IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2016

Date of Reserving the Order	Date of Pronouncing the Order
05.01.2016	21.01.2016

CORAM

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

W.P.Nos.30116 to 30120 of 2013

The Managing Director (previously
the Special Officer,
The Maduranthagam Coop., Sugar Mills Ltd.,
Padalam - 603 309,
Kancheepuram District. ... Petitioner in all W.Ps.

Vs.

1.The Joint Commissioner of Labour
(Appellate Authority under the Payment
of Gratuity Act, 1972),
D.M.S., Compound, Teynampet,
Chennai - 600 006.

2.The Assistant Commissioner of Labour II,
(Controlling Authority under the Payment
of Gratuity Act, 1972),
Teynampet, Chennai - 600 018.
...1st & 2nd Respondents in all W.Ps

3.P.Pavunammal
4.R.Amsa ...3rd & 4th Respondents in W.P.No.30116/13

3.E.Perumal
4.E.Ramalingam
5.M.Nagappan
6.E.Kasthuri
7.E.Munusamy
8.M.Rajasekaran

9.K.Nithiyanandam
10.K.Jagada
11.K.Deenadayalan
12.D.Kuppusamy ...Respondents 3 to 12 in WP.30117/13

3.E.Bhavani
4.P.Chandra
5.K.Chandra ...Respondents 3 to 5 in WP.30118/13

3.K.Chitra ...3rd Respondent in WP.30119/13

3.M.Mari
4.M.Kamala
5.John Porumainathan
6.V.Govindasamy
7.E.Govindasamy
8.M.Ansar Basha
9.J.Srinivasan ... Respondents 3 to 9 in WP.30120/13

Common Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records culminating in the order of the first respondent dated 12.06.2013, made in P.G.A.Nos.9 and 10 of 2012, P.G.A.No.13 to 22 of 2012, P.G.A.No.24 to 26 of 2012, P.G.A.No.11 of 2012, P.G.A.No.27 to 33 of 2012 on the file of the first respondent herein, quash the same and consequently direct refund of the gratuity deposited by the Management to the credit of P.G.Nos.88/08 and 91/08, P.G.Nos.140, 142, 143/2008, 327, 328, 329, 330, 332 334 and 339 of 2009, P.G.Nos.87,89,90 of 2008, P.G.A.No.95 of 2008 and P.G.Nos.93, 94 of 2008 and 331, 333, 335, 336 & 337 of 2009.

For petitioner : M/s.G.Thilakavathi in all W.Ps.

For Respondents : Mr.Balan Haridas for RR3&R4 in all WPs

Mr.R.Rajeswaran Spl.G.P., for RR1&2 in all W.Ps.

C O M M O N   O R D E R

The petitioner is the Management of the Maduranthagam Cooperative Sugar Mills Ltd., and the challenge in these Writ Petitions are to orders passed by the authorities under the provisions of the Payment of Gratuity Act, 1972(hereinafter referred to as the 'Act').

2. Heard Ms.G.Thilakavathi, learned counsel appearing for the petitioner and Mr.Balan Haridas, learned counsel appearing for the respondents workmen and Mr.R.Rajeswaran, learned Special Government Pleader appearing for the respondents 1 and 2.

3. The learned counsel appearing for the petitioner submitted that some of the petitioners are legal heirs of the deceased employees and some of them are the erstwhile employees of the petitioner Management. It is the case of the petitioner that the services of those employees was initially as casual labourers and subsequently brought as permanent staff under the Staffing Pattern as Seasonal Employees of the Sugar Mill and they were serving in the said capacity till the closure of the crushing season. The petitioner Management took into consideration the circulars which were in vogue and settled the gratuity benefits to the legal heirs of the deceased employees/employees, and after a period of about four years, private respondents have made a claim before the second respondent stating that the gratuity had to be settled at the rate of 15 days wages for every completed year of service and that they are entitled for gratuity even for the period when the employee served as casual labourers.

4. The learned counsel submitted that there are broadly four types of claim made by the private respondents i.e., (i) for payment of gratuity at the rate of 15 days wages per year of service from the date of entry as causal labourers till they were brought as Seasonal Mazdoors in regular scale of pay;(ii) claim for payment of differential amount of gratuity for the period of employment as Seasonal Mazdoors i.e., gratuity at the rate of 15 days wages less gratuity paid at seven days wages; (iii) payment of gratuity till the actual date of superannuation notwithstanding the fact that the employees had been paid till the date of demise; and (iv) interest for the delayed payment.

5. The petitioner Management resisted the first claim by placing reliance on the circular issued by the Commissioner of Sugar dated 25.07.1990. However, the second respondent granted the benefit as claimed by the private respondents. The claim Nos.(ii) & (iii)were also resisted before the authority, however the Controlling Authority, the second respondent, allowed the claim in toto at the rate of 15 days wages from the date of joining as casual labourers till their demise as seasonal employees. Further, the case of the petitioner was that in terms of the circular of the Commissioner of Sugars has been declared as a Seasonal Industry and this declaration has been affirmed when it was put to challenge before this Court. Similarly the claim (iv) for interest was also resisted, yet the authority granted the relief of interest. The appeal filed by the Management to the appellate authority was also rejected and the Management is before this Court challenging the impugned orders on the grounds referred supra.

