BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)Nos.20931 and 20932 of 2014
and
WMP(MD)Nos1 and 2 of 2024

The Management,
Thanjavur Central Co-Operative Bank Limited
rep by its Managing Director / Joint Director,
West Main Street, Thanajvur.
...Petitioner in both WPs

Vs

1.The Joint Commissioner of Labour,
Appellate Authority under
the Payment of Gratuity Act, 1972,
Tiruchirappalli.

2.The Assistant Commissioner of Labour (Gratuity),
Controlling Authority under
the Payment of Gratuity Act, 1972,
Office of the Deputy Commissioner of Labour,
Tiruchirappalli.
...Respondents 1 & 2 in both WPs

3.P.Sivaraman ... Respondent No.3
in WP(MD)No.20931 of 2014

3.M.Karunanithi ... Respondent No.3
in WP(MD)No.20932 of 2014

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of certiorari to call for the records relating to the impugned order passed by the first respondent in PGA.Nos.46 and 45 of 2013, dated 30.04.2014 confirming the orders passed by the second respondent in PG.Nos.5 and 10 of 2012 dated 13.04.2013 respectively and quash the same.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondent No.1 : Mr.C.Venkateshkumar, Special Government Pleader

For Respondent No.2 : Mr.G.M.Xavier

ORDER

The petitioner Central Co-Operative Bank has filed these writ petitions as against the orders passed by the 1st respondent / the appellate authority under the Payment of Gratuity Act confirming the orders of the 2nd respondent / controlling authority under the Payment of Gratuity Act, directing the petitioner to pay gratuity to the 3rd respondents [herein will be referred to as employees].

2.An enquiry under Section 81 of the Tamil Nadu Co-Operative Societies Act has been initiated as against the employees by the petitioner bank and it was found that they have indulged in misappropriation of the society funds. Therefore, surcharge proceedings were initiated as against them and orders were also passed under Section 87 of the Tamil Nadu Co-Operative Societies Act, which were not challenged by the employees. Thus these orders became final. While so the employees attained superannuation and therefore, they have been relieved from the service without concluding the disciplinary proceedings initiated as against them.

3.The employees have filed applications before the 2nd respondent / the controlling authority under the Payment of Gratuity Act seeking payment of gratuity and the applications were allowed. The petitioner bank was directed to pay the gratuity due to the employees. As against these orders, the petitioner bank filed appeals before the 1st respondent / the appellate authority under the Payment of Gratuity Act and the appeals filed by the petitioner bank were dismissed by confirming the orders of the 2nd respondent. Challenging the same these writ petitions are filed.

4.The learned counsel for the petitioner bank submits that the employees have indulged in misappropriation of the bank fund and caused loss to the bank. It has been found in the enquiry under Section 81 of the Co-Operative Societies Act, surcharge proceedings were initiated and orders were passed under Section 87 of the Co-Operative Societies Act as against the employees, which became final. Therefore the employees are liable to pay the loss caused to the petitioner bank. Section 48 of the Tamil Nadu Co-Operative Societies Act enables the petitioner bank to recover the liability from the employees including the gratuity. However without considering the provision under Section 48 of the Tamil Nadu Co-Operative Societies Act, the 2nd respondent has erroneously allowed the petitions filed by the employees and it was also confirmed by the 1st respondent.

5.The learned counsel for the petitioner by relying upon the judgments of Hon'ble Supreme Court in ***Chairman cum Managing Director, Mahadani Coalfileds Limited Vs Sri Rabindranath Choubey*** in Civil Appeal No.9693 of 2013 and in ***Andiyannan Vs The Joint Registrar of the Co-operative Societies, Madurai*** reported in ***2015 (4) CTC Page 1*** and the orders of this court in ***C.Mesidhas Vs. The Special Officer, Manakkavilai Primary Agriculture Co-Operative Bank Limited*** in WP.No.2665 of 2008, dated 27.09.2010 submits that there is a liability for the employees towards the petitioner bank and it can be recovered by forfeiting the gratuity amount due to the employees.

6.The learned counsel for the employees submits that Section 48 of the Tamil Nadu Co-Operative Societies Act would not be applicable for the employees in this case, since there is no agreement between the petitioner bank and the employees. The learned counsel has relied on the judgment of this court dated 13.10.2011 in the writ petition in WP(MD)No.2683 of 2011 filed by the Special Officer of the Srirangam Co-Operative Urban Bank Ltd and submitted that this issue has already been addressed by this court by framing specific questions as to the right of the society to withhold the gratuity on account of any financial loss caused to the society.

