WP(MD)No.23500 of 2016

B.PUGALENDHI, J

This Writ Petition is listed today under the caption for 'being mentioned'.

2.The learned counsel appearing for the respondents 3 to 5 submits that he has been appointed as a Legal Aid Counsel for the respondents 3 to 5 and while disposing of the matter, this Court has directed the Legal Aid Service Authority to pay a sum of Rs.15,000/- as remuneration to him. However, it was not found in the order in WP(MD) No.23500 of 2016, dated 17.09.2025 and therefore, he prayed for appropriate directions.

3.In view of the above, the following paragraph has to be incorporated as paragraph No.23, in the order passed by this Court in WP(MD) No.23500 of 2016, dated 17.09.2025.

> "This Court places its appreciation to the learned Legal Aid Counsel, who defended the case of the respondents 3 to 5 in an effective manner and the Legal Aid Services Authority is directed to pay a sum of Rs.15,000/- as remuneration to the learned Legal Aid Counsel."

4.In paragraph 5, instead of "The learned counsel appearing for the respondents 3 to 5 submits that", it has to be changed as **"The learned Legal Aid Counsel appearing for the respondents 3 to 5 submits that".** In cause title, instead of "For R3 to R5 : Mr.M.Ganesan", it has to be changed as **"For R3 to R5 : Mr.M.Ganesan, Legal Aid Counsel.**

5.Registry is directed to make the above changes in the order passed in WP(MD) No.23500 of 2016, dated 17.09.2025 and issue corrected copy of the order forthwith.

06.01.2026

vrn

B.PUGALENDHI, J.

vrn

Order made in
WP(MD)No.23500 of 2016

06.01.2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.23500 of 2016 and
WMP(MD) No.16865 of 2016

The Management,
Thanjavur Central Co-operative Bank Limited,
Represented by its Managing Director / Joint Registrar,
Thanjavur. ... Petitioner

Vs

1.The Assistant Commissioner of Labour,
Controlling Authority under
Payment of Gratuity Act, 1972,
Kajamalai Nagar,
Mannarpuram,
Tiruchirappalli.

2.T.Veeravinothan (died)
3.B.Malliga
4.Eswar
5.Priya ...Respondents

(R3 to R5 are *suo motu* impleaded, vide Court order, dated 05.02.2018 in WP(MD) No.23500 of 2016)

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.No.338 of 2016, dated 05.10.2016 and quash the same.

For Petitioner	: Mr.D.Shanmugaraja Sethupathi
For R1	: Mr.C.Venkatesh Kumar Special Government Pleader
For R3 to R5	: Mr.M.Ganesan

ORDER

The Management of the Thanjavur Central Co-operative Bank Limited, Thanjavur has filed this writ petition as against the order passed by the Assistant Commissioner of Labour, Controlling Authority under Payment of Gratuity Act, 1972, Trichy, in P.G.No.338 of 2016, dated 05.10.2016, in directing the Management to pay gratuity to the second respondent, employee of the petitioner Bank.

2.The case of the petitioner Bank is that the second respondent was working as Assistant General Manager in the petitioner Bank. On certain irregularities, he was issued with a charge memo, dated 09.06.2004, based on which, an enquiry was conducted. The enquiry officer has submitted his report on 22.05.2007 that the charges are proved. Therefore, the Management has passed an order of punishment, dismissing the second respondent from service, on 27.01.2010. The order of punishment was challenged by the second respondent before this Court in WP.No.2632 of 2010 and the same was dismissed on the ground of maintainability and by referring to an alternative remedy of appear before the Revisional Authority. Thereafter, the second respondent has challenged the order of punishment before the Revisional Authority, under Section 153 of the Tamil Nadu Co-operative Societies Act and the same was also dismissed. The Review petition filed by the second respondent before the Secretary to Government, Department of Co-operation, Food and Consumer Protection was also dismissed vide G.O.Ms.No.175, Department of Co-operation, Food and Consumer Protection, dated 18.10.2013. While so, the second respondent has filed an application in P.G.No.338 of 2016, before the Assistant Commissioner of Labour/ Controlling Authority under Payment of Gratuity Act, 1972, seeking gratuity. The first respondent has allowed the application filed by him and directed the Management to pay gratuity of Rs.9,69,860/- with 10% interest to the second respondent, by order dated 05.10.2016 and the same is under challenge in this writ petition.

