to



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pay the petitioner the gratuity payable as Rs.11,15,236/- in terms of the central Bank of India (Officers') service regulations, 1979 along with interest at the rate of 10% from 30.09.2009 till the date of payment after deducting the payment already made viz., of Rs.6,88,876/-"

2. The facts are briefly extracted hereinbelow:-

3. The petitioner had joined the services of the 3rd respondent bank on 28.10.1974. During his tenure with the bank, he had served at various branches in different capacities, including as a Branch Manager at the Kumbakonam Branch from August 2001 to May 2004, and as a Senior Manager at the Mandaveli Branch, Chennai, from 09.06.2004 to 12.05.2007. While the petitioner was serving at the Alleppey Branch of the 3rd respondent bank, he was issued with a Charge Memo alleging irregularities in the sanctioning of loans during his tenure at the afore-mentioned two branches. Thereafter, a departmental enquiry flouting principles of natural justice was conducted and the petitioner was dismissed from service by order



dated 29.09.2009. An appeal to the appellate authority of the bank also ended in a failure.

4. The petitioner would submit that the order of dismissal did not allege any offense of moral turpitude on the part of the petitioner or that he has caused any financial loss to the 3rd respondent bank on account of his willful omission or negligence. The 3rd respondent bank had not issued any notice of forfeiture of gratuity within time and there was no order forfeiting his gratuity.

5. The petitioner would submit that at the time of his dismissal he had rendered 35 years of service with the 3rd respondent bank and since he has rendered more that 5 years of continuous service he is entitled to gratuity under the payment of Gratuity Act, 1972 (hereinafter called as the “PG Act”).

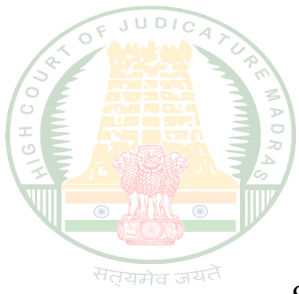
6. The petitioner would submit that as per Section 4(5) of the PG Act an employee is entitled to receive better terms of gratuity under any award or agreement or contract with the employer. It is also



submitted that Clause 46 of the Central Bank of India (Officers')

Service Regulations 1979 (hereinafter called as the "Regulations 1979"), enumerates the manner in which the gratuity has to be paid to an officer of the Bank. As per the said provision the gratuity payable for an officer is one month pay for every completed year of service subject to maximum of 15 month pay upto 30 years of service and when the officer had completed more than 30 years of service, he will be eligible for gratuity for an additional amount at the rate of one half of the monthly pay for each completed year of service beyond 30 years. Further, if the fraction of service beyond completed years of service is six months or more, the gratuity has to be paid on a pro rata basis for such period. Clause 46(1) of the Regulations 1979 makes it clear that for computing gratuity, Fixed Personal Pay and the Professional Qualification pay should also be taken into account as part of wages, apart from the Basic Pay and the Dearness Allowance.

7. Therefore, as per the calculation of the petitioner, he is entitled to gratuity of Rs.11,15,235.54/- along with interest at 10% per annum from the day next to the date of his dismissal.



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8. Since the 3rd respondent bank had not paid the gratuity, a gratuity application was filed before the 2nd respondent. The 2nd respondent by order dated 22.11.2018 held that though the gratuity payable was Rs.8,32,529/-, however, the same was limited to Rs.3,50,000/- on the basis of the ceiling prevailing on the date of the dismissal. This order was challenged by the petitioner before the 1st respondent. The 1st respondent, by an order dated 26.03.2021, held that the order passed by the 2nd respondent does not call for any interference. Challenging the same, the petitioner is before this Court.

