



W.P.(MD).No.240 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.240 of 2017

Y.231, Mekkamandapam Primary
Agricultural Co-operative Credit Society,
Represented through its President,
J.Oliver Samraj,
Mekkamandapam Post,
Kanyakumari District.

... Petitioner

Vs.

1. The Joint Commissioner of Labour,
(Appellate Authority under Payment of Gratuity Act)
1st Floor, TNHB Office,
Ellis Nagar, Madurai.

2. T.Chellam

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the impugned order of the first respondent in reference PGA No.29 of 2012, dated 10.05.2016 and quash the same and directing the Controlling Authority to refund the deposited amount of Rs.1,40,487/- to the petitioner and to issue such appropriate directions or orders to the first respondent and grant such other remedy and relief to this petitioner.



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For Petitioner : Mr.G.Manivannan
For R1 : Mrs.D.Farjana Ghoushia
Special Government Pleader
For R2 : Mr.D.Srinivasaraghavan
Legal Aid Counsel

ORDER

The present Writ Petition has been filed by the Management challenging the order passed by the authority under the Payment of Gratuity Act, directing the petitioner/Management to pay the gratuity to the second respondent herein.

2. The second respondent herein was working as a Manager of the petitioner Society and she was suspended on allegations of misappropriation on 12.06.2001. Proceedings were initiated under Section 87 of the Tamil Nadu Cooperative Societies Act and surcharge order was passed on 22.02.1999. Though the employee had filed an appeal before the Co-operative Tribunal, it was dismissed on 12.08.2003. Therefore, the surcharge proceedings had reached finality.



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3. A criminal complaint was lodged as against the second respondent and she was charge sheeted and later convicted on 08.02.2016.

4. Though the second respondent was placed under suspension from 12.06.2001 onwards, no disciplinary proceedings were initiated. On the other hand, the second respondent was permitted to retire with effect from 31.08.2004 without reserving any right whatsoever to initiate disciplinary proceedings.

5. The second respondent herein on being permitted to attain superannuation had approached the authority under the Payment of Gratuity Act for releasing the gratuity amount. The Controlling Authority has passed an order on 28.04.2012 directing the petitioner Management to release the gratuity. An appeal was filed by the petitioner herein and the appeal was dismissed on 10.06.2016. Challenging the same, the present Writ Petition has been filed.

6. According to the learned counsel appearing for the writ petitioner, the second respondent herein has suffered a surcharge order and the amount



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has not yet been recovered from her, in view of the fact that she has transferred the properties to the name of her husband. In such an event, the Management is not under a legal obligation to pay the gratuity amount, in view of Section 4(6) of the Payment of Gratuity Act, 1972.

7. Per contra, the learned counsel appearing for the second respondent/workman submitted that no disciplinary proceedings were initiated as against her, while she was in service. On the other hand, she was permitted to retire from services on 31.08.2004 without reserving any right to initiate departmental proceedings. Unless disciplinary proceedings were initiated and the workman was terminated on the ground of wilful omission or negligence causing any damage or destruction of the property of the employer, gratuity cannot be forfeited. Hence, he prayed for sustaining the order passed by the authority under the Act.

8. Heard the learned counsel appearing on either side and perused the materials available on record.



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9. Admittedly, no disciplinary proceedings have been initiated as against the second respondent/workman. The workman has been permitted to retire from services on attaining superannuation on 31.08.2004. No right has been reserved to initiate any departmental proceedings. Section 4 (6) of the Payment of Gratuity Act is extracted 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



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turpitude, provided that such offence is committed by him in the course of his employment.”

10. A perusal of the said Section clearly reveals that unless disciplinary proceedings are initiated as against the workman and it had resulted in termination of the employee for causing any damage or loss or destruction of the property employer, gratuity cannot be forfeited by the employer. In the present case, admittedly, no disciplinary proceedings have been initiated nor the workman was terminated from service. In such circumstances, the employer cannot invoke Section 4(6) of the Act to forfeit the gratuity amount. Hence, the order passed by the authority under the Act for releasing of the gratuity cannot be found fault with and there are no merits in the Writ Petition.

11. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs.

20.06.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Joint Commissioner of Labour,
(Appellate Authority under Payment of Gratuity Act)
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R.VIJAYAKUMAR,J.

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