3.The learned counsel appearing for the petitioner submits that:-

i. The petitioner Bank is registered under the Tamil Nadu Co-operative Societies Act and Rules and also having its own bye-law, in respect of the Constitution, object and day today affairs of the Bank. The service condition of the employees including payment of gratuity is governed by the special bye-law of the Bank framed in consonance with

Rule 149 of the Tamil Nadu Co-operative Societies Rules.

ii. The second respondent has been imposed with a punishment of dismissal from service, after conducting an enquiry, by providing sufficient opportunity to him. The Revision and Review applications filed by the second respondent challenging the order of punishment were dismissed by the authorities and the order of punishment became final.

iii. After laps of six years from the date of termination, the second respondent has moved the application before the first respondent for gratuity and such inordinate delay has not been taken into consideration by the first respondent.

iv. The petitioner Bank is having its own scheme for payment of gratuity to its employees in accordance with settlement under Section 12(3) of the Industrial Disputes Act and Group Gratuity Scheme linked with Life Insurance Corporation of India. However, the application filed by the second respondent under the Payment of Gratuity Act has been entertained and also ordered, when the authority does not have jurisdiction to decide the issue.

v. As per the Group Gratuity Scheme linked with Life Insurance Corporation of India, the employee of the Bank is entitled to claim gratuity subject to the maximum of 20 months salary and he cannot claim gratuity without any ceiling. The petitioner has disputed the last drawn salary of the second respondent Rs.48,493/- mentioned in the impugned order that he has not substantiated his claim with any documents.

vi. Since the petitioner was terminated from service for the act of willful omissions and negligence causing damage and loss to the employer, he is not entitled to get the gratuity.

4.Pending this writ petition, the employee, namely, T.Veeravinothan died and therefore, his legal heirs have been *suo* *motu* impleaded as respondents 3 to 5, by order, dated 05.02.2018.

5.The learned counsel appearing for the respondents 3 to 5 submits that:

i. When the second respondent was working as the General Manager in the petitioner Bank, he was issued with a charge memo, dated 09.06.2004, on certain irregularities. The charges are as under:-

Charge 1: That the second respondent behaved against the interest of the Bank, by obtaining loan from two private lenders and failed to repay the same.

Charge 2: That the second respondent took advantage of his position as Assistant General Manager to obtain Cheque Book (200 cheque leaves) from the Bank.

Charge 3: The second respondent brought disrespect to the bank, i.e he borrowed money from two private money lenders and did not report the same to the Bank, thus failed to follow the Co-operative Societies Rules and Bye-laws of the Bank.

Charge 4: That the second respondent issued cheques when there is no balance in his savings bank account and indulged in malpractice.

ii. There was no allegation of misappropriation or swindling the funds of the Bank against the second respondent, but only irregularities/procedural violations. For the above irregularities, he was terminated from service on 27.01.2010

iii. Order of punishment challenged by the second respondent before this Court, Revision Petition and also the Review petition were dismissed.

iv. The second respondent has moved an application before the first respondent, claiming gratuity in P.G.No.338 of 2016 and it was allowed, by order dated 05.10.2016, directing the petitioner to pay a sum of Rs.9,69,860/- with 10% interest towards gratuity.

v. With regard to delay in filing the application, it is contended that the second respondent has challenged the order of punishment before this Court in the year 2010 and thereafter, he moved Revision Petition before the Joint Registrar of Co-operative Societies, Trichy in the year 2012 and therefore, a Review before the Secretary to Government, Department of Co-operation, Food and Consumer Protection in the year 2013 and therefore, there was a delay of 1992 days in filing the application for gratuity.

