



W.P.No.32255 of 2024

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D.BHARATHA CHAKRAVARTHY.J.

This matter is posted today before this Court under the caption “For Being Mentioned”.

2. Both sides learned counsel would submit that if the matter is left to the Authority for calculation, again the petitioner would be driven to get another round of litigation as the interest has to be calculated as per the order of this Court.

3. At this stage, Mr.L.P.Shanmugasundaram, the learned counsel for the fourth respondent would insist that once this Court has held in the first paragraph that the Writ Petition itself is not maintainable, then it ought not to have granted the limited relief with reference to the interest portion also. As a matter of fact, the memo of calculation filed by him includes the interest for the entire period.



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4. Per contra, the learned counsel appearing on behalf of the petitioner would submit that he has furnished the calculation and the same is in tune with the directions given by this Court.

5. With reference to the contention made by Mr.L.P.Shanmugasundaram, the learned counsel for the fourth respondent, the same cannot be entertained when the matter is listed under the caption for being mentioned. Therefore, the calculation submitted by the petitioner is accepted.

6. In view of the same, Paragraph No.18 of the order dated 03.01.2025 shall be replaced as follows:

“ 18. Therefore, when Section 8 clearly states that if the order is not complied with, thereafter, it has to be paid only with compound interest that is fixed by the Central Government which is 15%, then the same has to be paid only with that rate. However, given the inaction on the part of the workman, after the Execution Authority's order on 16.08.2017 and he approached by the authority under the Payment of Gratuity Act, 1972 only on 27.04.2022, the interest, as ordered in the recovery



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certificate for that period alone shall be deducted and the management shall pay the balance gratuity sum of Rs.3,04,023/- with compound interest at the rate of 15% as ordered by the authorities from the date of retirement i.e., from 01.01.2016 up to 16.08.2017 and thereafter, from 28.04.2022 till date of disbursement. **As per the calculation memo submitted by the petitioner a sum of Rs.5,33,507/- shall be paid to the fourth respondent within six weeks from the date of receipt of a web copy of this order without waiting for the certified copy of this order.”**

7. The Registry is directed to carry out necessary correction in the order and issue fresh copy of the order dated 03.01.2025.

04.02.2025

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04.02.2025



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.32255 of 2024
and W.M.P.Nos.35046 and 37095 of 2024

The Administrator,
Chennai Government Officer Co-operative
Building Society,
Tambaram, Chennai - 600 045.

.. Petitioner

Versus

1. The Deputy Commissioner of Labour (I.C),
Controlling Authority under the Payment of Gratuity
Act,
Office of Joint Commissioner of Labour - 2,
DMS, Teynampet, Chennai - 600 006.
2. The District Collector of Chengalpattu,
Chengalpattu.
3. The Thashildhar of Tambaram,
Tambaram Taluk.
4. Albert

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari calling for the records of the 1st respondent pertaining to the award passed in P.G.No.291 of 2022, dated 06.03.2023 and quash the same.



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For Petitioner : Mrs.G.Devi

For Respondents : Mr.K.Surendran,
Additional Government Pleader,
for RR-1 to 3

: Mr.L.P.Shanmugasundaram,
for R4

ORDER

This Writ Petition is filed challenging the impugned order in P.G.No.291 of 2022, in and by which, the claim of the workman was allowed and the authority, under the *Payment of Gratuity Act, 1972*, directed the petitioner management to pay the balance sum of gratuity being sum of Rs.3,04,023/- with further interest at the rate of 10% per annum from the date on which the amount became due till the date of disbursement.

2. The factual background, in which this Writ Petition arises, is that the workman was working as a Secretary in the petitioner society and upon attaining the age of superannuation, retired from the service with effect from 31.12.2015. Even thereafter, many of his service dues were not paid. Therefore, he approached the Registrar under Section 153 of the *Tamil Nadu*



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Co-operative Societies Act, 1983 by filing a revision. By the order, dated

06.09.2016, the Registrar went into the issue and found that the total amount of Provident Fund payable was Rs.12,12,403/-, of which, a sum of Rs.7,50,000/- was already paid and a balance sum of Rs.4,62,403/- was to be paid. The authority also found that the gratuity of Rs.6,09,946/- was due and ordered the said sum to be paid. Similarly, the deposit amount of Rs.331/- and Earned Leave amount of Rs.2,40,000/- were ordered to be paid, in all a total sum of Rs.13,12,680/- was found to be due to the workman and was ordered to be paid.

