
(2010) 10 MAD CK 0054

In the Madras High Court

Case No : Writ Petition (MD) No. 8946 of 2006

The Management, Kumbakonam Central Cooperative Bank
Ltd.

APPELLANT

Vs

M. Velu, The Assistant Commissioner of Labour (Gratuity)
and The Joint Commissioner of Labour, Appellate Authority
under The Payment of Gratuity

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Payment of Gratuity Act, 1972 — Section 14, 2(A), 4(1), 7(3)(A), 7(7)

Citation : (2010) 10 MAD CK 0054

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. Jayaraman, for the Appellant; V. Ilanchezian, for R 1 and S.C.
Herold Singh, G.A., for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner is a management of the Central Cooperative Bank, Kumbakonam. Aggrieved by the order passed by the

3rd Respondent, the Appellate Authority under the Payment of Gratuity Act, 1972, the Writ petition came to be filed.

2. The first Respondent was working as an Assistant General Manager in the Petitioner Bank. He joined in the Bank originally as a Supervisor on

27.08.1956 and after putting in 38 years of service, he retired from service on 30.04.1984. He was paid gratuity amount of Rs. 1,97,198/- as per

the byelaws of the Society and the same was credited into the account of the first Respondent on 27.10.1995. The first Respondent was not

satisfied with the quantum of gratuity paid, because according to him, 3 years period of his service has been omitted on some untenable grounds

and the last drawn wages calculated by the Bank was not proper. While the Bank calculated the last drawn salary at Rs. 9,766/-, the first

Respondent claimed the last drawn salary at Rs. 9,916/-.

3. Aggrieved by the reduced payment of gratuity, he filed an application before the 2nd Respondent, the Controlling Authority. The 2nd

Respondent took up the case as P.G. No. 32 of 1998 and issued notice to the Petitioner Bank. Before the 2nd Respondent, the 1st Respondent

claimed the differential gratuity and also interest as per law. The Writ Petitioner filed a counter and disputed the claim on three grounds. The first

ground that under the provisions of the Payment of Gratuity Act, there is a ceiling and therefore, he cannot claim more than what is under the Act

and whereas, the Bank has paid the amount in terms of the byelaw. The second ground that the Petitioner's entire service does not satisfactory and

he had suffered suspension on two occasions. That was during 1974, 1976 and 1977-1979 and for that suspension period, he is not eligible for

any gratuity. The third ground that the last drawn wages calculated was in accordance with the records of the Bank.

4. The 2nd Respondent by an order dated 22.06.1999 held that there was no dispute regarding the last drawn wages at Rs. 9,916/- as both sides

have succeeded and once 38 years of service was accepted in the absence of any statutory disqualification, the first Respondent is eligible to get

gratuity and since the amount of gratuity has already been paid, was less than the statutory, he is eligible for getting the differential amount. It must

be noted that before the 2nd Respondent only the 1st Respondent adduced evidence and the Petitioner Bank did not adduce any evidence.

However, aggrieved by the order passed by the 2nd Respondent dated 22.06.1999, an appeal u/s 7(7) of the Payment of Gratuity Act has been

filed before the 3rd Respondent, the Appellate Authority. As a condition precedent, the amount ordered by the Authority has also been deposited.

On receiving the appeal, the 2nd Respondent took up the appeal as P.G.A. No. 10 of 2000 and ordered notice to the first Respondent. It is by an

order dated 31.10.2000, the 2nd Respondent dismissed the appeal. He found that the defence relating to the statutory and the maximum amount

prescribed was not considered by the Controlling Authority. Therefore, he remitted the matter for fresh disposal. On such remittance, the 2nd

Respondent heard the matter and concluded that the workmen is entitled to claim the differential gratuity and he has not passed on any full and final receipt.

5. Even though the statutory which was prescribed the maximum was Rs. 50,000/-, the bank itself has paid as per the guidelines and another

Manager by name Mr. Jayaraman was paid Rs. 5,00,0000/- as gratuity and therefore, there was no bar under the Act to claim a higher gratuity as

per the contract between the parties. Though he pointed out the example of the said Jayaraman, Manager, the same is not acceptable, since the

statutory payment has been made and hence by an order dated 29.03.2004, he held against the first Respondent. Thereafter, the first Respondent

filed an appeal before the third Respondent which was taken on file as P.G.A. No. 34 of 2004 and after notice to the Petitioner Bank and also a

counter being filed dated NIL December 2004, the third Respondent, the Appellate Authority allowed the appeal by an order dated 04.01.2006

and he found that the first Respondent is eligible to get an additional payment of Rs. 22,529/- and also interest from the date of retirement till the

date of payment.

6. Attacking the same, the Petitioner Bank has raised three contentions. The first contention was that the period of suspension, which he is

undergone in 1974, 1976 and 1979 cannot be taken as a continuous service. This argument overlooks the definition of continuous service

provided u/s 2A. Wherein even a discontinued service, he is treated as a continuous service. But reading of Section 2A does not show a

suspension inflicted by an employer can be omitted, to be counted as a continuous service. Because while suspending an employee, the contract

of employment does not come to an end. But it continues. By an order of suspension, the employer only prevent the workmen from reporting to

work and therefore, the said contention cannot be accepted.

7. With reference to the last drawn wages, it has been considered by the Controlling Authority in the first round of litigation and the last drawn

wages was accepted. The other question that beyond the statutory payment, the employer need not pay any amount also cannot be accepted.

Since u/s 14, the Act only overrides other enactment, which are inconsistent and if under the byelaw, if any amounts are paid over and above the

statutory payment, then the maximum pointed under the Act cannot be cited as an example. The last question with reference to payment of interest.

The act very clearly says that the liability to pay gratuity arises u/s 4(1) and if any one of the contingencies set out in 4(1) mentioned, then the

payment of gratuity become an imperative from that moment. Therefore, if any gratuity is not paid on the day when it becomes payable, then

Section 7(3)(A) provides for interest. Therefore, the Appellate Authority has correctly held that the workmen is eligible for interest for the reduced

payment of gratuity.

8. In the light of the above, there is no case made out to entertain the Writ petition. It must also be noted that it is not as if that the first Respondent

worked only for a few years, but he had worked for 30 years continuously in the Bank and for paltry sum of Rs. 22,529/- it is unnecessary for the

Bank to file such a Writ petition.

9. In the light of the above, there is no case made out. Hence, the Writ petition stands dismissed. No costs.