



W.P(MD)No.3608 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.3608 of 2021 and
WMP(MD) No.13469, 2929 of 2021

Thanthoni Agro Engineering Services
Co-operative Centre Limited,
Represented by its
Liquidator / Senior Agricultural Officer,
Soil Testing Lab,
Thillai Nagar, Rayanur,
Thanthonimalai Post,
Karur District.

... Petitioner

Vs

1.The Deputy Commissioner of Labour/
The Controlling Authority Under the payment of Gratuity Act
1972,
Dindigul.

2.Ramalingam.K

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 1st respondent in P.G 6/2018 dt 23.11.2018 under payment of Gratuity Act, 1972 and quash the same as illegal and for other reliefs.



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For Petitioner : Mr.J.Lawrance
For R1 : Mr.S.Vinodh, Government Advocate
For R2 : Mr.R.Murali

ORDER

The petitioner, Thanthoni Agro Engineering Services, registered under the Tamil Nadu Co-operative Societies Act, has filed this writ petition through the Liquidator, appointed by the Deputy Registrar of Agro Engineering Service, challenging the order passed by the Deputy Commissioner of Labour / the Controlling Authority under the Payment of Gratuity Act, 1972, in P.G.No.6 of 2018, dated 23.11.2018, directing the petitioner Society to pay gratuity to the second respondent/employee of the petitioner's Society.

2.This Court while entertaining this writ petition, by its order, dated 24.02.2021 has directed the petitioner to deposit a sum of Rs.3,60,000/- on the file of the first respondent, in P.G.No.6 of 2018, dated 23.11.2018 and also permitted the second respondent to withdraw the same. Thereafter the case is listed only today for final disposal.



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3.The learned counsel appearing for the petitioner submits that the petitioner Society has been constituted under the provisions of Tamil Nadu Co-operative Societies Act, with an object to provide agriculture services to its members, by repairing, hiring, manufacturing and selling agricultural implements and machineries and also to provide fertilizers to its members /farmers, on subsidy basis. The second respondent was the Superintendent of the Society. He along with the Special officer of the Society has committed several irregularities, thereby, a loss of Rs.1,34,30,451.20/- was caused to the Society. An enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 was ordered and thereafter, a surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 was also initiated as against the second respondent and others, fixing liability to the tune of Rs.1,34,30,451.20/- on the delinquent officers and the same was challenged by the second respondent before the Special Tribunal for Co-operative cases at Chennai, in CMA.No.13 of 2014. The Tribunal has remanded the matter back to the authorities for fresh consideration. After furnishing copies of documents and after



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affording sufficient opportunity to the second respondent, surcharge order under Section 87(1) of the Tamil Nadu Co-operative Societies Act, 1983 was passed by the Deputy Registrar of Agro Engineering Services, Chennai, as against the Special Officer and the second respondent, fixing liability of Rs.1,34,30,453.20/- with interest @ 18% per annum. The same was challenged by the second respondent by way of an appeal in CMA(CS) No.58 of 2016, before the Special Tribunal for Co-operative Cases, Chennai, which was dismissed on 08.12.2017, confirming the surcharge order passed by the Deputy Registrar of Agro Engineering Services.

3.1. Apart from the surcharge proceedings, a criminal case in Crime No.1 of 2011 was registered by the Inspector of Police, CCIW, Karur, as against 19 persons, including the second respondent and the same is pending in CC No.358 of 2016, before the Judicial Magistrate No.II, Karur. In these circumstances, the second respondent has submitted his resignation letter and it was not accepted and thereafter he did not attend the Society. While so, the second respondent has filed an application in P.G.No.6 of 2018,



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before the first respondent/the Deputy Commissioner of Labour/the Controlling Authority under the Payment of Gratuity Act, 1972, seeking gratuity and the same was allowed by the authority, by his order, dated 23.11.2018. Challenging the same, the petitioner Society has filed this writ petition in the year 2021.

