

*** THE HON'BLE SRI JUSTICE G. NARENDAR**
AND
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY
W.A.No.102 of 2024

% 22.02.2024

The District Cooperative Central Bank Ltd.,
Kakinada, rep. By its Chief Executive Officer
(CEO), Nagimalithota, Kakinada,
East Godavari District, Andhra Pradesh. Petitioner

Versus

\$ Sri Jandhyam Venkata Rao,
S/o Late Achutararamayya, Aged 67 years,
Occ: Retd., Employee, R/o D.No.5-10-25/q,
Gas Office Street, Ward No.27,
Bank Colony, Tuni, East Godavari District,
Andhra Pradesh & Others. Respondents

! Counsel for the Petitioner : Sri Srinivas Basava

! Counsel for the Respondents : 1) Sri Syed Arif Basha
2) Sri G.V.S. Kishore Kumar,
Learned G P (S-I)
3) Sri S.Brahmananda Reddy

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> Head Note:

? Cases referred: (2006) 11 SCC 634

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DATE OF ORDER PRONOUNCED: 22.02.2024

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE G. NARENDAR
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| 1. Whether Reporters of Local Newspapers may be allowed to see the Order? | Yes/No |
| 2. Whether the copies of Order may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Order ? | Yes/No |

G. NARENDAR, J

NYAPATHY VIJAY, J

THE HONOURABLE SRI JUSTICE G. NARENDAR
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JUDGMENT: *(Per Hon'ble Sri Justice G.Narendar)*

Heard Sri Srinivas Basava, Learned Counsel for the Appellant and Sri Syed Arif Basha, Learned Counsel, Sri G.V.S. Kishore Kumar, Learned G.P (S-I) and Sri S.Brahmananda Reddy, Learned Counsel appearing for the Respondents.

2. The appellant i.e., the District Cooperative Central Bank Ltd., is before this Court being aggrieved by the Order dated 10.05.2023 passed by the Learned Single Judge in W.P.No.39157 of 2018. The Learned Single Judge by the order impugned has been pleased to appreciate the following prayer.

"to issue an order or direction more particularly in the nature of Writ of Mandamus declaring the action of the 3rd respondent Bank in not paying the terminal benefits i.e., Gratuity for 20 months and Encashment of Earned Leave for 240 days to the petitioner after adjustment of amount already paid in accordance with Clause 3 of Memorandum of Intent dated 11.01.2013 as well as the inaction on the part of the 2nd to 4th respondents in acting on the petitioners representations dated 17.09.2018 as illegal, arbitrary, unjust and violative of Articles 14, 19 and 21 of the Constitution of India and consequently direct the 3rd respondent Bank to pay the Gratuity and Encashment of Earned Leave of the petitioner as per the Service Regulations of the 3rd respondent Bank and pass such other order or orders."

3. While appreciating the same, the Learned Single Judge has been pleased to grant relief in the following manner and the relevant paras 10 to 12 of the order reads as under:-

"10. Paragraph No.12 of the Judgment passed in W.A. No.139 of 2023 reads thus:

12) Therefore, from a reading of this Memorandum of intent it is clear that terminal benefits to Special Category Assistants, who were taken into services as on 01.03.2009 and thereafter rendered 5 years of service are as per the Point No.1, for the others like the writ petitioner Point No.3 is applicable. Admittedly, the writ petitioner joined the bank on 02.09.2009 and retired on 30.03.2016 (para 11 of the counter affidavit). Therefore, it is clear that the writ petitioner has completed 5 years of service and is, therefore, entitled to terminal benefits as per the service regulations.

