



WP(MD), No.9150 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.11.2025

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

WP(MD)No.9150 of 2021
and
WMP(MD)No.6897 of 2021

The Management,
Ramanathapuram District Central
Co-operative Bank Ltd.,
Rep. by its Managing Director/ Joint Registrar,
No.265E, Vandikara Street,
Ramanathapuram.

... Petitioner

Vs.

1. The Controlling Authority under
Payment of Gratuity Act 1972,
Deputy Commissioner of Labour,
O/o. The Joint Commissioner of Labour,
Madurai – 625 002.
2. P.Paramasivam (died)
3. Andaleswari
4. Vinayagam
5. Thirumalaikumar
6. Kali Muneeswari



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7. Duraikannan
(R3 to R7 are impleaded vide order
dated 24.10.2025 in WMP(MD)No.14995
of 2025)

... Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for the issuance of a Writ of Certiorari, to call for the records
relating to the impugned order passed in P.G.I.A.No.291 of 2019 in
P.G.No.28 of 2018 dated 16.03.2021 by the Controlling Authority under
the Payment of Gratuity Act/Deputy Commissioner of Labour, Madurai
and quash the same.

For Petitioner : Mr.N.Padmaboopathi
for Mr.D.Shanmugaraja Sethupathi

For R1 : Mr.C.Venkatesh Kumar,
Special Government Pleader

For R2 : Died

For R3 to R7 : Mr.P.Kumaresan

ORDER

The Management of Ramathapuram District Central Co-operative
Bank Ltd. has filed this writ petition as against the *ex parte* order passed
in P.G.No.28 of 2018 dated 22.07.2019 and the order of rejection passed

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in P.G.I.A.No.291 of 2019 dated 16.03.2021.

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2. The second respondent, an employee of the petitioner Co-operative Bank, had indulged in various financial irregularities. Therefore, a disciplinary proceedings was initiated against him by issuing six charge memos. An enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was conducted and based on the enquiry report, a surcharge decree was passed against him that he is liable to pay a sum of Rs.3,15,311/-, vide order dated 26.08.2008. Subsequently, based on the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act, in respect of the misappropriation committed in the jewel loan account at Pamban Branch, another surcharge proceedings was initiated by issuing surcharge notice dated 14.08.2007 that he is held liable for a sum of Rs.80,113/-. Pursuant to the disciplinary proceedings and surcharge proceedings, the second respondent was placed under suspension on 27.04.2006. While so, the second respondent attained the age of superannuation on 30.06.2006, however, he was not allowed to retire from service. He has filed an application before the first respondent/the Controlling Authority under



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Payment of Gratuity Act in P.G.No.28 of 2018, claiming gratuity of Rs.97,737/- from the Co-operative Bank. But, he failed to prosecute the said application. Therefore, the application in P.G.No.28 of 2018 was dismissed for default on 17.05.2018. Based on the application filed by the second respondent to restore P.G.No.28 of 2018 by setting aside the order of dismissal dated 17.05.2018, it was restored and taken on file. However, there was no representation for the petitioner Co-operative Bank before the first respondent on 01.07.2019. Therefore, the first respondent has passed an *ex parte* order on 01.07.2019. The petitioner Co-operative Bank has filed an interlocutory application in P.G.I.A.No. 291 of 2019 to set aside the *ex parte* order dated 01.07.2019. The first respondent has reserved the orders in P.G.I.A.No.291 of 2019 and thereafter, passed an order dated 16.03.2021, rejecting the application filed to set aside the *ex parte order*. Therefore, the petitioner Management has filed this writ petition as against the *ex parte* order passed in P.G.No.28 of 2018 dated 22.07.2019 and the order of rejection passed in P.G.I.A.No.291 of 2019 dated 16.03.2021.



