(2011) 02 MAD CK 0383

In the Madras High Court

Case No : Writ Petition No''s. 28060 and 28061 of 2005 and W.P.M.P. No''s. 30509 and 30511 of 2005

Tamil Nadu Co-Operative State Agriculure and Rural Development Bank Ltd.	APPELLANT
Vs	
D. Rajendran, Joint Commissioner of Labour and The Assistant Commissioenr of Labour	RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:
Payment of Gratuity Act, 1972 — Section 13, 3(2), 4, 4(6), 7(3)

Citation : (2011) 3 LLJ 697

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S.T.S. Murthi, for the Appellant; R. Murali, G.A. for R2 and R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner in both the Writ Petitions is the Tamil Nadu Cooperative State Agriculture and Rural Development Bank Limited represented by its Special Officer. The two Writ Petitions are filed challenging the order passed by the 2nd Respondent appellate authority under the Payment of Gratuity Act, 1972 made in P.G.A. Nos. 8 and 32 of 2003. While Appeal No. 8 of 2003 was filed by the Petitioner bank, Appeal No. 32 of 2003 is filed by the 1st Respondent. While the Petitioner bank filed the appeal against the order made in P.G. No. 30 of 2002 dated 31.10.2002 passed by the Controlling Authority, Appeal No. 32 of 2003 was filed by the 1st Respondent against the very same order for not granting any interest as per the provisions of the Payment of Gratuity Act, 1972 for the delayed payment of gratuity. Both appeals were heard together and a common order was passed.

2. The contesting 1st Respondent preferred a Gratuity Application No. 30 of 2002 before the 3rd Respondent claiming gratuity of sum of Rs. 1,53,343/-. The

Petitioner bank paid already a sum of Rs. 59,881/- and withheld the balance amount of Rs. 93,462/- on account of certain audit objection. The 1st Respondent claimed unpaid gratuity. Before the 3rd Respondent, the Petitioner bank held that the audit objected to the four increments granted to the 36 employees of the bank and therefore the amounts were withheld from the gratuity. It is claimed that the audit report was relating to the year 1986-87 and after 12 years after the audit objection, the amounts were sought to be recovered without any legal authority. Under the Payment of Gratuity Act, 1972 the employer can deprive the gratuity for the reasons set out in Section 4(6) of Payment of Gratuity Act, 1972 and for other reasons, the deductions cannot be made from gratuity. Therefore, the authority found that the gratuity has been illegally withheld from being paid to the 1st Respondent and therefore he directed that the 1st Respondent is entitled to total gratuity of sum of Rs. 1,53,343.40 and after deducting the amount already paid, the authority directed to release the payment of Rs. 93,642/-, which was illegally withheld, vide order dated 31.10.2002. It is against this order, the Petitioner filed an appeal u/s 7(7) of the Payment of Gratuity Act, 1972. Aggrieved by the very same order, the 1st Respondent preferred appeal for non-payment of interest for the delayed payment of gratuity. Clubbing both the appeals together, the 2nd Respondent passed the impugned order.

3. The 2nd Respondent appellate authority held that the forfeiture of gratuity is provided only u/s 4(6) of the Act and the Petitioner had not pleaded any one of the grounds therein. In the absence of any loss caused to the Petitioner bank, then separate order of forfeiture will have to be passed, which was not done in the case of the 1st Respondent. He also held that u/s 7(3) of the Payment of Gratuity Act, 1972, gratuity will have to be paid within 30 days, failing which the interest will automatically accrue to an employee u/s 7(3A) of the Act. In that provision, in case of delayed payment of gratuity, the employer is bound to pay simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of the long term deposits, which the Government may specify by notification. By exercise of the power u/s 7(3A), the Central Government has issued a statutory notification in S.O.874 dated 1.10.1987 published in the Gazette of India, Extraordinary Part II Section 3(2) specifying the rate of interest of 10% of simple interest. Therefore, in the light of Section 7(3A), the authority confirmed the order of the Controlling Authority in so far as the Payment of Gratuity and in respect of the appeal preferred by the 1st Respondent, he directed the interest at 10% should be added in terms of Section 7(3A) of the Act by the common order dated 27.12.2004. It is against this order, the Writ Petition has been filed as noted above.

4. The learned Counsel for the Petitioner is unable to dislodge the order on any one of the grounds. It is not his case that the forfeiture power vested u/s 4(6) of the Act was exercised by the Petitioner bank before the 1st Respondent was allowed to get himself retired from service. With reference to the interest, since it is a statutory requirement and the 1st Respondent''s gratuity has been

withheld contrary to the provisions of the Act, automatically Section 7(3A) comes into operation. The Petitioner bank has no right to withheld gratuity in terms of Section 13 of the Payment of Gratuity Act, 1972. Even pursuant to the Civil Court decree, the amounts are not liable for any attachment. u/s 14 in view of the non-obstante clause even if there are contracts between the parties, it is overridden by the said provision.

5. In this context, it is useful to refer to the judgment of the Gujarat High Court in Gujarat State Road Transport Corporation v. Devendrabhai Mulvantrai Vaidya reported in 2004 (1) LLJ 77. In paragraph 7, Gujarat High Court had observed as follows:

7. Considering the aforesaid provision, the employer is entitled to withhold the gratuity amount only on the eventualities which are enumerated under the said provision. The services of the Respondent were never put to an end by way of termination as provided in Sub-section (6)(a) or under Sub-section (6)(b) of Section 4 of the Act. Under the aforesaid circumstances and especially when the Respondent was allowed to retire from service on reaching the age of superannuation, in my view, the Petitioner Corporation has no power to withhold the gratuity amount and it can be withheld only on the eventualities, as provided in Section 4 of the Act. When the Respondent has already retired by reaching the age of superannuation, it is not possible even to accept the say of Mr. Dagli that on conclusion of the enquiry, services of the Respondent can be terminated or he can be dismissed from service. Since the Respondent has retired from service, on reaching the age of superannuation, it is difficult to uphold the contention of Mr. Dagli that on conclusion of the enquiry, the Respondent can be dismissed from service or his services can be terminated on any disciplinary ground. Since the Corporation has no power to withhold the gratuity amount, and considering the provisions of Section 4 of the Act, in my view, it cannot be said that the Appellate Authority or the controlling authority has committed any error of law in reaching the conclusion which they have reached. Accordingly, I do not find any substance in this petition. The petition is accordingly dismissed at the admission stage.

6. Under the circumstances, both the Writ Petitions stand dismissed. The connected Miscellaneous Petition is closed. Since it is now claimed by the Petitioner that as a condition precedent for maintaining the appeal they have deposited the amount, there is no impediment for the contesting 1st Respondent to withdraw the amount lying in deposit with the 3rd Respondent. Since the 1st Respondent is not before this Court, either in person or through counsel, a direction is issued to the 3rd Respondent to issue appropriate notice to the 1st Respondent to come to his office to collect the amount. No costs. The connected Miscellaneous Petitions are closed.