vi. This Court in M/s. A & F Overseas Trade Ltd., vs. The Appellate Authority under the Payment of Gratuity Act, 1972, Puducherry and others, in WP.No.18129 of 2018, dated 01.10.2020 has settled the issue that there is no need for filing condone delay petition before the Controlling Authority under the Payment of Gratuity Act. Therefore, mere delay in filing gratuity application cannot nullify the right of the second respondent claiming gratuity under the Payment of Gratuity Act.

vii.The petitioner has disputed the last drawn salary of the second respondent, in fact, it is the bounden duty of the petitioner /the employer to maintain the salary and other service particulars.

viii. Though it is claimed by the petitioner that the second respondent has caused damage and loss to them, it has not been clarified nowhere what was the quantum of loss caused and therefore, it could be presumed that those contentions are baseless.

6.This Court has considered the submissions and also perused the materials placed on record.

7.The issues to be decided in this writ petition are as follows:

(a) Whether the first respondent Controlling Authority had the jurisdiction to entertain the application made by the second respondent?

(b) Whether the application made by the second respondent to the controlling authority for payment of gratuity is hit by limitation?

(c) Whether the claim of the petitioner Management that the second respondent is not entitled to payment of gratuity as he was dismissed for wilful negligence and an act of moral turpitude is correct?

8.With regard to the first issue, the main contention of the petitioner Management is that Section 7 (4) of the Payment of

Gratuity Act 1972 (“the Act”) allows the Controlling Authority to only decide disputes in respect of the amount of gratuity payable under the Act and not under any settlement or scheme with the employer. Since there is a separate scheme for payment of gratuity to its employees in accordance with the settlement arrived at under Section 12(3) of the Industrial Disputes Act and a group gratuity scheme linked with the Life Insurance Corporation of India, the Controlling authority does not have jurisdiction to deal with the same. It is pertinent to note that Section 4 (5) of the Payment of Gratuity Act 1972 recognizes the right of the employees to receive better terms of gratuity under settlements or contracts with the employer. The provision reads as under:

> *“(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.”*

9. A full Bench of this Court in ***the Management,***

Virudhunagar District Central Cooperative Bank Limited Vs. The Assistant Commissioner of Labour, Madurai (WP(MD) No.4452 of 2013, etc dated 30.10.2024) has held that it is the Controlling Authority that has the jurisdiction to entertain claims for gratuity arrived at under any contract or settlement with the employer. The relevant portion is extracted hereunder:

> *"9.It is under these circumstances that the following three questions of law had been referred to be considered by a Full Bench:*
> *"(i) Whether the Controlling Authority under Section 7(4) of the Payment of Gratuity Act can entertain a claim for 'better terms of gratuity' made by the employee under Section 4(5) of that Act?*
>
> .....
>
> *The answer to the 1st and 2nd references:-*
>
> *67.A careful cumulative analysis of provisions of law and the interpretations as observed above would indicate that a plain reading of the provisions of the Payment of Gratuity Act, 1972, would indicate that under Section 7(4)(a) of the*

Act, "if there any dispute as to the amount of gratuity payable to an employee under this Act", the said admissibility of such claim should be examined only by the Controlling Authority, as defined under Section 3 of the Act. This is the only interpretation possible, since Section 4(5) of the Act recognizes the right of the employee to receive 'better terms of gratuity' under any award or agreement or contract with the employer. Therefore, a dispute relating to the amount of gratuity payable would not only include the amount of gratuity payable as provided under Section 7(2) of the Act, but also as provided under Section 4(5) of the Act.

68. It is the Controlling Authority who also can adjudicate 'better terms of gratuity'. The Act is an all comprehensive Act and is self contained. It also has an appellate provision under Section 7(7) of the Act. There cannot be adjudication by any third party authority of the disputes which arise relating to amount of gratuity payable to an employee under this Act.

69.Further, when there is an agreement or award or contract between the employees and the Management and when such agreement or settlement encompasses within its fold, not only the calculation of gratuity for arriving at the pay, but also for calculation of length of service, then all such issues would have to be adjudicated as a dispute arising under the Payment of Gratuity Act."