11. As per the orders passed in W.P.No.28820 of 2018 as well as W.A.No.139 of 2023, the employee who has completed 5 years of service in the Bank (DCCB) is entitled for 20 months Gratuity and 240 days Encashment of Earned Leave. In the present case, the petitioner was recruited by the 3rd respondent in the year 1978 as a Paid secretary under the "Half a Million Jobs Programme". In pursuance of G.O.Ms.No.67, dated 20.02.2009, the petitioner was reverted back to the service of the 3rd respondent as Special Category Assistant and thereafter petitioner was retired from service on 31.12.2016. Thus, the petitioner has completed more than 5 years of service in the Bank. Therefore, the petitioner has come into zone of consideration for the entitlement of 20 months Gratuity and 240 days Encashment of Earned Leave.

12. The issue involved in this petition is squarely covered by the order of this Court in W.P.No.28820 of 2018 dated 31.10.2022."

4. On a reading of para 12, it is seen that the Learned Single Judge has been pleased to place reliance on the order passed by a Learned Single Judge of this Court rendered in W.P.No.28820 of 2018, dated

31.10.2022, against which W.A.No.139 of 2023 has been preferred. Copies of the orders in W.P.No.28820 of 2018 and in W.A.No.139 of 2023 are enclosed along with the material papers of this Writ Appeal.

5. It is stated that the Learned Single Judge in W.P.No.28820 of 2018 proceeded to compute the dues and issued directions for payment of the same. Aggrieved thereby, W.A.No.139 of 2023 has been preferred. A Coordinate Bench of this Court has been pleased to affirm the orders of the Learned Single Judge and in Para 16, it placed reliance on the ruling in **S.S. Rana vs. Registrar of Cooperative Societies**¹ to hold that the Writ Petitions are maintainable against Cooperative Societies. This is a finding regarding maintainability of a Writ Petition and has attained finality.

6. The fact remains that, what is now prayed in the instant Writ Appeal is calling upon the Court to carry out an exercise, whereby the Court is required to compute and ascertain the amounts due to the respondents under the head of Gratuity.

¹ (2006) 11 SCC 634

7. We have perused the orders passed and relied upon Writ Petitions and the Writ Appeal. We see that there is no reference to Section 7 of the Payment of Gratuity Act, 1972 (for short "the **Act**"). The Act is a self-contained enactment, whereby the Act provides for remedial measures and also for punitive actions so far it relates to any omission or commission that arises under the Act. The Act provides for an efficacious, alternative and statutory remedy by way of a statutory application, for the very purpose sought for in the Writ Petition. The litigant having been vested with an alternative remedy, it is not demonstrated as to why the same should be by-passed.

8. Section 7 of the Act reads as under:-

Determination of the amount of gratuity

(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest 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:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]

(4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(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.]

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.]

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit –

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely :

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents,
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code, 1860 (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection (4), or deposits with the appellate authority such amount.]

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

9. A reading of Section 7 of the Act clearly demonstrates that the act of computing dues and directing payment and the first adjudication of any dispute in this regard, is in the exclusive domain of the Controlling Authority, constituted under the Central Act of 1972 and that being the position under the statute, we are of the considered opinion that a Writ Petition is not maintainable in view of the availability of an efficacious and alternate remedy

10. Learned Counsel for the respondents is unable to make out the case, as to why the efficacious and alternative remedy of an application provided under Section 7(4) of the Act, ought not to be complied with.

11. In that view of the matter, the Writ Appeal requires to be allowed on the ground of maintainability and the order of the Learned Single Judge is set aside and the Writ Petition stands rejected. The rejection of the Writ Petition will not foreclose or preclude the petitioners from approaching the Competent/Controlling Authority and prefer necessary applications for adjudication of their claims regarding non-payment of gratuity. If such applications are made within one

month from the date of receipt of copy of this order, the competent/controlling authority shall endeavour to hear and dispose of the same within three (3) months thereafter.

12. Accordingly, the Writ Appeal is allowed. There shall be no order as to costs. As a sequel, pending applications, if any, shall stand closed.

JUSTICE G. NARENDAR

JUSTICE NYAPATHY VIJAY

Date: 22.02.2024

Note: L.R copy be marked
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