

Payment Of Gratuity Act Is A Beneficial Legislation For Employees And Overrides Other Enactments: Andhra Pradesh High Court

2022 LiveLaw (AP) 124

HIGH COURT OF ANDHRA PRADESH

RAVI NATH TILHARI; J.

WRIT PETITION No. 13203 of 2011; 16.09.2022

District Cooperative Central Bank Ltd. versus Controlling Authority

Counsel for the Petitioner: Sri V. Padmanabharao, representing Sri Suragani Vijaya Kumar

J U D G M E N T

Heard Sri V. Padmanabharao, learned counsel, representing Sri Suragani Vijaya Kumar, learned counsel for the petitioner. None appeared for the 2nd and the 3rd respondents to argue the matter.

2. The District Cooperative Central Bank Limited, West Godavari District at Eluru has filed this writ petition under Article 226 of the Constitution of India for issue of a writ more particularly in the nature of writ of certiorari calling for the records in P.G.Case No.1 of 2003 on the file of the 1st respondent-the Controlling Authority under Payment of Gratuity Act, 1972 (in short 'the Act 1972') and Assistant Commissioner of Labour, Eluru, West Godavari District (in short 'the Controlling Authority') and quash the order dated 31.03.2011 to the extent the petitioner has also been held liable to pay the gratuity of Rs.1,08,758/- to the 2nd respondent-Sri S.V.N. Ramachandra Rao jointly with 3rd respondent-the Primary Agricultural Cooperative Society Limited, the petitioner not being the employer and the 2nd respondent not being its employee.

3. The 2nd respondent/the applicant in P.G.Case No.1 of 2003, initially filed the application on 18.12.2001 against the 3rd respondent for payment of gratuity of Rs.1,29,709/-. Later on, he submitted supplemental application on 25.11.2004 and added the District Cooperative Central Bank, the petitioner as opposite party No.2 in P.G.Case.

4. The 2nd respondent stated that he was originally appointed by the Chairman appointment committee for the area of Eluru Cooperative Central Bank Limited, Eluru under the proceedings R.C.Co.Op.No.6676/73-A, dated 25.11.1973 as Secretary of Dharmajigudem Cooperative Society and he joined on 01.12.1973. The Chairman appointment committee and the General Manager / Member Secretary of the petitioner District Cooperative Central Bank Limited issued orders of transfers from time to time and from place to place in the area of Eluru Cooperative Central Bank Limited, Eluru. The General Manager of the petitioner bank issued administrative orders dated 04.06.1985 transferring the applicant to K.Gokavaram PACS. The applicant worked continuously from 01.12.1973 till the date of his retirement on 31.01.2001.

5. The petitioner/opposite party No.2 in P.G.Case filed counter dated 19.01.2005 inter alia denying the allegations in the supplemental proceedings and the same not being maintainable and submitting further that the 2nd respondent was appointed by the Chairman appointment committee for the area of Eluru Cooperative Central Bank Limited, Eluru on 25.11.1973 under the Half a Million Job programme and appointed as Secretary of Dharmajigudem PACS. The appointment was made by a separate committee and not by the petitioner and the applicant was not under the administrative control and discipline of the petitioner but was governed by the regulations framed by

the Registrar of Cooperative Societies and the pay structure or the service conditions were not governed by the petitioner. The transfer orders were also issued from time to time by the Chairman appointment committee in accordance with the regulations. With respect to the administrative order dated 04.06.1985 it was submitted that the said order was issued by the petitioner to the 2nd respondent in the capacity of Member Secretary of the appointment committee. The common cadre constituted in 1973 was abolished and the Registrar was authorized to allot such employees to the Primary Agricultural Cooperative Societies under Section 116AA of the Andhra Pradesh Cooperative Societies Act, 1964 (in short 'Act 1964') with effect from 22.04.1985, and accordingly, the 2nd respondent was allotted the 3rd respondent society in pursuance of G.O.Ms.No.454, dated 13.09.1985, by the District Collector, West Godavari, Eluru in ROC (Cooperative) No.5859/90-A, dated 09.09.1990. The petitioner was neither the employee of the 2nd respondent nor the common cadre constituted prior to the introduction of Section 116AA of the Act. The 2nd respondent was only the employee of the 3rd respondent and as such the supplemental application seeking relief of release of gratuity from the petitioner deserved to be dismissed.

6. The 2nd respondent filed reply affidavit dated 05.02.2005 and while reiterating his stand in the supplemental application, further submitted that he was born under the District Cooperative Central Bank and service conditions were not changed by any notice or otherwise. The subsequent change in administrative system, as referred by the petitioner was not relevant.

7. In P.G.Case No.1 of 2003 the 2nd respondent filed his chief affidavit and was examined as AW.1, and also filed the following documents marked as Exs.A1 to A9.

Ex.A1: Orders dt.25.11.1973 issued by the Chairman appointment committee for the area of Eluru Cooperative Central Bank Limited, Eluru.

Ex.A2: Orders dt.4.12.1973 issued by the Registrar of Cooperative Societies, Hyderabad.

Ex.A3: Orders dt.26.03.1974 issued by the Chairman Appointment Committee for the area of Eluru Cooperative Central Bank Ltd., Eluru.

Ex.A4: Orders dt.12.02.1975 issued by the Chairman Appointment Committee for the area of Eluru Cooperative Central Bank Ltd. Eluru.

Ex.A5: Transfer orders dt.22.07.1982 issued by the Member Secretary, appointment committee for the area of Eluru Cooperative Central Bank Ltd. Eluru.