10. Admittedly, the second respondent has made a claim for gratuity as per the Group Insurance Scheme entered into by the petitioner Management with its employees. In light of the above decision of the Full Bench of this Court, the first respondent/ Controlling Authority had the jurisdiction to entertain the application filed by the second respondent for payment of gratuity and the ground raised by the petitioner Management cannot be sustained.

11. Insofar as the second issue is concerned, the main contention of the petitioner Management is that the application before the Controlling Authority was made after a delay of 6 years and therefore, it is hit by limitation under Rule 10 (1) of the Payment of Gratuity (Central) Rules. Rule 10 (1) of the Payment of Gratuity (Central) Rules 1972 reads as under:

> *"10. Application to controlling authority for direction:-*
>
> *(1) If an employer:-*
>
> *(i) refuses to accept a nomination or to entertain an application sought to be filed under rule 7, or*
>
> *(ii) issues a notice under sub-rule (1) of rule 8 either specifying an amount of gratuity, which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or*
>
> *(iii) having received an application under rule 7 fails to issue any notice as required under rule 8 within the time specified therein, the claimant employee, nominee*

or legal heir, as the case may be, may, within ninety days of the occurrence of the cause for the application, apply in Form 'N' to the controlling authority for issuing a direction under sub-section (4) of section 7 with as many extra copies as are the opposite parties:

Provided that the controlling authority may accept any application under this sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period."

12. It is pertinent to note that when the Act came into force on 16.09.1972, an employee could make an application for payment of gratuity under the Explanation to 7(4)(a) of the Act only after requiring the employer to deposit the gratuity amount and the employer might have failed to do so. Rule 10 (1) was introduced to give force to the above provision. However, amendments have been made by Act 25 of 1984 with effect from 01.07.1984 and Act 22 of

1987 with effect from 01.10.1987, by which, an employee can straight away make an application for payment of gratuity to the Controlling Authority for deciding the dispute arising out of the matter specified in clause (a) thereto, which includes non-payment of gratuity by the employer within the time limit after it had fallen due, as per Section 7(4)(b). Section 7(4)(b) of the Act reads as follows:

> *"Section 7(4)(b)- Where there is a dispute with regard to any matter or matters specified in Clause (a), the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute."*

13.Therefore, the limitation provided under Rule 10 (1) for making an application before the controlling authority does not have any force as the parent legislation has been amended to allow the employee to directly make an application to the controlling authority.

14.In ***M/s. A & F Overseas Trade Ltd vs. the Appellate Authority under the Payment of Gratuity Act, 1972 and others (W.P. No. 18129 of 2018 dated 01.10.2020)***, this Court has held that there is no period of limitation restraining an employee from making an application before the Controlling Authority for payment of gratuity and the relevant portions are extracted hereunder:

> *"3...... It could be noticed from reading together of clauses (2) and (3) of Section 7 of the Act that the employer has to make payment of the admitted amount of gratuity to the employee within a period of thirty days from the date on which it falls due, irrespective of whether the employee has made such claim. Further Section 7(3-A) of the Act fastens liability on the employer to pay simple interest thereon at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify. When the employer fails to make or there is shortfall in payment of gratuity, the employee is entitled to make an application*

for payment of gratuity to the Second Respondent under Section 7(4)(b) of the Act. ***The scheme of the Act as per the amended provisions clearly reveal that there is no period of limitation restricting the right of the employee to make such application to the Controlling Authority.***

....

5. It becomes evident that after the amendments made to the Act with effect from 01.10.1987, the period of limitation prescribed in Rule 10 of the Rules is in derogation of clauses (2), (3), (3-A) and (4) of Section 7 of the Act. As a consequence thereof, it would necessarily follow that the requirement to condone delay in filing the application for payment of gratuity in terms of Rule 10(1) of the Rules ceased to exist and resort to that procedure is not warranted."

15. In the present case, the second respondent was terminated from service on 27.01.2010 and challenging the same, he has approached various Forums. The application before the first respondent/Controlling Authority was made with a delay of 1992

days. However, considering the position of law that there is no longer any limitation period within which an application has to be filed before the Controlling Authority, it cannot be said that the application was hit by limitation. Therefore, the contention of the petitioner Management that the application was hit by limitation cannot be sustained.

