BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos.9500 & 9501 of 2014 and
WMP(MD) Nos.1,1 of 2014

W.P(MD)No.9500 of 2014:-

The Management,
Thanjavur Central Co-operative Bank Ltd.,
Rep by its Managing Director/Joint Registrar,
West Main Street,
Thanjavur. ... Petitioner

Vs

1.The Joint Commissioner of Labour,
Appellate Authority Under the Payment of Gratuity Act,
Trichy.

2.The Assistant Commissioner of Labour,
Controlling Authority Under the Payment of Gratuity Act,
Trichy.

3.R.Thangarasu ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records, relating to the impugned order passed by the first respondent in P.G.A No.8 of 2013, dated 24.07.2013, confirming the order passed by the second respondent in P.G.No.111/2011, dated 07.12.2012 and quash the same.

W.P(MD)No.9501 of 2014:-

The Management,
Thanjavur Central Co-operative Bank Ltd.,
Rep by its Managing Director/Joint Registrar,
West Main Street,
Thanjavur. ... Petitioner

Vs

1.The Appellate Authority,
Under Shops and Establishment Act/
The Deputy Commissioner of Labour,
No.26, 3rd Street, Khaja Nagar,
Tiruchirappalli – 20.

2.R.Thangarasu ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent in T.N.S.E No.6/2012, dated 03.07.2013 and quash the same.

For Petitioner : Mr.D.Shanmugaraja Sethupathi
For R1 & R2 : Mr.C.Venkatesh Kumar
Special Government Pleader

(In both the writ petitions)
For R3 in WP(MD) No.9500/2014
and R2 in WP(MD) No.9501/2014: Mr.G.M.Xavier

COMMON ORDER

The petitioner is the Thanjavur Centrtal Co-operative Bank Limited. One R.Thangarasu was working as a Branch Manager in Vallam Branch of the petitioner Bank. While he was serving as a Branch Manager in Vallam Branch, a surprise inspection was conducted and the authorities have found that the said Thangarasu, in connivance with the jewel Appraiser has committed certain irregularities in granting jewel loans. He has granted 114 jewel loans, in which, the jewels pledged by the borrowers were found to be spurious. Thereby, the said Thangarasu has misappropriated the funds of the Bank and also caused financial loss to the tune of Rs.22,83,000/-to the Bank. Therefore, a charge memo in Na.Ka.No. 1671/09-01, E.1, dated 04.03.2009 was issued as against him. An enquiry was conducted and the enquiry officer has submitted his report on 21.05.2009, holding that all the charges framed as against the said Thangarasu were proved. In the meantime, he has attained the age of superannuation on 31.05.2009 and he was relieved from service without allowing him to retire from service, vide order in Na.Ka.No.131/2009/E1, dated 31.05.2009 and also without prejudice to the disciplinary proceedings as well as the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. He was provided with an opportunity and he has also submitted his explanation on 26.05.2012. Thereafter, the disciplinary authority, vide his proceedings in Na.Ka.No.182/09-10(2) E1, dated 05.12.2012, has passed the final order, dismissing the said Thangarasu from service.

2. Apart from disciplinary proceedings, a criminal case in Crime No.6 of 2011 was also registered as against the petitioner and four others, for the offence under Sections 408, 465, 467, 468, 471, 477(A) and the cases in CC Nos.136 to 148 of 2012 are pending before the Judicial Magistrate Court, Thanjavur. A surcharge proceedings was initiated by the Deputy Registrar of