Ex.A6: Transfer orders dt.05.11.1984 issued by the General Manager / Member Secretary, appointment committee transferring the applicant to Central Office, Eluru.

Ex.A7: Transfer orders dt.03.12.1984 issued by the General Manager / Member Secretary, appointment committee in the area of Cooperative Central Bank Ltd. Eluru.

Ex.A8: Posting orders dt.04.06.1985 issued by the General Manager Cooperative Central Bank Limited, Eluru posting the applicant to K. Gokavaram.

Ex.A9: Relieving certificate dt.31.01.2001 issued by the Chairperson, PACS, K.Gokavaram.

8. The 3rd respondent filed the following documents marked as Exs.B1 to B3.

Ex.B1: Attested copy of deposition and Cross-Examination of Sri S.V.N.Rama Chandra Rao dated 29.12.2003, 29.01.2004 and 06.02.2004 in APSE 1/2003 Labour Officer, Eluru.

Ex.B2: Xerox copy of DCC Bank receipt dated 17.03.2001 for Rs.5,363-40/-

Ex.B3: Copy of orders dated 31.01.2005 in APSE 1/2003 of the Authority under Section 50 of APSE Act, 1988 and Labour Officer, Eluru.

But for the petitioner any document was not marked nor any witness was examined.

9. The Controlling Authority framed the following points for consideration:

1. Whether the applicant was appointed by Opposite Party 1 or Opposite Party 2? Whether the service conditions including transfer of the applicant are controlled by whom?
2. Whether the Gratuity Act, 1972 is applicable to the applicant or not?
3. If the answer is affirmative, what is the amount of gratuity payable to the applicant?
4. Whether the Opposite Parties 1 & 2 are liable to Pay Gratuity to the applicant or not?

10. The Controlling Authority allowed the P.G.Case No.1 of 2003 and directed the petitioner as also the 3rd respondent to deposit an amount of Rs.1,08,758/- towards gratuity payable to the 2nd respondent, holding both as jointly and severally liable to pay gratuity to the 2nd respondent.

11. With regard to the first issue, the Controlling Authority held that the 2nd respondent was the employee of the petitioner and rendered service in different PACS including the 3rd respondent. The service conditions including the transfer of the 2nd respondent were controlled by the District Cooperative Central Bank Limited, Eluru i.e., the petitioner.

12. With regard to issue No.2, the Controlling Authority held that the Payment of Gratuity Act, 1972 was applicable and on issue No.3, the Authority held that the 2nd respondent was entitled for an amount of Rs.1,08,758/- as gratuity payable to him and on issue No.4, the Authority held that the opposite parties No.1 & 2 in P.G.Case No.1 of 2003 i.e., the 3rd respondent and the petitioner respectively were jointly and severally liable to pay the gratuity to the 2nd respondent.

13. Sri V. Padmanabharao, learned counsel for the petitioner, submitted that the 2nd respondent is not the employee of the petitioner. The 2nd respondent was appointed on 25.11.1973 pursuant to the order of the Registrar of Cooperative Societies dated 21.07.1973 as Secretary of Dharmajigudem PACS by the appointment committee in which the petitioner was only the Member Secretary. The common cadre constituted in 1973 was abolished under Section 116AA of the Act 1964 on 22.04.1985, upon which the 2nd respondent was allotted the 3rd respondent society vide proceedings of the District Collector, dated 09.09.1990. The 2nd respondent was neither the employee of the petitioner bank nor the common cadre constituted prior to the introduction of Section 116AA of the Act. The 2nd respondent was only the employee of the 3rd respondent. The 2nd respondent was never paid by the petitioner.

14. Learned counsel for the petitioner laying emphasis on Rule 72 (3) of the A. P. Cooperative Societies Rules 1964 (in short 'Rules 1964') contended that the 2nd respondent on allotment to the 3rd respondent society shall be deemed to be the employee of that society and shall be entitled to receive pay and allowances as may be fixed, from the funds of that society. Consequently, the 2nd respondent is not the employee of the petitioner.

15. Sri V. Padmanabharao, learned counsel for the petitioner, further submitted that the petitioner is not the 'employer' under Section 2(f) of the Act 1972 of 2nd respondent as the petitioner has no ultimate control over the affairs of the 3rd respondent establishment allotted to the 2nd respondent.

16. Learned counsel for the petitioner placed reliance in the case of **A.P.Co-op Central Agril.Dev.Bank Ltd., v. A.P.Co-op.Agri.Dev.Bank Employees Assn.**¹ to contend that the employer is the person or authority which has the ultimate control over the affairs of the establishment.

17. He further submitted that the Controlling Authority legally erred in holding the petitioner as jointly and severally liable to pay the gratuity to the 2nd respondent along with 3rd respondent.

18. None appeared for respondents No.2 & 3 to argue the matter in spite of the last opportunity given to them on 14.07.2022, while posting the matter for 18.07.2022 for further hearing. On 18.07.2022 also none appeared for respondents No.2 & 3 to argue the matter. The judgment was reserved.

19. Perused the contents of the counter affidavit of the 2nd respondent.

20. The 2nd respondent in the counter affidavit has raised an objection that the petitioner has an effective alternative remedy under Section 7(7) of the Payment of Gratuity Act 1972 to prefer appeal before the appropriate appellate authority/Government within a period of 60 days, and in view of the statutory alternative remedy, the writ petition deserves dismissal.

21. The 2nd respondent has further submitted in the counter affidavit that the definition of 'employer' under Section 2(f) of the Payment of Gratuity Act 1972 is very clear in which the petitioner and the 3rd respondent both are covered, and therefore, the petitioner cannot deny his liability for payment of gratuity only because the 2nd respondent was working with the 3rd respondent. The transfer orders were issued from time to time by the petitioner and the 2nd respondent remained under the administrative control of the petitioner till his retirement.

