
(2008) 12 MAD CK 0058
In the Madras High Court
Case No : W.A. No. 807 of 2008

K. Ambalanatha Doss

APPELLANT

Vs

The Special Officer, Kanyakumari District Central Co-operative Bank and The Assistant Commissioner of Labour

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)
Payment of Gratuity Act, 1972 — Section 14

Citation : (2009) 3 MLJ 1360

Hon'ble Judges : A.K. Ganguly, C.J;K. Chandru, J

Bench : Division Bench

Advocate : B. Rajendhran, for the Appellant; S.M. Subramanian, for R1 and Raja Kalifullah, Govt. Pleader assisted by M. Sneka, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The appellant is aggrieved of the order dated 2.11.2006 passed by the learned Judge in W.P. No. 20978 of 2003.

2. The appellant was an employee of the first respondent-Bank and he claimed gratuity from the said Bank. Since there was a dispute regarding

the quantity of the gratuity amount, he filed an application before the second respondent, who is the Controlling Authority under the Payment of

Gratuity Act, 1972. Notice was sent by the Controlling Authority to the first respondent-Bank.

3. The first respondent-Bank, instead of participating before the said Authority, filed a writ petition before this Court being W.P. No. 20978 of

2003 making a strange prayer. The prayer of the first respondent-Bank was that the second respondent should be directed to return the gratuity

application filed by the appellant in Gratuity Case No. 61 of 2003. This prayer was made under the belief that the first respondent is a Co-

operative Society governed by the provisions of the Tamil Nadu Co-operative Societies Act, 1993 and the Rules framed thereunder.

4. According to the first respondent, the Co-operative Societies Act is the self contained provision. If any person is not satisfied with the

disbursement of gratuity, he shall find solution only under the provisions of Co-operative Societies Act and cannot go before the Authorities under

the Payment of Gratuity Act. This argument advanced by the first respondent was accepted by the learned Judge and the writ petition was

allowed, thereby preventing the appellant from pursuing his remedy before the Controlling Authority.

5. If for any reason the first respondent-Bank feels that the second respondent is lacking jurisdiction, even the question of lack of jurisdiction can

be raised before the statutory Authority and they need not rush to this Court with this prayer. It is not the stand of the petitioner that the Act does

not apply to them or that the appellant is not an employee within the meaning of Payment of Gratuity Act.

6. On the contrary, what was found favoured by the learned Judge as found in paragraph 9 is as follows:

9. Section 153 of the Act deals with revision. The Registrar may of his own motion or an application, call for and examine the record of any officer

subordinate to him or of the Board in respect of any proceeding under this Act or the Rules or the By-laws not being a proceeding in respect of

which an appeal to the Tribunal is provided, in order to satisfy himself as to the regularity of such proceedings, or the correctness, legality or

propriety of any decision passed or order made therein. Thus, if any party is aggrieved by the orders issued by the Cooperative Societies, when

the Registrar is a reviewing revisional authority, the party has to go before the Registrar to ventilate his grievance. Then, a review is also provided

u/s 154 of the Act. The appellant or the applicant for the revision may apply for the review for any order passed u/s 152 or u/s 153 of the Act. u/s

156, there is a bar of jurisdiction of civil Courts as far as these proceedings are concerned. Therefore, the second respondent is at liberty to

approach the Registrar u/s 153 of the Act, but not the first respondent.

As against this order, the appellant is before us.

7. Mr. V. Rajendhran, learned Counsel appearing for the appellant submits that the Gratuity Act is a special Act conceived by the Parliament

which not only creates the right to payment of gratuity, but also provides for a Forum under the Controlling Authority or under the Appellate

Authority. It is an accepted principle of law that when the Act creates a right and also provides a Forum, the party must be allowed to go before

that Forum not before any other Forum. He also emphasized that Section 14 of the Act, where the Act has been conceived to override the other

provisions of law.

8. In this context, it is necessary to refer the decision of the Supreme Court reported in the case of State of Punjab Vs. Labour Court Jullunder and

Others, In that case, the Supreme Court dealt with the scope of the Industrial Disputes Act vis-a-vis Payment of Gratuity Act. The Supreme Court

also held that the proceedings for payment of gratuity due under the Payment of Gratuity Act must be taken under that Act and not under any other

Act and hence the application filed by the employee u/s 33-C(2) of the Industrial Disputes Act did not lie.

9. When a special law creates a right as well as remedy, the party must be directed to go before that Forum and not any other Forum. In our

opinion even the reference to the provision of revision u/s 153 and review u/s 154 may not be a satisfactory Forum and there is a dispute relating

to entitlement of gratuity including the difference in the gratuity amount. The Central law holds the field in respect of gratuity and there being no

other provision under the said law excluding the operation of Central law the order of the learned Judge cannot be countenanced by this Court.

10. Accordingly, the order of the learned Judge dated 2.11.2006 passed in W.P. No. 20978 of 2003 stands set aside and the proceedings before

the second respondent in Gratuity Case No. 61 of 2003 will stand restored. Since it is a claim relating to the year 2003, we direct the second

respondent to expedite the hearing of the gratuity application and in any event dispose it within a period of three months after giving notice to both

the parties with regard to quantity of gratuity amount. The writ appeal stands allowed. No costs.