Co-operative Societies, Thanjavur and the liability of Rs.22,83,000/- was fixed on him towards the loss caused to the Bank. Challenging the surcharge decree, the employee has filed CMA(CS) No.61 of 2010 before the Appellate Tribunal and the same is pending. At the same time, the employee has filed an application in P.G.No.111 of 2011, before the Assistant Commissioner of Labour/Controlling Authority under the Payment of Gratuity Act, Trichy, seeking a direction to the Bank for the payment of gratuity. The petitioner Bank has resisted that claim on the ground that when the employee was not allowed to retire from service, the payment of Gratuity Act can be forfeited as per Section 4(6)(1)(a) of the Payment of Gratuity Act. The second respondent/the Controlling Authority by his order, dated 07.12.2012 has allowed the claim of the employee, on the ground that the petitioner Bank could not proceed with the disciplinary proceedings after the employee attaining the age of superannuation. As against the order passed by the second respondent, the petitioner Bank had filed an appeal before the Appellate Authority/the first respondent herein, under section 7(7) of the Payment of Gratuity Act in P.G.A.No.8 of 2013. The first respondent, by his order, dated 24.07.2013 has dismissed the appeal filed by the petitioner Bank. Aggrieved over the same, the petitioner Bank has approached this Court by way of a writ petition in WP(MD) No.9500 of 2014, in the year 2014.

3.The order of dismissal from service passed by the disciplinary authority, in his proceedings in Na.Ka.No.182/09-10(2) E1, dated 05.12.2012 as against the employee was challenged by him before the Appellate Authority under the Tamil Nadu Shops and Establishment Act, Trichy and the same was allowed by the Appellate Authority in T.N.S.E.No.6 of 2012, dated 03.07.2013. The petitioner Bank has also challenged the above order in WP(MD) No. 9501 of 2014.

4.Since the issue in both the writ petitions are interlinked, these writ petitions are taken up together and disposed of by this common order.

5.The learned counsel for the petitioner Bank submits that for the misappropriation committed by the employee, a disciplinary proceedings was initiated by appointing an enquiry officer and the enquiry officer has submitted his enquiry report on 21.05.2009, holding that the charges framed as against the employee were proved. In pursuant to the same, the disciplinary Authority has issued a show cause notice to the employee and he has also offered his explanation on 26.05.2012. In the meantime, on his attaining the age of superannuation on 31.05.2009, he was relieved from service, without allowing him to retire from service by the petitioner Bank vide order in Na.Ka.No.131/2009 E1 dated 31.05.2009. Thereafter, the disciplinary Authority, vide his proceedings in Na.Ka.No. 182/09-10 E1, dated 05.12.2012 has passed a final order, dismissing the employee from service for having committed irregularities and misappropriation, which was challenged by the employee before the Appellate Authority under the Tamil Nadu Shops and Establishment Act, Trichy. The Appellate Authority has allowed the same in

T.N.S.E.No.6 of 2012, dated 03.07.2013, holding that continuing the enquiry proceedings against the person after his retirement from service cannot be sustained. In this regard, the learned counsel submits that the service conditions of the petitioner Bank is governed by the Special Bye-law, which enables the petitioner Bank to continue the disciplinary proceedings, even after the date of superannuation. The relevant special Bye-law of the petitioner Bank reads as follows:-

> "19. KINDS OF PENALTIES:-
> EXPLANATION IV :-
> *(1) The discharge of a person appointed on probation before the expiry or at the end of the prescribed or extended period of probation or of a person engaged on contract in accordance with the terms of the contract on the expiry of the period of the appointment or of a person engaged on daily wages does not amount to removal or dismissal within the meaning of this special bylaw.*
>
> *(2) The disciplinary proceedings instituted against an employee, while he was in service, shall be deemed to be proceedings under this special bylaw, even after his retirement, and be continued and concluded by the competent authority in the same manner as if the employee had continued in service. In the event of any such disciplinary proceedings having been initiated and if the bank has*

> *reason to believe that the disciplinary proceedings will result in the removal or dismissal of the employee from service, the bank shall place the employee under suspension. In such cases the employee is not eligible for payment of subsistence allowance. The bank also, shall not make payment of the terminal benefits like gratuity etc., payable to the employee until the disciplinary proceedings are finally concluded".*

Therefore, according to the learned counsel, in view of the enabling provision in the Special bye-law of the Bank and as per the law laid down by the Honourable Full Bench in the case of ***Andiyannan Vs. The Joint Registrar of Co-operative Societies, Madurai Region,*** reported in ***2015(4) CTC Page 1***, the petitioner Bank is entitled to continue the disciplinary proceeding against the delinquent employee, even after his retirement.