22. I have considered the submissions advanced by the learned counsel for the petitioner and perused the material on record.

23. In view of the submissions advanced, as also the stand taken in the counter affidavit, the following points arise for consideration:

i) Whether the writ petition be dismissed on the ground of statutory alternative remedy of appeal, relegating the petitioner to avail such remedy?

ii) Whether the petitioner is the 'employer' of the 2nd respondent and the 2nd respondent is the 'employee' of the petitioner within the meaning of these respective expressions under the Payment of Gratuity Act 1972?

iii) Whether the order of the Authority under the Payment of Gratuity Act 1972 is legally valid or it calls for interference by this Court?

Point No.(i):

24. So far as the existence of the statutory alternative remedy of appeal is concerned, normally, in the presence of statutory alternative remedy, this Court relegates the petitioner to first avail the statutory remedy to exhaust the same and declines to invoke its writ jurisdiction, but that is only a rule of discretion and not of jurisdiction. The existence of statutory alternative remedy, it is settled in law, is not an absolute bar to the exercise of writ jurisdiction by this Court but is only a self-imposed restriction.

¹ 1992 (3) ALT 88 (D.B)

25. In *Maharashtra Chess Assn. v. Union of India*² the Hon'ble Apex Court held that the existence of an alternate remedy, whether adequate or not, does not alter the fundamentally discretionary nature of the High Court's writ jurisdiction and therefore does not create an absolute legal bar on the exercise of the writ jurisdiction by a High Court. The decision whether or not to entertain an action under its writ jurisdiction remains a decision to be taken by the High Court on an examination of the facts and circumstances of a particular case. The Hon'ble Apex Court further held that the writ jurisdiction of the High Court is fundamentally discretionary. Even the existence of an alternate adequate remedy is merely an additional factor to be taken into consideration by the High Court in deciding whether or not to exercise its writ jurisdiction. It was further held that in exercising its discretion to entertain a particular case under Article 226, a High Court may take into consideration various factors including the nature of the injustice that is alleged by the petitioner, whether or not an alternate remedy exists, or whether the facts raise a question of constitutional interpretation. These factors are not exhaustive. It was further held that the High Court must take a holistic view of the facts as submitted in the writ petition and make a determination on the facts and circumstances of each unique case.

26. In *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*³ the Hon'ble Apex Court reiterated that non-exercise of jurisdiction under Article 226 of the Constitution of India is a rule of self restraint. The Hon'ble Apex Court found that relegating the appellant therein to the alternative remedy would serve no purpose.

27. The Court finds that the impugned order was passed in the year 2011. The writ petition was also filed in the year 2011. Since then more than 11 years have elapsed. The pleadings have already been exchanged and to relegate the petitioner, after so many years of pendency of the writ petition, at this stage, would not be a sound exercise of discretion.

28. Further, in the writ petition there is interim stay passed on 29.04.2011. The matter pertains to payment of gratuity and it would be in the interest of the parties that the petition is decided on merits. Relegating the petitioner to the remedy of appeal and thereby opening another round of litigation to this Court by either of the aggrieved parties from such appellate order, would delay the dispensation of justice.

29. The ground of challenge is also purely legal, based on the definition of 'employer' and 'employee' under the Payment of Gratuity Act 1972 as also Rule 72 (3) of the Rules 1964.

30. The Court, therefore, proceeds to decide the matter on merit.

Point No.(ii):

31. The second point of determination is with respect to the relationship between the petitioner and the 2nd respondent as employer and employee under Payment of Gratuity Act.

32. Learned counsel for the petitioner submitted that the petitioner does not have ultimate control over the affairs of 3rd respondent establishment and consequently the petitioner is not the 'employer' under Section 2 (f) of the Payment of Gratuity Act. He laid emphasis on the expression "ultimate control over the affairs of the establishment"

² (2020) 13 SCC 285

³ (2021) 9 SCC 657

to contend that the test to determine if a person is employer or not, is his ultimate control over the affairs of the establishment and not over the employee.

33. Learned counsel for the petitioner next submitted that in view of Section 116AA of the Andhra Pradesh Cooperative Societies Act 1964 and Rule 72 (3) of the Rules 1964, after the 2nd respondent was allotted to 3rd respondent society, the 3rd respondent would be the employer of the 2nd respondent and not the petitioner.

34. To consider the aforesaid submissions, it is relevant to refer Section 2(e), 2(f) and 2(s) of the Payment of Gratuity Act 1972, which define the expressions 'employee', 'employer', and 'wages' respectively, which read as under:

“S.2: Payment of Gratuity Act, 1972 Section: 2 Definitions. “ In this Act, unless the context otherwise requires,--

“2(e) "employee" means any person (other than an apprentice) employed on wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

2(f) "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop –

(i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive office of the local authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;

2(s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.”

35. A perusal of the definition of 'employer' under Section 2 (f) of the Payment of Gratuity Act shows that in cases not covered under clause (i) or (ii), the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oil field, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person would fall within the definition of 'employer'.

36. Much emphasis was laid by the learned counsel for the petitioner on the expression “ultimate control over the affairs of the establishment” to contend that on allocation of the 3rd respondent to the 2nd respondent, the petitioner was not having any control over the affairs of the 3rd respondent.