9. The 3rd respondent bank had filed a counter statement denying the very right of the petitioner to claim gratuity and stating that the application for the grant of payment of gratuity had been made 7 years from the date of dismissal. They would further submit that since the maximum amount of gratuity payable at the relevant point in time was Rs.3.5 lakhs, the 2nd respondent had directed the 3rd respondent bank to pay the same with simple interest at 10% from the date of dismissal. Though the 3rd respondent was aggrieved by the



order, however, in order to give a quietus to the litigation they have paid the sum of Rs.6,88,876/- to the petitioner towards gratuity and interest.

10. The 3rd respondent would further submit that the petitioner is not entitled to claim the benefits under Regulation 46 of the Regulations, 1979, as the said Regulation does not apply to an employee who has been terminated from service by way of punishment. Therefore, they have sought for the dismissal of the Writ Petition.

11. Heard the counsel on either side and perused the records.

12. The only two factors that have to be considered in this Writ Petition are:-

a) Whether the petitioner is entitled to have the Fixed Personal Pay and the Professional Qualification Pay included as part of the wages for the purpose of calculating Gratuity?

b) Whether the petitioner can seek the benefits of proviso 1 of



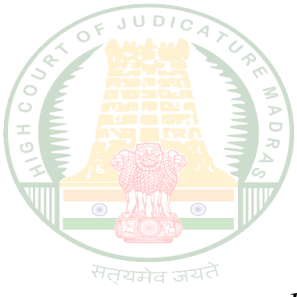
Regulation 46(2) of the Regulations 1979?

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13. The issue as to whether the petitioner is entitled to claim gratuity now pales into insignificance considering the fact that the 3rd respondent bank has not questioned the order passed by the 2nd respondent directing the payment of gratuity and having acquiesced to the same they cannot now turn around and seek umbrage under the provisions of Regulation 46 of the Regulations 1979.

14. Once the petitioner is deemed entitled to gratuity then the quantum of gratuity that the petitioner is entitled to should be determined. Section 4(5) of the PG Act provides that an employee is entitled to receive better terms of gratuity under any award or agreement or contract with the employer. The Regulation 46(2) and the 1st proviso to Regulation 46(2) of the Regulations 1979 would read as follows:-

"(2) The amount of Gratuity payable to an officer shall be one month's pay for every completed year of service, subject to a maximum of 15 months pay.



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Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years."

15. Therefore, on considering the provisions of Section 4(5) of the PG Act, the petitioner is entitled to the gratuity as provided under Regulation 46 of the Regulations 1979. The note to Regulation 45 of the Regulations 1979 would read as follows: *"Pay for the purpose of Provident Fund shall mean Basic Pay including stagnation increments, officiating allowance, Professional Qualification Allowance and increment component of Fixed Personal Allowance."* This makes it clear that the Professional Qualification Allowance and the Fixed Personal Allowance have to be treated as part of the basic pay.

16. The Appellate Authority has discussed in detail the right of the petitioner to claim gratuity totally overlooking the fact that the



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payment of gratuity directed by the 2nd respondent has not been challenged by the 3rd respondent bank but has only been challenged by the petitioner. A reading of the 1st respondent's order, however, would imply that the 1st respondent had presumed that the appeal is that of the 3rd respondent bank.

17. Accordingly, in view of the above discussions, the Writ Petition is allowed and the orders passed by the 1st respondent dated 26.03.2021 and the 2nd respondent dated 22.11.2018 are set aside. The 3rd Respondent is directed to pay the petitioner the gratuity amount of Rs.11,15,236/- in terms of the Central Bank of India (Officers') Service Regulations, 1979 along with interest at the rate of 10% from 30.09.2009 till the date of payment after deducting the payment already made viz., of Rs.6,88,876/-. No costs. Consequently, the connected Miscellaneous Petition is closed.

23.06.2025

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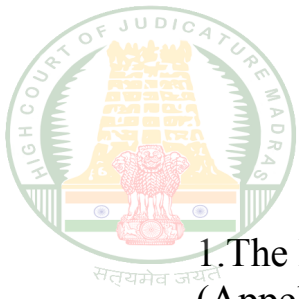
Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

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