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

8.The private respondents are employees of the petitioner bank, surcharge proceedings were initiated as against them and orders were also passed. However the 3rd respondent in WP(MD)No. 20931 of 2014, was relieved without any disciplinary proceedings being initiated and the 3rd respondent in WP(MD)No.20932 of 2024 was issued with charge memo, but without concluding the said proceedings he was also relieved from service.

9.With regard to any loss caused by the employees, Sub-section 6 of Section 4 of the Payment of Gratuity Act enables the management to withhold the gratuity due to the employee provided, if he has been terminated for any act of wilful omission or negligence including, causing damages or loss of employer. Admittedly the petitioner management initiated disciplinary proceedings as against one of the employees and as against the other employee, they have not at all initiated any disciplinary proceedings. However, they were simply relieved from service. With regard to the applicability of Section 48 of the Tamil Nadu Co-Operative Society Act there are conflicting judgments. Section 13 of the Payment of Gratuity Act protects employees and the same is extracted as under:

> *"Section: 13 Protection of gratuity - No gratuity payable under this Act and no gratuity payable to an employee employed in any*

establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under section shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court."

10.Similarly Section 14 of the Payment of Gratuity Act overrides on all other enactments and the same is extracted as under:

"Section: 14 Act to override other enactments, etc. The provisions of this Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

11.The very similar issue has been already addressed by this court in ***the Special Officer, Srirangam Co-Operative Urban Bank Ltd, Vs The Joint Commissioner of Labour, Trichy*** and two others [in WP(MD)No.2683 of 0211, dated 31.10.2011] by framing the following issues and answered as under :

"7. In the light of the rival contentions, four issues will arise for consideration:-

(i) Whether the petitioner on reaching the age of superannuation and relieved from service, was entitled to get gratuity in terms of the Act?

(ii) Whether the Society can withhold gratuity on account of any financial loss caused to the Society or on account of the pendency of any criminal case?

(iii) Whether the Society has any other method of recovering the amounts due to the Society? and

(iv) Whether the Society withholding the gratuity, notwithstanding Section 14 of the Payment of Gratuity Act is valid?

8. On the first question, it must be noted that under Section 4(1) of the Payment of Gratuity Act, gratuity shall be payable to an employee on the termination of his employment, if he had rendered five years continuous service. An employee, who is superannuated or retired or resigned or due to death or disablement due to accident or disease, is entitled for gratuity. The terminology used by the management for sending out a person from service is not relevant. It is stated that the third respondent had *put in thirty four years and seven months service and was relieved on reaching the age of superannuation. Merely because in the relieving order, it was stated that it was without prejudice to the criminal proceedings, that will have no bearing in determining the liability for payment of gratuity under Section 4 (1) of the Gratuity Act. Therefore, that objection must necessarily fail.*

9. The second contention was that if an employee had caused loss to an employer, Section 4(6) of the Payment of Gratuity Act enables the employer to forfeit the gratuity towards the damage or loss or destruction of the property of the employer to the extent of the damage or loss so caused. In the present case, the petitioner-Society did not spell out the quantum of loss and they have not pointed out any surcharge proceedings initiated in terms of Section 87 of the Tamil Nadu Co-operative Society Act fixing liability on the third respondent, towards the loss therefore, the amount of gratuity can be forfeited. On the contrary, consistently, the Courts have held that the right of the employer to forfeit certain amounts from the gratuity must reflect in the order of *termination itself and it should be a contemporaneous order and not a best defence taken by an employer. Even in cases of forfeiture, an opportunity will have to be given to the affected employee. For the purpose of exercising the power under Section 4(6) in forfeiting the gratuity, there should be a valid order of dismissal or imposition of punishment.*

10. The Supreme Court while dealing with the right of the workman to receive gratuity under Section 4(1) as well as obligation of the employer to pass an order under Section 4(6) forfeiting the gratuity, dealt with the scope of the provisions vide its judgment in Jaswant Singh Gill v. Bharat Coking Coal Ltd., reported in (2007) 1 SCC 663 and in paragraphs 7,10,11,13 and 14, it had observed as follows:

> *7.The short question which arises for consideration in this appeal is as to whether the provisions of the said Act shall prevail over the rules framed by the Coal India Limited, holding company of Respondent 1, known as the Coal India Executives' Conduct, Discipline and Appeal Rules, 1978 (for short "the Rules"). Indisputably, the appellant was governed by the Rules. Rule 27*

provides for the nature of penalties including "recovery from pay or gratuity of the whole or part of any pecuniary loss caused to the Company by negligence or breach of orders or trust". Major penalties prescribed in Rule 27, however, include reduction to a lower grade, compulsory retirement, removal from service and dismissal. Rule 34 provides for special procedure in certain cases stating:

"34.2. Disciplinary proceedings, if instituted while the employee was in service whether before his retirement or during his re-employment shall, after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

34.3. During the pendency of the disciplinary proceedings, the disciplinary authority may withhold payment of gratuity, for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the company, if have been guilty of offences/misconduct as mentioned in sub-section

(6) of Section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the company by misconduct or negligence, during his service including service rendered on deputation or on re-employment after retirement. However, the provisions of Sections 7(3) and 7(3-A) of the Payment of Gratuity Act, 1972 should be kept in view in the event of delayed payment, in the case the employees fully exonerated."