37. At this stage, it would be relevant to refer Section 116A of the Andhra Pradesh Cooperative Societies Act 1964.

38. Section 116A of the Andhra Pradesh Cooperative Societies Act 1964 provides as under:

“116-A. Constitution of common cadre of Employees for certain Societies: - (1) Notwithstanding anything in this Act, the Registrar shall have power to constitute a common cadre for the following posts, namely:- (a) Co-operative Banks:-

(i) General Managers of Co-operative Central Banks and Deputy General Managers of Apex Bank,

(ii) Deputy Managers of Co-operative Central Banks and Assistant General Managers of Andhra Pradesh State Co-operative Bank.

(b) Andhra Pradesh Co-operative Dairy Development Federation:-

(i) Executive Director, Director (Operation), Director (Planning and Development), Director (Civil), Director (Finance and Accounts) :

(ii) General Manager, Joint Director, Chief Quality Control Officer, Research Officer, Chief Dairy Economist ;

(iii) Deputy Director, Cost Accounts Officer, Senior Accounts Officer, Senior Dairy Engineer, Executive Engineer (Civil), Plant Manager, Production Manager, Deputy Director (Stores) ; Deputy Director (Public Relations);

(iv) Assistant Director, Accounts Officer, Personnel Manager, Manager Grade-I, Dairy Manager, Deputy Material Manager, Dairy Economist, Works Manager;

(v) Manager Grade-II, Assistant Dairy Manager, Assistant Office Manager, Junior Engineers (Mechanical), (Civil and Electrical), Assistant Accounts Officer ;

(c) Spinning Mills:-

(i) Managing Director, Mill Manager ;

(ii) Spinning Master ;

(iii) Deputy Spinning Master ;

(iv) Assistant Spinning Master ;

(v) Supervisor ;

(vi) Electrical Engineer ;

(vii) Electrical Supervisor ;

(viii) Chief Accounts Officer and Accountant.

(d) Sugar Factories:-

(i) Chief Engineer ;

(ii) Chief Chemist ;

(iii) Chief Agricultural Officer ;

(iv) Chief Accounts Officer ;

(v) Administrative Officer ;

(vi) Labour Welfare Officer.

(2) The classification and methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the officers specified in sub-section (1) shall be such as may be provided by regulations to be framed by the Registrar.]”

39. The Government of India formulated a program under which Half a Million Jobs were to be provided during the year 1973-74 to the educated unemployed. A Circular

vide Rc.No.55489/73-C2(b), dated 21.07.1973 was issued on the subject of Cooperative Credit-Constitution of common cadres for the paid employees of Agricultural Cooperative Credit Societies, to make the societies viable to provide credit for agricultural production and to better their working. It began with creation of a common cadre for the paid secretaries to the primary agricultural credit cooperative societies.

40. The Circular dated 21.07.1973 annexed to the writ petition as P5, reads as under:

“Rc.No.55489/73-C2(b) Dated: 21.7.1973

Sub: Cooperative Credit – Constitution of common cadre for the paid employee of Agricultural Cooperative credit societies – Reg.

All Collectors (Coopn) are aware that the Cooperative Credit at the primary level is weak because of the existence of large number of small and defunct societies at the primary level.

2. For some time past, efforts were being made to make the societies viable to provide credit for agricultural production by increasing their loaning business to the required level, but the results are not very promising. In the absence of paid secretaries, the Cooperative credit societies, in most of the cases, have not been functioning on proper lines and not able to attain viable status within the time limit fixed. Unless the agricultural credit societies come up to the expected level and provide credit to agriculturists for augmenting agricultural production, the cooperative credit sector will not be fulfilling its objective.

3. Even though there are a number of trained persons available, the cooperatives are not able to absorb them, mostly on account of their weak financial position and the consequent inability to meet the cost of the paid secretaries. The Government of India have recently formulated a programme under which Half a million jobs would be provided during the year 1973-74 to the educated unemployed. Under this programme it is proposed to create employment opportunities to 2000 persons who have undergone cooperative training but could not get employment so far, at an estimated cost of Rs.36 lakhs.

4. The scheme envisages payment of subsidies to cooperative credit societies, both viable and potentially viable other than those situated in the Small Farmers Development Agency and Marginal Farmers and Agricultural Labourers areas and those ceded to commercial banks. The quantum of subsidy is Rs.150/- per month per society for a period of one year in respect of the qualified paid secretaries to be selected and posted in the societies. After the expiry of this period, the societies should be in a position to meet the cost of the paid secretaries on a permanent basis.

5. Under Section 116 of the A.P.Coop.Societies Act 7 of 1964 there is a provision for creation of common cadres for various categories of employees of coop institutions with a view to better their working. To begin with a common cadre has been created for the paid secretaries of the primary agricultural credit coop societies and separate appointment committees have been constituted for the societies in the area of each of the coop.central banks to enable them to exercise the power of appointment, transfer and disciplinary action. In respect of the paid secretaries of the Agricultural Credit Coop. Societies, necessary orders in this behalf are being communicated in the Registrar’s proceedings Rc.No.55489/73-C2, dt.12.7.1973.

6. The Appointment committee will attend to, among others, the following items of work.

- i. Ascertain the particulars of trained but unemployed personnel available in the bank area.
- ii. Assessment of the viable and potentially viable societies in the area which have not appointed the qualified and trained persons as paid secretaries and assessment of employment potential in the area.
- iii. Recruitment of qualified and cooperative trained but unemployed personnel as paid secretaries and allotment of paid secretaries to the societies concerned.