4.The learned counsel appearing for the petitioner submits that the second respondent, in connivance with the Special Officer and others has caused a loss to the petitioner Society to the tune of Rs.1,34,30,453.20/-. Enquiry reveals that the petitioner Society has purchased 598 MT of Urea and 235 MT of DAP from TANFED for Rs.54,06,906/-, for the purpose of supplying the same to the farmers. However, the second respondent along with other officials have sold the above purchased fertilizers to TNPL Ltd, for a sum of Rs.1,59,36,567/- and also to one Balmer Laurie Co., for Rs.28,33,600/- and the sales made by them was not entered into the accounts of the petitioner's Society. Therefore, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies was ordered and pursuant to the enquiry report, a surcharge proceedings was also



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initiated as against the second respondent and the Special Officer.

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An order under Section 87(1) of the Tamil Nadu Co-operative Societies Act, 1983 was also passed on 04.10.2016, fixing liability of a sum of Rs.1,34,30,453.20/-. The appeal preferred by the second respondent as against the surcharge order was dismissed by the Special Tribunal for Co-operative Cases, Chennai, on 08.12.2017. At this juncture, the second respondent has submitted his resignation letter and it was not accepted by the petitioner Society. While so, he has moved an application before the first respondent, seeking gratuity. According to the learned counsel, without considering the inordinate delay of 2661 days in filing the application, the first respondent has allowed the application filed by the second respondent. In the said application, the petitioner Society has entered appearance and has also raised objections on the maintainability, by referring to the provisions under Section 79(1) of the Tamil Nadu Co-operative Societies Act. The learned counsel has also referred to the provision under Section 4(6) of the Payment of Gratuity Act, 1972, which enables the Management to withhold the gratuity amount partially or entirely in specific cases of misconduct leading



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to termination, such as causing damage to employer property or engaging in acts involving violence or moral turpitude during employment. Since the second respondent has involved in serious allegation of misappropriation of huge amount, and a surcharge order has also been passed as against him, the first respondent ought not to have entertained the petition filed by the second respondent and ordered for gratuity. The learned counsel further submits that as the petitioner's Society comes under the purview of the Tamil Nadu Co-operative Societies Act, 1983, the available remedy for the second respondent is before the Revisional Authority, under Section 153 & 154 of the Tamil Nadu Co-operative Societies Act, 1983. He further submits that the first respondent without considering the facts that the surcharge order passed under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 attained its finality and also the criminal case registered as against the second respondent is pending, has passed the order erroneously, granting gratuity to the second respondent.



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5.The learned Government Advocate appearing for the first respondent has also confirmed the applicability of provision under Section 79 of the Tamil Nadu Co-operative Societies Act and also the relevancy of provision under Section 4(6) of the Payment of Gratuity Act, 1972.

6.The learned counsel for the second respondent submits that this writ petition itself is not maintainable that this petitioner Society is having a remedy to file an appeal before the Appellate Authority under Section 4(7) of the Gratuity Act, 1972. He further submits that as against the order passed by the Authority under the Payment of Gratuity Act, 1972, in the year 2018, this writ petition was filed in the year 2021, in order to avoid statutory delay. Therefore, according to the learned counsel, this writ petition is not maintainable. He further submits that the surcharge proceedings initiated as against the second respondent was set aside by this Court in CRP No.756 of 2018, dated 23.07.2021 and therefore, as on date, there is no surcharge order as against this petitioner. Therefore, the reference made by the learned counsel for the petitioner by referring



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to the provisions under Section 4(6) of the Payment of Gratuity Act would not be applicable to the second respondent that he has not been terminated from service.

7. This Court considered the rival submissions made and also perused the materials placed on record.

8. The petitioner's Society has been established with a noble object of providing agricultural services to its members and also for providing fertilizers to the farmers in a subsidized rate. However, due to mal-administration of the Society, the Society has suffered a huge loss of Rs.1,34,30,451/-. Besides departmental proceedings, a criminal prosecution has also been initiated as against the second respondent and others including the Special officer of the Co-operative Society, by the CCIW, Karur in Crime No.1 of 2011. A final report has also been filed as against the accused persons in CC No.358 of 2016, which is pending before the Judicial Magistrate Court No.II, Karur. Moreover, a surcharge proceedings was also initiated under Section 87 of the Tamil Nadu Co-operative Societies