3. It is the case of the management that thereafter, once again the workman was called and on 26.09.2016, he executed an undertaking in Rs.20/- stamp paper, whereby, he agreed that instead of Earned Leave for 240 days, he is agreeable to an Earned Leave of 180 days as per the bylaws of the society and therefore, deducting the said sum, the total sum of Rs.11,21,425.81 ps alone is payable. Of the said sum, he had received a sum of Rs.4,25,000/- vide cheque, dated 26.09.2016. He agreed that the balance need not be paid by the society, but, the balance sum of Rs.6,96,425.81 ps can be made by way of a fixed deposit for one year and the deposit receipt to be given to him. He agreed to accept the above-said sum as full quit.



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4. Thereafter, it is the case of the management that since the same was not complied with, the workman filed an Execution Petition before the Deputy Registrar to execute the order passed in the revision. In the execution proceedings, an order was passed on 16.08.2017. The order reads that apart from the above, as per the bylaws, the maximum gratuity payable is only Rs.3,50,000/- and accordingly, the excess amount need not be paid and the order records as if the workman and the society agreed for such a course i.e., instead a total balance of Rs.6,96,425.81 ps. It was agreed that the workman will be paid a sum of Rs.4,45,437.81 ps with interest at the rate of 9% per annum from the date of passing of the order i.e., 06.09.2016 and the same shall be paid on or before 05.09.2017.

5. It is stated that thereafter, the workman started approaching the society and even by a communication, dated 31.05.2022, the position was reiterated that the maximum gratuity payable is only Rs.3,50,000/-. However, by another communication, dated 28.11.2022, the President of the society had agreed that depending on the then prevailing situation, they are agreeable to release the balance of the gratuity also without restricting it to Rs.3,50,000/- alone. Even



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thereafter, it is stated that the balance was not paid and therefore, the workman had approached the authority under the *Payment of Gratuity Act, 1972*. After considering the case of the parties, the original authority in P.G.No.291 of 2022 passed an order, dated 06.03.2023, thereby, ordering the petitioner management to pay the balance sum of Rs.3,04,023/- with further interest at the rate of 10% per annum from the date on which the amount became due till the date of disbursement.

6. After the order was passed by the authority, the workman approached the authority to issue a recovery certificate as per Section 8 of the *Payment of Gratuity Act, 1972*, upon which, the recovery certificate was granted on 17.05.2024 directing the management to pay the gratuity amount with compound interest at the rate of 15%. Thereafter, the workman approached this Court by way of W.P.No.26129 of 2024 for a direction to the District Collector, Chengalpattu and the Tahsildar, Tambaram to recover the amount under the Revenue Recovery Act. The said Writ Petition was also disposed of by the order, dated 06.09.2024 by directing the respondents to consider the representation of the workman and to pass appropriate orders. It is only thereafter the present Writ Petition was filed by the management.



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7. Heard *Mrs.G.Devi*, learned Counsel for the petitioner management; *Mr.K.Surendran*, learned Additional Government Pleader for the respondent Nos.1 to 3 and *Mr.L.P.Shanmugasundaram*, learned Counsel for the fourth respondent.

8. The learned Counsel for the petitioner management would submit that in view of the compromise entered into during the execution proceedings, when the entire amount is settled, thereafter, the workman kept quiet for five years and belatedly raised the issue. Having accepted the amount as full quit in the compromise, thereafter, the workman has no right to again raise the issue belatedly in the year 2022. Therefore, the Payment of Gratuity Authority also erred in ordering the balance to be paid by the society.

9. She would further submit that even the first letter of the petitioner society categorically denies the excess to be paid and when the bylaws of the society are categorical, the maximum of the gratuity payable is only Rs.3,50,000/- and the balance cannot be paid. To date, the bylaws are yet to be amended. In view thereof, the petitioner society is not in a position to pay the



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balance amount and the revisional authority ordered the payment of the entire amount by overlooking the bylaws. That is why in the execution proceedings, the error was corrected. The Payment of Gratuity Authority did not consider the same and therefore, the impugned order is liable to be set aside.

10. Per *contra*, the learned Counsel for the fourth respondent workman would submit that firstly, in this case, when the statutory authority passed an order and when there is a remedy of filing an appeal is available under the *Payment of Gratuity Act, 1972* and when the management has failed to avail the appeal remedy within the period of limitation, the Writ Petition cannot be entertained by this Court. Secondly, when the statutory authority passed an order under Section 153 of the *Tamil Nadu Co-operative Societies Act, 1983*, during the execution proceedings, the workman was coerced into coming into a settlement by forgoing the lawful sum due to him. In any event, the right of the workman accrues under the *Payment of Gratuity Act, 1972*, whereby, the 15 days salary for every completed period of service has to be paid and if the benefit which is granted by the Co-operative Society is lesser than the amount due under the *Payment of Gratuity Act, 1972*, the same cannot be accepted and the bylaw cannot overwrite the provisions of the *Payment of Gratuity Act*,



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1972. In any event, even in the Co-operative Society, considering that the bylaws were against the provisions of the *Payment of Gratuity Act, 1972*, by a circular, dated 06.07.2012 bearing Circular No.20 of 2012, the Registrar of Co-operative Societies had already instructed all the Co-operative Societies that the provisions of the *Payment of Gratuity Act, 1972* will prevail and directed the every society to amend their respective bylaws. Without carrying out the same, the contentions are made.