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3. The learned counsel appearing for the petitioner submitted that the second respondent has indulged in various financial irregularities, for which, he was issued with six charge memo on 24.02.2005, 28.02.2005, 15.03.2005, 16.08.2005, 13.05.2006 and 13.06.2008 and all the disciplinary proceedings are pending against him. In the meantime, the second respondent attained the age of superannuation on 30.06.2006 and as per Rule 22(4) of the Special By-law of the Co-operative Bank, he was relieved from service, without prejudice to the disciplinary proceedings pending against him. The learned counsel further submitted that enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was conducted against him for the irregularities committed by him and based on the enquiry report under Section 81 of the Act dated 05.10.2007, a surcharge decree was passed against the second respondent that he is liable to pay a sum of Rs.3,15,311/-, vide order dated 26.08.2008. In respect of the misappropriation committed in the jewel loan account at Pamban Branch, another enquiry was conducted under Section 81 of the Act and based on the enquiry report dated 05.10.2006, another surcharge notice dated 14.08.2007 was issued against the second respondent that he is liable for a sum of Rs.80,113/-. In these circumstances, the second



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respondent has filed the above application for payment of gratuity, before the first respondent, on 06.09.2017, after a period of 11 years from the date of his superannuation. The learned counsel also claimed that the second respondent has not co-operated for the disciplinary proceedings and therefore, the same are still pending. He further submitted that the surcharge decree dated 26.08.2008 and the subsequent surcharge notice dated 14.08.2007 have not been challenged by the second respondent in the manner known to law and the loss caused to the petitioner Co-operative Bank is yet to be recovered from the second respondent, pursuant to the surcharge proceedings.

4. The learned counsel for the petitioner, by referring to Rule 19(2) of the Special By-law of the Bank, submitted that the disciplinary proceeding instituted against an employee, while he was in service, shall be deemed to continue even after the retirement. According to the learned counsel, as against the second respondent, there are six disciplinary proceedings still pending. The learned counsel has relied on the Judgment of this Court passed in W.P.No.29696 of 2016, etc. (batch cases) dated 25.11.2019, wherein, this Court held that the Co-operative



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Societies are having a separate scheme under Section 79 of the Tamil Nadu Co-operative Societies Act and therefore, the Payment of Gratuity Act, 1972, would not be applicable to the employees of the Tamil Nadu Co-operative Societies Act. This Court has also held that jurisdiction of the competent authority under the Payment of Gratuity Act is ousted.

5. The learned counsel has also relied on yet another Judgment passed by this Court in ***W.P.No.20477 of 2015 dated 01.07.2019, (Balakrishnan vs. Assistant Commissioner of Labour and others)***, wherein, this Court held that the Special By-law made under the Tamil Nadu Co-operative Societies Act will prevail over the General Law, namely, the Payment of Gratuity Act. This Court also held that in respect of employees of the Co-operative Societies, the provisions of the Tamil Nadu Co-operative Societies Act alone will be applicable and not the General Law.

6. The learned counsel has also relied on another Judgment of this Court passed in ***W.P.No.8524 of 2019 dated 30.09.2019 (Managing Director, Erode District Central Co-operative Bank vs. Santhakumar***



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and another), wherein, this Court held that the Co-operative Society Rules as well as the Special By-Laws prescribing service conditions will prevail over the General Law and the same is binding on all the employees of the Co-operative Societies and therefore, they cannot claim that they are entitled for gratuity or other benefits even in case where the disciplinary proceedings are pending. Apart from these judgments, the learned counsel has also relied on various Judgments in support of his contentions.

7. The learned counsel for the second respondent submitted that on attaining the superannuation, the second respondent was relieved from service, by order dated 30.06.2006. Once an employee has been relieved, he is entitled for gratuity as per the Payment of Gratuity Act. The learned counsel further submitted that though the petitioner Bank claimed that there are disciplinary proceedings pending against the second respondent, he was allowed to retire and relieved from service. In none of the charges, he has been imposed with punishment. Therefore, the contention of the learned counsel appearing for the petitioner Co-operative Bank cannot be taken into account.



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8. With regard to the surcharge proceedings, the learned counsel for the second respondent submitted that the surcharge proceedings were initiated in the year 2007-2008 and it would automatically lapse after a period of six months. Therefore, the surcharge proceedings are of nullity and it cannot be referred by the petitioner Co-operative Bank.