5.1.By referring to the impugned orders, the learned counsel for the petitioner submits that the Controlling Authority as well as the Appellate Authority has ordered to pay the gratuity amount to the employee, mainly on the ground that he cannot be terminated from service after attaining the age of superannuation and therefore, the gratuity amount cannot be withhold by the petitioner Bank. The learned counsel by referring to the Judgment of the Honourable Apex Court in the case of ***Chairman-cum-Managing Director, Mahanadi Coalfields Limited vs. Sri Rabindranath Choubey,*** in ***Civil Appeal No.9693/2013, dated 27.05.2020*** submits that the above findings made by the Controlling Authority and the Appellate Authority is not sustainable, in view of the above referred Judgment and the relevant portion is extracted as under:-

> *"Three Judges Bench of the Honourable Supreme Court has framed two questions in the above case, on the reference made to the Bench by order dated 29.10.2013. The 1st question framed by the Honourable Supreme Court is relevant to the present case, which reads as follows:*
>
> *The short but interesting questions of law which fell for consideration of this Court are (i) as to whether is it permissible in law for respondent (employee), even after his superannuation from service, because the appellant (employer) to withhold the payment of gratuity of the of the pendency of the disciplinary proceedings against him?"*

9. The Honourable Supreme Court has held that the employer has a right to withhold the payment of gratuity during the pendency of disciplinary proceeding. The relevant portion of the judgment which is relevant to the present case at paragraph 10.20, 10.31 and 11 reads as follows:

10.20. Section 4(1) used the expression 'termination of employment after five years by way of superannuation, retirement or resignation or on his death or disablement due to accident or disease' that is in a normal course. It does not deal with a situation where departmental inquiry is instituted and continued and completed after the age of superannuation and termination of employment had not taken place on completion of the age of superannuation as there is a deemed continuation of the employment for the purpose of holding an inquiry and passing the appropriate punishment order after the conclusion of the departmental inquiry on the basis of misconduct if any found established. Provisions of section 4(1) do not impinge upon the continuation of inquiry. Section 4(6) prevails on it. The Payment of Gratuity Act, 1972, can govern the conditions concerning payment of gratuity. It cannot control and provide with respect to an employer's right to hold a departmental inquiry after retirement, and there is no provision prescribing what kind of punishment can be imposed in the departmental inquiry if it is continued after attaining the age of superannuation. The relevant rules would govern such matters. In case the Payment of Gratuity

Act, 1972, is interpreted to interdict the departmental inquiry after the age of superannuation and to deal with the nature of punishment to be imposed, it would be taken as a case of over inclusion in the Act which deals exclusively with the payment of gratuity.

10.31.Several service benefits would depend upon the outcome of the inquiry, such as concerning the period during which inquiry remained pending. It would be against the public policy to permit an employee to go scot free after collecting various service benefits to which he would not be entitled, and the event of superannuation cannot come to his rescue and would amount to condonation of guilt. Because of the legal fiction provided under the rules, it can be completed in the same manner as if the employee had remained in service after superannuation, and appropriate punishment can be imposed. Various provisions of the Gratuity Act discussed above do not come in the way of departmental inquiry and as provided in Section 4(6) and Rule 34.3 in case of dismissal gratuity can be forfeited wholly or partially, and the loss can also be recovered. An inquiry can be continued as provided under the relevant service rules as it is not provided in the Payment of Gratuity Act, 1972 that inquiry shall come to an end as soon as the employee attains the age of superannuation. We reiterate that the Act does not deal with the matter of disciplinary inquiry, it contemplates recovery from or forfeiture of gratuity wholly or partially as per misconduct committed and does not deal with punishments to be imposed and *does not supersede the Rules 34.2 and 34.3 of the CDA Rules. The mandate of Section 4(6) of recovery of loss provided under Section 4(6)(a) and forfeiture of gratuity wholly or partially under Section 4(6)(b) is furthered by the Rules 34.2 and 34.3. If there cannot be any dismissal after superannuation, intendment of the provisions of Section 4(6) would be defeated. The provisions of section 4(1) and 4(6) of Payment of Gratuity Act, 1972 have to be given purposive interpretation, and no way interdict holding of the departmental inquiry and punishment to be imposed is not the subject matter dealt with under the Act.*