16.With regard to the third issue, the main contention of the Management is that the second respondent was dismissed for negligence and act involving moral turpitude and therefore he is not entitled to gratuity as per Section (4) (6) of the Payment of Gratuity Act 1972. Section 4 (6) of the Act reads as follows:

“(6) Notwithstanding anything contained in sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited

to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited -

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

17. A reading of clause (a) in the above section makes it clear that if an employee is terminated for wilful omission or negligence, the forfeiture of gratuity can be done only to the extent of the damage or loss caused to the employer. In the present case, there is no such loss or damage which has been quantified in the charges framed against the second respondent.

18. In ***Jaswant Singh Gill vs. Bharat Coking Coal***

reported in ***(2007) 1 SCC 663***, the Hon'ble Supreme Court has held that if the extent of loss or damage caused by the employee is not quantified, the same cannot be a ground to deny payment of gratuity. The relevant portions are extracted hereunder:

> *"13.The Act provides for a closely neat 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........ Clause (a) of Sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, willful 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 No. 1 was more than the amount of gratuity payable to the appellant....."*

19. On the other hand, a reading of Section 6 (2) (b) (ii) of the Act makes it clear that gratuity can be forfeited only if the employee has been terminated for any act which constitutes an offence involving moral turpitude and such an offence is committed by him in the course of his employment.

20. In ***Union Bank of India vs. C.G.Ajay Babu and another*** *reported in* ***2018 (9) SCC 529***, the Hon'ble Supreme Court has held that forfeiture of gratuity under Section 6 (2) (b) (ii) requires an offence involving moral turpitude and such an offence should be established in a court of law. The relevant portions are extracted hereunder:

> *"17. 'Offence' is defined, under The General Clauses Act, 1897, to mean "any act or omission made punishable by any law for the time being in force".*
>
> *18. Though the learned Counsel for the appellant-Bank has contended that the conduct of the respondent-employee, which leads to the framing of*

charges in the departmental proceedings involves moral turpitude, we are afraid the contention cannot be appreciated. ***It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is for the court.*** *Apart from the disciplinary proceedings initiated by the appellant- Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under sub-Section (6)(b)(ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction.*

.....

20. In the present case, there is no conviction of the respondent for the misconduct which according to the Bank is an offence involving moral turpitude. Hence, there is no justification for the forfeiture of gratuity on the ground stated in the order dated 20.04.2004 that the "misconduct proved against you amounts to acts involving moral turpitude". At the risk of redundancy, we may state that ***the requirement of the statute is not the proof of misconduct of acts involving moral turpitude but the acts should constitute an offence involving moral turpitude and such offence should be duly established in a court of law."***

21. In the present case, the petitioner Management has not placed any materials to indicate that criminal action has been initiated for the misconduct of the second respondent. Therefore, it cannot be said that the second respondent has been terminated for an act, which constitutes an offence involving moral turpitude. Considering the above precedents of the Hon'ble Supreme Court and

the language of the provision, the contention of the petitioner Management that the second respondent is not entitled to gratuity as he was terminated for negligence and act involving moral turpitude cannot be sustained. Thus, the issues are answered accordingly.

22. In light of the aforesaid discussions, there is no infirmity in the the impugned order passed by the first respondent/ Controlling Authority. Accordingly, this writ petition is dismissed. The petitioner Management is directed to pay the gratuity amount along with interest as directed by the Controlling Authority to the second respondent/the legal heirs within six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous petition is closed. No costs.

17.09.2025

NCC: Yes/No
Index:Yes
vrn

To

The Assistant Commissioner of Labour,
Controlling Authority under
Payment of Gratuity Act, 1972,
Kajamalai Nagar,
Mannarpuram,
Tiruchirappalli.

B.PUGALENDHI, J.

vrn

Order made in
W.P(MD)No.23500 of 2016 and
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17.09.2025