- iv. Periodical review of the work of the paid-secretaries.
 - v. Recommending the quantum of subsidy in respect of each society and arranging prompt release of subsidy to the grantee societies, watching utilization of subsidy by the institutions and also prompt submission of utilization certificates, printed receipts etc., by the institutions.
 - vi. Ensuring absorption of paid secretaries on permanent basis.
7. The scheme should be confined to Primary Agricultural Credit Societies which were classified as Viable societies and potentially viable societies and other societies the permission of the Registrar and for which a concrete programme to bring them to viable status within a period of 3 years on phased manner had been drawn up and is under implementation. The above societies affiliated to the cooperative Central banks shall be eligible for subsidy under the scheme.
8. Targets should be prescribed for the select societies in respect of enrollment of members collection of share capital, deposits, issue of loans and non-credit business etc. The progress made in achievement of targets in respect of each society should be watched and reviewed periodically by the Appointment committee and also the Divisional Coop.Officers concerned.
9. The Appointment committee shall be responsible to administer the scheme under the overall supervision of Andhra Pradesh State Cooperative Bank and the Registrar.
10. The subsidy sanctioned under the scheme will be placed at the disposal of the Andhra Pradesh State Cooperative Bank Ltd., Hyderabad and the Andhra Pradesh State Coop.Bank Ltd., Hyderabad will release subsidy to the individual (select) societies either directly or through Coop. Central Banks concerned on specific recommendation of the Appointment committee.
11. For the purpose of recruitment, the Appointment committee should call for the lists of candidates from the Employment Exchange and select the candidates after conducting a written examination and interviewing them.
12. In all cases of recruitment, undertaking should be obtained from the candidates that they would serve the institutions for not less than 3 years. 13. The following among others may be the duties and responsibilities of the paid secretaries in the societies:
- i. He shall be the officer to sue or be sued on behalf of the society. ii. He shall be responsible for the maintenance and custody of all books of accounts and other records pertaining to the society.
 - iii. He shall be responsible for enrollment of all agricultural families in the area of operations of the society as members of the society and for providing services to all members in proper time.
 - iv. He shall receive all moneys and other securities and issue receipts to them. At the end of each day's transactions he shall render an account of the amounts received and spent and handover the cash balance and securities to the President/Treasurer of the society after obtaining his signature in the cash book maintained for the purpose
 - v. He shall be responsible for arranging the remittance of cash balance over and above Rs.25/- on any day in the cooperative central bank.]
 - vi. He shall have power to issue expenditure not exceeding Rs.10/- on cash on contingent and other expenses subject to the budget allotment. The particulars of expenditure shall be placed before the Board of Directors.
 - vii. He shall be responsible for the maintenance of necessary registers for the applications for membership and for loan applications received in the society and place them before the board of directors with his recommendation in proper time.

viii. He shall be responsible for preparing credit limit applications and applications in proper time and present them to the cooperative central bank. ix. He shall be responsible for proper disbursement of loans as per loan sanction orders and for a seeing to the proper utilization of the loans by the members of the societies by doing periodical checks.

x. He shall be responsible to collect dues from members of the societies on the due dates by keeping himself in touch with the loanees at frequent intervals. xi. He shall be responsible for ensuring that the society undertakes non-credit activities by obtaining indents from the members, subject to the regulations to be framed by the Board of directors for the purpose.

xii. He shall be responsible for making available the records and other properties of the society to the Auditors and Inspecting staff at all reasonable time. xiii. He shall be responsible to see to the timely rectification of defects pointed out in audit and periodical inspection and to send necessary rectification reports.

xiv. He shall be responsible to see that the society work on profit by drawing up careful plan of work.

xv. He shall be responsible for sending all returns required of the society to the coop.central banks and the cooperative department.

The above duties and responsibilities should be made clear to the paid secretaries at the time of recruitment itself. The societies concerned may be advised to adopt necessary amendments to their by laws incorporating the above provisions.]

14. All District Collectors (Cooperation) are requested to see that the appointment committees met very urgently and take action for requirement of paid secretaries for the primary agricultural credit coop. societies on the lines indicated above. The scheme shall be implemented with effect from 1.7.73. As the full committee has not been constituted yet, the meetings of the committees may be convened by District Cooperative officers or the Divisional Coop. Officers as the case may be. In the case of all cooperative central banks the Chief Executive Officer-cum-Development officers have been nominated as members of the committees. In case of the cooperative central banks the posts of the Chief Executive officers are vacant officers looking after the duties of the Chief Executive Officer-cum-Development officers will be on the committee.

15. The total recruitment should be limited to 2000 paid Secretaries for the entire State. Therefore, the total number of societies selected should have to be limited in the area of each cooperative central bank. The number of paid secretaries to be allotted to each cooperative central bank will be decided by the Registrar after the particulars of viable and potentially viable societies where paid secretaries are to be appointed are recommended by the Registrar from the committee. While selecting societies care should be taken to see that viable and potentially viable societies which have not been ceded to commercial banks or are not covered by the small farmers development Agency and Marginal farmers and agricultural labourers agencies, and which have adequate potential for development are given preference recording definite reasons in each case. The collectors are requested to arrange to send the number of viable and potentially viable societies where paid secretaries are to be appointed along with the number of trained candidates available as per the interviews conducted before 31.7.1973.

16. Regulations regarding the service conditions of employees and other matters not covered by the regulations appended to the Registrar's proceedings referred to above will be communicated separately.

17. All Collectors (Coop) are requested to acknowledge receipt of this circular and to ensure successful implementation of the cases which contemplates strengthening of the Cooperative Credit structure and at the same time solve un-employment problem to the expected extent.”