10.32 Thus considering the provisions of Rules 34.2 and 34.3 of the CDA Rules, the inquiry can be continued given the deeming fiction in the same manner as if the employee had continued in service and appropriate punishment, including that of dismissal can be imposed apart from the forfeiture of the gratuity wholly or partially including the recovery of the pecuniary loss as the case may be.

11. In view of the above and for the reasons stated above and in view the view of three Judge Bench of this Court in Ram Lal Bhaskar onal and our conclusions as above, it is observed and held that (1) the wwwillow-emplover Aas a right to withhold the gratuity during the somy of the dise?linary proceedings, and (2) the disciplinary authority has powers to imprase the penalty of dismissal/major penalty upon the regione even after his attaining the age of superannuation, as the opiary proceedings were initiated while the employee was in service. Under the cucumstances, the impugned judgment and order passed by the

High Court cannot be sustained and the same deserves to be quashed and set aside and is accordingly hereby quashed and set aside and the order passed by the Controlling Authority is hereby restored. However, the appellant employer is hereby directed to conclude the disciplinary proceedings at the earliest and within a period of four months from today and pass appropriate order in accordance with law and on merits and heregter necessary consequences as per Section 4 of the Payment of Granity Act, 1972, more particularly Subsection (6) of Section 4 of the Gratuity Act and Rule 34.3 of the CDA Rules shall follow. The present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

5.2.The learned counsel has also relied on the Judgment of the Honourable Supreme Court in the case of Chairman-cum-Managing Director, Mahanadi Coalfields Limited vs. Sri Rabindranath Choubey, in Civil Appeal No.9693/2013, dated 27.05.2020. The relevant portion from the above Judgment is extracted as under:-

(iii) The Controlling Authority under the Payment of Gratuity Act, 1972, had no jurisdiction to go into the legality of order of the disciplinary authority.

(vi) The Controlling Authority had no jurisdiction to deal with Rules

34.2 and 34.3 or to pronounce upon validity thereof or of dismissal. Thus, the observations made, traveling beyond the scope of the proceedings, cannot be said to be binding and cannot constitute the ratio with respect to continuance of departmental inquiry after superannuation and what kind of punishment can be imposed by an employer. The jurisdiction of authority was only to consider payment of gratuity under Section 4(6) of the Payment of Gratuity Act, 1972. Thus, we overrule the decision in Jaswant Singh Gill (supra).

5.3.The learned counsel by referring to the provision under Section 4(6)(1)(b) of the Payment of Gratuity Act submits that the gratuity of the employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused. According to the learned counsel, the employee has caused a loss to the society and a surcharge decree has also been passed as against him, fixing his liability of Rs.22,83,000/-. Therefore, according to him, the case of the employee squarely falls under the ambit of Section 4(6)(1)(b) of the Payment of Gratuity Act and accordingly, the directions of the second and third respondents to pay the gratuity to the third respondent, a dismissed employee is not proper.

5.4.The learned counsel has relied on the another order passed by this Court in WP No.2665 of 2008., dated 27.09.2010, in the case of C.Mesiadhas Vs. the Special officer, Manakkavilai Primary Agricultural Co-operative Bank Limited, wherein, it was held as under:-

"The Tamil Nadu Cooperative Societies Act which is a state enactment and received the assent of the President on 15.07.1983. Therefore, by virtue of Article 254(2) any Central law on the field cannot have an overriding effect over the State enactment. Section 48(2) of the Tamil Nadu Co-operative Societies Act specifically provides that in case of loss to the Society or any amount due to the Society, the gratuity amount can be adjusted and if there are claim from more than one society for the said amount, the same can be shared by the different society.