9. The learned counsel appearing for the second respondent further submitted that as against the order passed by the first respondent/the Controlling Authority under the Payment of Gratuity Act, an appeal remedy is available under Section 7(7) of the Payment of Gratuity Act and the petitioner Co-operative Bank has filed this writ petition without invoking the available appeal remedy.

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

11. The second respondent, an erstwhile employee of the petitioner Co-operative Bank, was relieved from service, on attaining the



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age of superannuation, without prejudice to the disciplinary proceedings pending against him, as per Rule 22(4) of the Special By-law. The Rule 22(4) of the Special By-law is extracted hereunder:

22. SUSPENSION

(1)

(i)

(ii)

(2)

(3)

(4) The employee under suspension shall not be allowed to retire on attaining the age of superannuation. His suspension shall be deemed to have been extended till the disposal of the disciplinary proceedings against him. During the extended period, the service rights accrued to the employee shall cease on the date of superannuation and the employee shall not be entitled for subsistence allowance.”

12. This By-law enables the Bank to relieve any employee, on attaining superannuation, without any prejudice to the disciplinary proceedings pending against him. There were six charge memos issued against the second respondent between the years 2005 and 2008. However, the disciplinary proceedings were not concluded till date, for

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the reasons best known to the petitioner Co-operative Bank.

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13. The contention of the petitioner Co-operative Bank, that the second respondent has not co-operated for the enquiry proceedings, cannot be a ground to keep the disciplinary proceedings pending without any progress for a period of 20 years. A surcharge decree has also been passed on 26.08.2008. The second respondent has not challenged the surcharge decree by preferring an appeal before the Co-operative Tribunal.

14. The second respondent has filed the above application in P.G.No.28 of 2018 before the first respondent only in the year 2017 and he has not prosecuted the application and allowed it to be dismissed for default on 17.05.2018. Thereafter, he filed an application to set aside the *ex parte* order in the above application and the same was allowed by the first respondent and the application in P.G.No.28 of 2018 was restored on file. Thereafter, there was a default on the part of the petitioner Bank in defending the application in P.G.No.28 of 2018 and an *ex parte* order was passed on 01.07.2019. The petitioner Co-operative Bank has also filed



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an application to set aside the *ex parte* order dated 01.07.2019 in the first week of August 2019 and it was entertained in P.G.I.A.No.291 of 2019.

The first respondent has reserved the matter for orders in P.G.I.A.No.291 of 2019 on 25.02.2020 and thereafter, without considering the reasons assigned by the petitioner Co-operative Bank, passed an order of rejection dated 16.03.2021.

15. Considering the manner in which the application in P.G.I.A.No. 291 of 2019 has been decided by the first respondent and also considering the fact that the petitioner Co-operative Bank is having a good case before the first respondent, this Court is inclined to set aside the order of the first respondent passed in P.G.I.A.No.291 of 2019 in P.G.No.28 of 2018 dated 16.03.2021 and the *ex parte* order passed in P.G.No.28 of 2018 dated 01.07.2019.

16. It is reported that pending the writ petition, the second respondent died and therefore, his legal heirs are brought on record as respondents 3 to 7, by order dated 24.10.2025.



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17. In fine, this writ petition is allowed, by setting aside the order passed in P.G.I.A.No.291 of 2019 in P.G.No.28 of 2018 dated 16.03.2021 and the *ex parte* order passed in P.G.No.28 of 2018 dated 01.07.2019. The first respondent shall conduct a fresh enquiry by providing an opportunity of hearing to the petitioner as well as the legal heirs of the deceased second respondent (employee of the petitioner Co-operative Bank) and thereafter, take a decision in accordance with law, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No.

Internet: Yes / No.

NCC : Yes / No.

To

1. The Controlling Authority under
Payment of Gratuity Act 1972,
Deputy Commissioner of Labour,
O/o. The Joint Commissioner of Labour,
Madurai – 625 002.



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B.PUGALENDHI, J.

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