41. From perusal of the Circular dated 21.07.1973, reproduced above, it is evident that a common cadre was created for the paid secretaries of the primary agricultural credit cooperative societies and separate appointment committee has been constituted for the societies in the area of each of the cooperative central banks to enable them to exercise the power of appointment, transfer and disciplinary action. The appointment committee was assigned the works under para-6, which included recruitment of qualified and cooperative trained but unemployed personnel as paid secretaries and allotment of paid secretaries to the societies concerned, the periodical review of the work of the paid secretaries and also ensuring the absorption of paid secretaries on permanent basis. From para-7 of the Circular, it is further evident that the primary agricultural credit societies were affiliated to the cooperative central banks to be eligible for subsidy under the scheme. The release of subsidy to the selected societies was either to be directly or through the cooperative central banks on the specific recommendations of the appointment committee. In the case of all cooperative central banks, the Chief Executive Officer-cum-Development Officers were nominated as members of the committees, and in case such post was vacant, the officers looking after the duties of the Chief Executive Officer-cum-Development Officers were to be on the committee in terms of para-14 of the Circular. Further, the total number of secretaries selected was to be limited in the area of each cooperative central bank and number of paid secretaries to be allotted to each cooperative central bank was to be decided by the Registrar. The duties and responsibilities of the paid secretaries, in terms of para-13 of the Circular also included, responsibility for sending all returns required of the societies to the cooperative central banks and cooperative departments.

42. In view of the Circular and in particular the terms and conditions thereof, as highlighted in paragraph-41, it cannot be said that the petitioner was only a member of the appointment committee and had no ultimate control over the affairs of the primary agricultural credit societies attached to the petitioner within its area.

43. The Andhra Pradesh State Legislature by way of Act No.21 of 1985 w.e.f. 22.04.1985 substituted present Section 116-A & 116AA for original Section 116-A. By substituted Section 116AA, the common cadre for all the categories of employees, other than those specified in substituted Section 116A of the Act, constituted before the commencement of the Andhra Pradesh Cooperative Societies (Amendment) Act 1985, and existing at such commencement, were abolished. The Registrar was accordingly empowered to allot, subject to such rules, as made in that behalf, the employees included in the cadre so abolished, to PACS.

44. Section 116AA, as substituted, reads as under:

“116AA. Abolition of Centralised services for certain categories of employees – The common cadre for all categories of employees other than those specified in Section 116-A, constituted before the commencement of the Andhra Pradesh Co-operative Societies (Amendment) Act, 1985 and existing at such commencement shall stand abolished with effect on and from the commencement, and upon such abolition, it shall be lawful for the Registrar, to allot, subject to such rules as may be made in this behalf, the employees included in the cadre so abolished to such Primary Agricultural Credit Societies as he may deem fit:

Provided that until they are allotted as aforesaid they shall continue in the posts in which they are working at the commencement of the said Act.”

45. Rule 72 of the Andhra Pradesh Cooperative Societies Rules 1964 (for short ‘the Rules 1964’) was added by G.O.Ms.No.454 (Co-op.IV) dated 13.09.1985.

46. Rule 72 of the Rules 1964 reads as under:

“72. Guidelines to allot decaderised Secretaries to the Societies:— (1) The Societies (Primary Agricultural Co-operative Societies, Large - Sized Co operative Societies/Rural Banks and Multi-purpose Co-operative Societies) shall for the purpose of allotment of the Secretaries, consequent to the abolition of the common cadre, be categorised as follows:—

- (i) Societies having business of (Loan outstanding) more than rupees ten lakhs.
- (ii) Societies having business of (Loan outstanding) between rupees five to ten lakhs.
- (iii) Societies having business of (Loan outstanding) between rupees three and five lakhs.
- (iv) Societies having business of (Loan outstanding) less than rupees three lakhs.

Note:— Members Loan outstanding as at the end of the preceding Co operative Year shall be taken into account.

(2) The allotment of the decaderised Secretaries to the Societies shall be regulated, as follows:—

(a) Each candidate (Secretary) shall indicate to the concerned Co-operative Central Bank his/her choice for allotment to any three societies in the order of preference outside the revenue mandal within which the village of his/her nativity falls, within a period of thirty days from the date on which this rule comes into force.

(b) Candidates with greater experience and possessing higher qualifications (being more than the minimum prescribed, for the posts of Cadre Secretaries) shall, as far as possible, be considered for allotment to any society under category No. (1) and the case of others, shall be considered for allotment to other categories of societies with reference to their respective length of service in the abolished cadre and qualifications:

[Provided that a person who passed Matriculation with five years of experience, or a person who passed Intermediate Examination with three years experience as Secretary of the Primary Agriculture Credit Society, shall be treated as equal to a graduate.]

(c) The allotments referred to in Clause. (a) and (b) shall be made by the Registrar.

(3) (a) The Secretary on allotment to a Society, shall be deemed to be the employee of that society and shall be entitled to receive pay and allowances as may be fixed from the funds of the said society.

(b) The service conditions of the Secretaries working in the societies shall be governed by such service regulations as may be framed by the Registrar for adoption by the Societies.

(4) Subject to the disciplinary procedure laid down in the Service Regulations as may be issued by the Registrar of Co-operative Societies and to be adopted by the Societies, the society shall exercise disciplinary control over the Secretary.

Provided that, the disciplinary proceedings if any pending on the date of abolition of the common cadre shall be conducted against the concerned Secretary by the Society to which he/she stands allotted in accordance with such service Regulations.

[(5) Notwithstanding anything contained in sub-rules (1) to (4), wherever Secretaries, who have been working from 22.4.1985 and who are not allotted for any reason whatsoever, to the Primary Agricultural Co-operative Societies as per the guidelines laid down in sub-rules (1) and (2) such Secretaries shall be deemed to have been allotted to the Primary Agricultural Co-operative Societies in which they are working on the date of issue of this notification and shall be governed as per the provisions of sub-rules (3) and (4).