5. Therefore, the petitioner's contention that Section 14 of the Payment of Gratuity Act will override cannot be accepted. In the light of the above, the contentions raised by the petitioner are misconceived and contrary to law. Hence, the Writ petition stands dismissed. No costs. Consequently, connected M.P.is closed.

6. The learned counsel for the employee/R.Thangarasu submits that in fact the appraiser has committed the mistake and it is not the petitioner and the same has been appreciated by the trial Court in a criminal prosecution in CC Nos.136 to 148 of 2012, wherein, the said Thangarasu was acquitted from the charges. The learned counsel further submits that the employee has attained the age of superannuation on 31.05.2009 and he was also relieved from service on that date. Therefore, there is no employer and employee relationship between the petitioner and the employee, after his retirement. However, he was proceeded with the disciplinary proceedings and has also been imposed with a punishment. Therefore, it cannot be sustained.

7.In reply, the learned counsel for the petitioner submits that the said Thangarasu was working in the capacity of a Branch Manager of the Bank and therefore, he cannot put the blame on the appraiser, who is under his control, when he is the incharge of the affairs of the Bank.

8.This Court considered the rival submissions made on either side and also perused the materials placed on record.

9.The issue in both the writ petitions is the right of the petitioner Bank in proceeding with the disciplinary proceedings as against the employee, after attaining the age of superannuation. The petitioner Bank has initiated disciplinary proceedings as against the employee that he, in connivance with the jewel Appraiser has committed certain irregularities in granting jewel loans and caused financial loss to the tune of Rs.22,83,000/-to the Bank; a charge memo was issued on 04.03.2009; enquiry was conducted; based on the enquiry report, he was dismissed from service on 05.12.2012 after he attained the age of superannuation on 31.05.2009.

10.The employee was in fact relieved from service by an order dated 31.05.2009. The petitioner bank claims that he was relieved from service without prejudice to the disciplinary proceedings and also the enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act. The special bylaw as referred by the petitioner Bank enables the petitioner bank to proceed with the disciplinary proceedings. The Honourable Supreme Court as well as this Court have also approved the same in the above referred judgments that the employer has a right to withhold the gratuity during the pendency of the disciplinary proceedings and the disciplinary authority has powers to impose the penalty of dismissal/major penalty upon the employee even after his attaining the age of superannuation, as the disciplinary proceedings were initiated, while the employee was in service and the retirement benefits are yet to be settled.

11.In view of the aforesaid decision of the Honourable Supreme Court, these writ petitions are allowed. The impugned orders passed by the first respondent in P.G.A No.8 of 2013, dated 24.07.2013, confirming the order passed by the second respondent in P.G.No.111 of 2011, dated 07.12.2012 and the order passed in

T.N.S.E No.6 of 2012, dated 03.07.2013 are set aside. The order of dismissal from service passed by the disciplinary authority as against the employee, in Na.Ka.No.182/09-10(2) E1, dated 05.12.2012 is sustained. No costs. Consequently, connected Miscellaneous petitions are closed.

10.09.2025

Index:Yes
Internet:Yes
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To

1.The Appellate Authority,
Under Payment of Gratuity Act 1972 ,
Tiruchirappalli.

2.The Controlling Authority,
Under Payment of Gratuity Act 1972,
Assistant Commissioner of Labour (Gratuity),
O/o.Deputy Commissioner of Labour,
Tiruchirappalli - 20.

B.PUGALENDHI, J.

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Commom Order made in W.P(MD)Nos.9500 & 9501 of 2014 and WMP(MD) Nos.1,1 of 2014

10.09.2025