11. Further, for every year, provision with reference to the gratuity being the 15 days pay, has been during auditing and has been duly approved by the board every year and the provision has also been made to keep the amount in a separate account. Only considering the said fact, the President of the Society also accepted to pay the said amount. Therefore, the entire amount as awarded along with the penal interest, now mentioned in the recovery certificate, is to be paid and the same does not warrant any interference by this Court.

12. I have considered the rival submissions made on either side and perused the material records of the case.



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13. At the outset, by the judgment of the Hon'ble Supreme Court of India in *C.C.T Vs. Glaxo Smith Kline Consumer Health Care Limited*¹, when the statutory authority's orders are subject to a statutory regime of appeal and limitation are all provided, this Court under Article 226 of the Constitution of India can neither extend the limitation nor entertain a Writ Petition merely because the limitation period is over. Therefore, the order of the Payment of Gratuity Authority has become final and this Writ Petition cannot be entertained in respect of the same.

14. However, considering the compromise which is said to have been arrived at, it can be seen that firstly, even in the averments made in paragraph No.4 of the Writ Petition, it is not the case of the management society that they have complied with the terms of the compromise by paying the entire amount of Rs.4,43,437.81 ps with 9% interest from 06.09.2016 on or before 05.09.2017. They have made an averment that they paid the principal amount only. When both sides enter into an agreement, when one party does not honour the same, thereafter, there is no error on the part of the workman falling back upon the original order.

¹ (2020) 19 SCC 681



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15. Secondly, it can be seen that even from the point of the society, originally, when the order was passed by the Registrar in the exercise of statutory powers under Section 153 of the *Tamil Nadu Co-operative Societies Act, 1983*, if the society is aggrieved, they should have taken up further with the said authority by way of a review or by way of further appeal or legal proceedings. Without doing so, they took up the matter only in the execution.

16. Thirdly, even after the execution, once again there is a concession made by the petitioner society that they will pay the entire amount. Therefore, in view of all the above developments and more specifically, when the right relates to the statutory right of the workman to receive the 15 days' salary as a gratuity amount, the same cannot be the subject matter of this kind of undertaking and vagaries before the authorities. It is a statutory right that is due to every workman who has put in their arduous service. Already, by a Circular, the bylaws were directed to be amended and it was ordered that the entire sum be paid to the workmen. Therefore, the same cannot be now taken away. Therefore, I am of the view that the workman's right cannot be curtailed based on the compromise and I reject the case of the management.



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17. However, at the same time, it cannot be accepted that the said compromise made in the Execution Petition was by coercion. Therefore, even though the Writ Petition itself is not entertainable, considering the peculiar facts and circumstances of the case that where, for a brief period, the workman also seems to have kept quiet, now, ordering compound interest for the entire period would not be fair for the management society. The society ought to have complied with the order of the original authority, whereby, only 10% statutory interest would have been payable, but, even thereafter they did not care to comply with the order and they woke up only after the workman sought to enforce the order under the Revenue Recovery Act.

18. Therefore, when Section 8 clearly states that if the order is not complied with, thereafter, it has to be paid only with compound interest that is fixed by the Central Government which is 15%, then the same has to be paid only with that rate. However, given the inaction on the part of the workman, after the Execution Authority's order on 16.08.2017 and he approached by the authority under the *Payment of Gratuity Act, 1972* only on 27.04.2022, the interest, as ordered in the recovery certificate for that period alone shall be deducted and the management shall pay the balance gratuity sum of



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Rs.3,04,023/- with compound interest at the rate of 15% as ordered by the authorities from the date of retirement i.e., from 01.01.2016 up to 16.08.2017 and thereafter, from 28.04.2022 till the date of disbursement. The said amount shall be disbursed within six weeks from the date of receipt of a web copy of this order without waiting for the certified copy of this order.

19. With the above directions, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

03.01.2025

Neutral Citation : yes
grs

To

1. The Deputy Commissioner of Labour (I.C),
Controlling Authority under the payment of Gratuity
Act,
Office of Joint Commissioner of Labour - 2,
DMS, Teynampet, Chennai - 600 006.
2. The District Collector of Chengalpattu,
Chengalpattu.
3. The Thashildhar of Tambaram,
Tambaram Taluk.



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D.BHARATHA CHAKRAVARTHY, J.

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and W.M.P.Nos.35046 and 37095 of 2024

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