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Act and surcharge order has also been passed attaching the second respondent's property. The revision petition filed by the second respondent, before the Co-operative Tribunal challenging the surcharge order was also dismissed. However, this Court, in CRP No.756 of 2018, dated 23.07.2021 has remanded the matter for fresh consideration of the issue. The relevant portion is as under:-

"12. In view of the above, the Judgment and Decree dated 08.12.2017 made in CMA No.58 of 2016 on the file of the Special Tribunal for Cooperative Cases, Chennai (Court of Small Causes, Chennai) is hereby set aside and the Civil Revision Petition is allowed. Again the matter is remanded back to the respondent herein for passing fresh order in respect of the petitioner alone. It is made clear that the respondent is directed to serve all the documents which are required by the petitioner within a period of four weeks from the date of receipt of a copy of this order and thereafter, pass order within a period of eight weeks."

The main contention of the second respondent is that the petitioner Society is having a remedy of appeal under Section 7(4) of the Payment of Gratuity Act and in order to avoid the statutory delay, they have preferred this writ petition. On the other hand, the



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petitioner Society has taken a specific plea on the maintenance of the application filed by the second respondent for gratuity, before the first respondent/the Authority under the Payment of Gratuity Act, by referring to Section 79(1) of the Tamil Nadu Co-operative Societies Act, which reads as under:-

79. Gratuity Fund . (1) A registered society not being an establishment to which the Payment of Gratuity Act, 1972 (Central Act 39 of 1972) applies, may provide in its by-laws for payment of gratuity to the employees at such rates and on such conditions as may be specified in the by-laws and such society may establish a Gratuity Fund or make other arrangements for the purpose.

(2) A Gratuity Fund, if any, established by a registered society under sub - section (1) shall be invested in the financing bank, but shall not__ (a) be used in the business of the society; (b) form part of the assets of the society; (c) be liable to attachment or be subject to any other process of any Court or other authority.

9. When there is a specific provision under Section 79(1) of the Tamil Nadu Co-operative Societies Act as contended by the petitioner Society, the first respondent has entertained the application filed by the second respondent for gratuity and also ordered in his favour, even without any discussions with regard to



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the provision under Section 79(1) of the Tamil Nadu Co-operative Societies Act. Therefore, the maintainability of the proceedings before the first respondent is challenged in this writ petition.

10. The learned counsel for the second respondent has pointed out that the petitioner Society is having an appeal remedy under Section 7(4) of the Gratuity Act. However, considering the manner, in which, the first respondent Gratuity Authority has entertained the application, dehors the provision under Section 79(1) of the Tamil Nadu Co-operative Societies Act, this Court has rightly entertained the writ petition and has also granted some interim relief. It appears that the second respondent has also withdrawn a part amount pursuant to the interim order. Admittedly, the second respondent is facing a surcharge proceeding and also a criminal proceedings on the allegation of misappropriation. Though the surcharge proceedings ordered as against the second respondent was confirmed by the Co-operative Tribunal, it has now been remanded for fresh consideration by this Court in CRP No.756 of 2018, dated 23.07.2021.



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11. In view of the foregoing reasons and discussions, the impugned order passed by the first respondent in P.G 6 of 2018, dated 23.11.2018, under payment of Gratuity Act, 1972 is set aside.

This writ petition is allowed with the following directions:

- i. The petitioner Society is at liberty to recover the amount, which has already been withdrawn by the second respondent.
- ii. Considering the manner, in which, the surcharge proceedings remanded back in the year 2021 is pending, this Court directs the Deputy Registrar, Karur to conclude the surcharge proceedings without any further delay.
- iii. This Court also notices that a final report, which was filed before the learned Judicial Magistrate No.II, Karur is still pending from the year 2016, in CC No.358 of 2016. Therefore, this Court directs the learned Judicial



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Magistrate No.II, Karur to conclude the above proceedings as expeditiously as possible within a period of four months.

There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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Index:Yes
Internet:Yes
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To

- 1.The Deputy Commissioner of Labour/
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1972,
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- 2.The Deputy Registrar, Karur.
- 3.The Judicial Magistrate No.II, Karur.



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B.PUGALENDHI, J.

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