10.The provisions of the Act, therefore, must prevail over the Rules. Rule 27 of the Rules provides for recovery from gratuity only to the extent of loss caused to the Company by negligence or breach of orders or trust. Penalties, however, must be imposed so long an employee remains in service. Even if a disciplinary proceeding was initiated prior to the attaining of the age of superannuation, in the event the employee retires from service, the question of imposing a major penalty by removal or dismissal from service would not arise. Rule

34.2 no doubt provides for continuation of a disciplinary proceeding despite retirement ofemployee if the same was initiated before his *retirement but the same would not mean that although he was permitted to retire and his services had not been extended for the said purpose, a major penalty in terms of Rule 27 can be imposed.*

11.Power to withhold penalty (sic gratuity) contained in Rule 34.3 of the Rules must be subject to the provisions of the Act. Gratuity becomes payable as soon as the employee retires. The only condition therefor is rendition of five years' continuous service.

13.The Act provides for a close-knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub-section (6) of Section 4 of the Act contains a non obstante clause vis-.-vis sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must *be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, wilful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damages or loss caused to Respondent 1 was more than the amount of gratuity payable to the appellant. Clause (b) of sub- section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied.*

14.Termination of services for any of the causes enumerated in sub-section (6) of Section 4 of the Act, therefore, is imperative."

11. But, once an employee reached the age of superannuation or retired, no punishment can imposed including dismissal. In such cases, Section 4(6) cannot be invoked, as held by Madhya Pradesh High court in R.Khichrolia Vs. Madhya Pradesh State Co-operative Marketing Federation, Ltd., reported in 2002 (4) L.L.N 705. Further, this Court in Krishnaveni Textile Mills, Singanallur, Coimbatore Vs. Assistant Labour Commissioner reported in 2002 (4) L.L.N 363 has held that even for forfeiture of gratuity, an employee must be given notice and an opportunity has to be given. In the present case, instead exercising the power of forfeiture, the third respondent was allowed to be retired with a condition that it was without prejudice to the pendency of criminal case. Even the fate of the criminal case is not let known to this Court in the pleadings. Therefore, the second submission made before the authorities as well as before this Court must fail.

12. The third question is for an unspecified amount of loss whether they can withhold the gratuity, Section 14 and Section 13 of the Payment of Gratuity Act will give the complete answer to such a plea.

Section 13 prohibits the gratuity from being attached in execution of any decree or order of any civil or revenue or criminal Court. In the present case, no such order has been produced. Even for such order to be passed, Section 13 will be a complete bar.

13. With regard to the last question, it is not as if the Co-operative Societies in Tamil Nadu are helpless and that they must pay gratuity even in cases where there are dues to a Society. Section 48 of the Tamil Nadu Co-operative Societies Act enables a Society to withheld any dues payable to the workmen including gratuity, in case there is an ascertainable loss caused to the Society. The petitioner-Society did not proceed against the workman with a vast power conferred under the Act. After the workman had approached the authority, the petitioner-Society cannot raise such issues and contend that the workman was not eligible for any gratuity. Even after the petitioner-Society pays gratuity to the third respondent, they have ample powers to proceed against him either under Section 87 or by way of an arbitration under Section 90. Therefore, that contention raised by the petitioner must necessarily fail.

14. In view of the above, the writ petition stands dismissed. In view of the dismissal of the writ petition, the third respondent is entitled to withdraw the amount lying in deposit with the second respondent. Consequently, connected miscellaneous petition is closed. No costs."

12.The issue on these writ petitions, has already been answered by this court in the above judgment and it is squarely applicable to the cases on hand, therefore, this court is not inclined to entertain these petitions. Accordingly, these writ petitions are dismissed. No costs. Consequently connected miscellaneous petitions are closed.

16.09.2025

Index: Yes /No
NCC : Yes /No

DSK

To
1.The Joint Commissioner of Labour,
Appellate Authority under
the Payment of Gratuity Act, 1972,
Tiruchirappalli.

2.The Assistant Commissioner of Labour (Gratuity),
Controlling Authority under
the Payment of Gratuity Act, 1972,
Tiruchirappalli.

B.PUGALENDHI.J.,

DSK

WP(MD)Nos.20931& 20932 of 2014

16.09.2025