Provided that the deemed allotment does not confer any legitimacy to those who are continuing after committing irregularities and that they could still be made accountable for deeds done in other societies.]”

47. It is undisputed that the 2nd respondent was appointed as paid secretary by the Chairman, Appointment Committee for the area of Eluru Cooperative Central Bank Limited, Eluru in the year 1973 under the aforesaid provisions. The petitioner is the District Cooperative Central Bank Limited. The order of appointment, was by the Chairman, Appointment Committee, as per the Circular in Rc.No.55489/73-C2(b), dated 21.07.1973, and the 2nd respondent worked in different PACSs including Cooperative Central Bank Central Office, Eluru up to 04.06.1985 and on 04.06.1985 the General Manager of the Cooperative Central Bank Limited transferred the 2nd respondent to the 3rd respondent from where the 2nd respondent retired on 31.01.2001. In this respect, various orders of the Chairman, Appointment Committee for the area of Eluru Cooperative Central Bank Limited, Eluru, the transfer orders and orders of posting by the General Manager, Cooperative Central Bank Limited, Eluru mentioned above and marked as Exs.A1 to A8 before the Authority were filed. Those documents have not been disputed by the petitioner neither before the Controlling Authority nor in the present writ petition.

48. Considering the contents of the Circular dated 21.07.1973, as referred to above in detail and the documents Exs.A1 to A8 as discussed in the order of Controlling Authority, it cannot be said that the petitioner did not have ultimate control over the affairs of the establishment where the 2nd respondent was appointed and was transferred from time to time.

49. The Controlling Authority has recorded finding that the petitioner is the employer which is based on consideration of the available evidence on record Exs.A1 to A8. No evidence was led before the Controlling Authority by the petitioner neither oral nor documentary in support of the plea taken before the Authority. The finding on relationship of employer and employee is a finding of fact and being based on evidence on record, which could not be shown to be suffering from any perversity or any other infirmity on such other permissible grounds, this Court is not inclined to interfere with such finding of fact in the exercise of writ jurisdiction.

50. In ***A.P.Co-op Central Agril.Dev.Bank Ltd.*** (supra) upon which the learned counsel for the petitioner placed reliance with respect to the expression “ultimate control over the affairs of the establishment”, this Court observed that in the definition of the expression ‘employer’ under Section 2 (14) of the Payment of Bonus Act, the employer or the authority which has ultimate control over the affairs of the establishment and not the control over the employees, shall be the employer as the definition does not indicate that person exercising control over the employees will be treated as an employer.

51. The aforesaid judgment is of no help to the petitioner inasmuch as from the scheme of appointment of paid secretaries under the Circular as also in the light of the definition of Section 2 (f) of the Payment of Gratuity Act, and Exs.A1 to A8, this Court has held above that it cannot be said that the petitioner had no ultimate control over the affairs of the primary agricultural cooperative societies to which the 2nd respondent was appointed and transferred.

52. Now the Court proceeds to consider the submission of the petitioner’s counsel based on Rule 72 (3) of the Rules 1964.

53. Rule 72 (3) (a) (b) of the Rules 1964, provides that the Secretary on allotment to a society shall be deemed to be the employee of that society i.e. the society allotted on abolition of common cadre of paid secretary, and shall be entitled to receive pay

and allowances as may be fixed, from the funds of the society allotted to him and his service conditions shall be governed by such service regulations as may be framed by the Registrar for adoption of the societies.

54. The deeming provision under Rule 72 (3) of the Andhra Pradesh Cooperative Societies Rules 1964 is for the purposes of the Andhra Pradesh Cooperative Societies Act 1964 and that too for a limited purpose as mentioned in Rule 72 (3) itself. Rule 72 (3) of the Rules 1964 does not deal with the subject of gratuity for which there is a central legislation, Payment of Gratuity Act 1972, which is a complete Code. It defines 'employer' and 'employee'. Rule 72 (3) of Andhra Pradesh Cooperative Societies Rules 1964 cannot be pressed to determine the meaning of 'employer' contrary to Sec.2(f) of the Payment of Gratuity Act 1972.

55. Section 14 of the Payment of Gratuity Act 1972 read as under:

"14. Act to override other enactments, etc.—The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act".

56. In view of Section 14 of the Payment of Gratuity Act 1972, the scope of Section 2(f) cannot be curtailed by Rule 72(3) of the Rules 1964.

57. There is another aspect of the matter which has rightly been considered by the Controlling Authority in its judgment. The Controlling Authority held that if it was accepted that the 2nd respondent is not the employee of the petitioner and the petitioner is not the employer of the 2nd respondent, then the services rendered by the 2nd respondent from 1973 to 1990 shall have to be ignored for the purposes of calculation of the amount of gratuity under the Payment of Gratuity Act.

58. In terms of Section 4(1) of the Payment of Gratuity Act 1972 gratuity shall be payable to an employee in the eventualities referred to therein if he had rendered continuous service for not less than five years. Explanation to Section 4(2) inter alia states that the gratuity shall be payable @ 15 days' wages for every completed year of service or part thereof in excess of six months. Explanation to Section 4(2) lays down how the gratuity is to be calculated, while Section 4(3) stipulates that the amount of gratuity payable to an employee shall not exceed certain limit and thus puts a cap on the amount payable towards gratuity. So holding that only 3rd respondent is the employer would mean reducing the years of service of the 2nd respondent and depriving him the amount of gratuity as per Section 4 of the Act 1972.

59. This Court is therefore of the view that if the submission of the petitioner's counsel is accepted that on allotment of the 3rd respondent society, the said society became the employer of the 2nd respondent, then the 2nd respondent would be entitled for the payment of gratuity only against the 3rd respondent under the Act which may be for a shorter period than the period the 2nd respondent is entitled under Payment of Gratuity Act, and thus the 2nd respondent would be deprived of certain amount of gratuity to his detriment for the period with effect from his appointment given in 1973 upto the date of allotment of 3rd respondent PACS in the year 1990. Such a view would be contrary to the specific provisions of as also of the object of the Payment of Gratuity Act.

60. The Payment of Gratuity Act was enacted in the year 1972 to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shop or other establishments and for matters

connected therewith and incidental thereto. It is a piece of social welfare legislation and deals with the payment of gratuity which is a kind of retiral benefit like pension, provident fund etc. Gratuity in its etymological sense is a gift, especially for services rendered, or return for favours received. The provisions contained in the Act are in the nature of social security measures to wage-earning population in industries, factories and establishments. The main purpose and concept of gratuity is to help the workman after retirement, whether retirement is a result of rules of superannuation or physical disablement or impairment of vital part of the body or on death to the nominee.

61. In *Beed District Central Coop. Bank Ltd. v. State of Maharashtra*⁴ the Hon'ble Apex Court held that the Payment of Gratuity Act is a beneficial statute. When two views are possible, having regard to the purpose the Act seeks to achieve being a social welfare legislation, it may be construed in favour of the workman. In *M.C. Chamaraju v. Hind Nippon Rural Industrial (P) Ltd.*⁵ the Hon'ble Apex Court held that the Payment of Gratuity Act has been enacted with a view to grant benefit to workers, a "weaker section" in the industrial adjudicatory process. In interpreting the provisions of such beneficial legislation therefore liberal view should be taken. In *Poonam Devi v. Oriental Insurance Co. Ltd.*⁶ where the Workmen's Compensation Act, 1923 (now christened as "the Employee's Compensation Act, 1923") was involved, the Hon'ble Apex Court held that it was a piece of socially beneficial legislation. The provisions will therefore have to be interpreted in a manner to advance the purpose of the legislation, rather than to stultify it.

62. In *Meeta Sahai v. State of Bihar*⁷ the Hon'ble Apex Court held that it is the responsibility of the Courts to interpret the text in a manner which eliminates any element of hardship, inconvenience, injustice, absurdity or anomaly. Legislation must further its objectives and not create any confusion or friction in the system. If the ordinary meaning of the text of such law is non-conducive for the objects sought to be achieved, it must be interpreted accordingly to remedy such deficiency. The Hon'ble Apex Court reiterated that it may be necessary to resort to purposive interpretation of the provisions of the Statute in the light of its objectives. In *Hira Singh v. Union of India*⁸ referring to its earlier judgment in the case of Directorate of Enforcement v. Deepak Mahajan {(1994) 3 SCC 440} the Hon'ble Apex Court observed that every law is designed to further ends of justice but not to frustrate on the mere technicalities. It further observed that to winch up the legislative intent, it is permissible for Courts to take into account the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane. The Hon'ble Apex Court further observed that in given circumstances, it is permissible for Courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile.

⁴ (2006) 8 SCC 514

⁵ (2007) 8 SCC 501

⁶ (2020) 4 SCC 55

⁷ (2019) 20 SCC 17

⁸ (2020) 20 SCC 272

63. Recently, in *Franklin Templeton Trustee Services (P) Ltd. v. Amruta Garg*⁹ also the Hon'ble Apex Court held that the legislative intent is gathered not by restricting it to the language of the provision, rather in the light of the object and purpose of the provision and the legislation. It has been emphasized that the Courts do lean towards a pragmatic and purposive interpretation as there is an assumption that the draftsmen legislate to bring about a functional and working result.

64. The submission of the learned counsel for the petitioner that the 2nd respondent is not the employee within the meaning of Section 2(e) of the Act 1972 based on Rule 72(3) of the Rules with respect to liability for payment of salary/wages to the 2nd respondent, is also unsustainable and is rejected for the same reasons as discussed above.

65. On point No.ii, it is held that there is relationship of employer and employee between the petitioner and the 2nd respondent under the Payment of Gratuity Act 1972.

Point No.iii:

66. It is further apt to refer Section 13 (2) of the General Clauses Act, 1897 reads as under:

“13(2) words in the singular shall include the plural, and vice versa.”

67. In *Brigade Enterprises Ltd. v. Anil Kumar Virmani*¹⁰ the Hon'ble Apex Court held that under Section 13 (2) of the General Clauses Act, 1897, words in the singular shall include the plural and vice versa in all Central Acts and Regulations, unless there is anything repugnant in the subject or context.

68. This Court does not find anything in the Payment of Gratuity Act, repugnant in the subject or context of Section 2(f) to hold that the expression 'employer' used, singularly, will not include the plural i.e. 'employers'.

69. This Court is of the considered view that the expression 'employer' in Section 2(f) of the Payment of Gratuity Act read with Section 13 (2) of the General Clauses Act, 1897, would include 'employers'.

70. Thus considered, I do not find any illegality in the order passed by the Controlling Authority, directing the petitioner jointly and severally for payment of the amount of gratuity to the 2nd respondent.

71. In the result, the Writ Petition lacks merit and is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

72. As none has appeared on behalf of the 2nd respondent, let a copy of this judgment be sent to the 1st respondent by the Registry for further action as per law under the Payment of Gratuity Act.

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⁹ (2021) 9 SCC 606

¹⁰ (2022) 4 SCC 138