6. The case of the private respondents/legal heirs of the employees, erstwhile employees is that the case is squarely covered by the decision of the Hon'ble First Bench in the case of Madurantakkam Coop., Sugar Mills Ltd., vs. The Joint Commissioner of Labour & Ors., in W.A.No.254 of 2013, dated 11.02.2013. By placing reliance on the said decision, it is submitted that the Management is attempted to re-argue the same contention once again before this Court and this will not be permitted by this Court in the light of the fact that the petitioner Management was the appellant in the said Writ Appeal.

7. Further, it is submitted that the petitioner Management had filed another Writ Petition in W.P.No.8928 of 2008 in the case of one Mr.K.Kumar and the challenge was to the order passed by the authority under the Payment of Gratuity Act and the Writ Petition was dismissed by order dated 07.02.2012. Therefore, it is the case of the private respondents that the Management is engaging itself in vexatious litigations and the Writ Petitions are liable to be dismissed.

8. After hearing the learned counsels appearing for the parties and perusing the materials placed on record, it has to be noted that the Management had filed W.P.No.8928 of 2008 challenging an order passed by the appellate authority under the provisions of the Act in P.G.A.No.11 of 2007, concerning an employee K.Kumar. In the said case, the employee's legal heirs contended that the employee was eligible to get gratuity at the

rate of seven days for every completed year of service and the total length of service being 26 years. This claim was accepted by the competent authority and confirmed by the appellate authority. The Management challenged the order raising identical contentions as raised in this Writ Petition stating that Sugar Mill is a Seasonal Industry and the claim for Gratuity was not maintainable. Further reference was also made to the circular dated 25.07.1990, with regard to the payment of gratuity for the service rendered as NMRs/Causals. This Court after considering the factual aspects and the contentions raised by the Management dismissed the said Writ Petition. The operative portion of the order reads as follows:-

> 6.The petitioner, once again aggrieved by the said order dated 26.10.2007 filed the present writ petition. The contention now raised before this Court was that the total length of service calculated by the Appellate Authority as 26 years is erroneous. However, this court is not inclined to accept the said contention. The power of the Controlling Authority for computing gratuity is provided under Section 7(4) of the Payment of Gratuity Act. As per the said provision, if there is any dispute as to the amount of gratuity payable to an employee under this Act, the dispute shall be resolved by the Controlling Authority after due notice. In the present case, the management was aggrieved by the grant of gratuity at the rate of 15 days for every completed year of service. The workman did not file any cross appeal for enhancing the length of service. Yet, the Appellate Authority is entitled to correct the error committed by the Controlling Authority as ultimately the object of the Payment of Gratuity not is to pay gratuity on any one of the contingencies set out under Section 4(1) of the Payment of Gratuity Act.
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> 7. Considering the grave mistake made by the Controlling Authority by taking into account the length of service mentioned in the pension pay order, which has no relevance to the length of service in terms of Section 2A of the Payment of Gratuity Act and considering the fact that the Payment of Gratuity Act do not make any distinction between the casual, temporary or NMR worker while calculating the length of service, this Court do not find any grave error committed by the Appellate Authority by passing the impugned order. Ultimately, the interest of justice

must be upheld and inasmuch as the first respondent has not committed any grave error either in terms of law or in terms of fact, this Court is not inclined to entertain the writ petition. Accordingly, the Writ Petition shall stand dismissed. No costs. Consequently connected miscellaneous petition is closed.

8. In view of the dismissal of the writ petition, the third respondent is entitled to withdraw the balance amount lying in deposit before the Controlling Authority.

9. The petitioner Management had filed another Writ Petition in W.P.No.28325 of 2008, challenging the order passed by the competent authority concerning a case of a retired employee M.Mohandoss. The said Writ Petition was dismissed by order dated 07.02.2012. The petitioner Management preferred appeal in W.A.No.254 of 2013. the Hon'ble First Bench of this Court considered the submissions made and took note of the circular issued by the Commissioner of Sugar, dismissed the Writ Appeal. For better appreciation, the relevant portion of the order is quoted herein below:-

> 5. We are unable to agree with the said contention raised by the learned counsel appearing for the appellant. The proceeding dated 01.08.1993 of the Commissioner of Sugar addressed to the Chief Executive of Coop., Sugar Mills clearly spells out that 'seasonal' employees during their entire period of service shall be paid 15 days as gratuity, provided they are employed for more than 240 days in each year as per provision to section 4 of the Payment of Gratuities Act, 1972. It further reads that an employee of a seasonal establishment shall be deemed to be in continuous service if he has actually worked for not less than seventy five percent of the number of days on which establishment was in operation during the year.....
>
> 6. However, the learned counsel appearing for the appellant contended that the third respondent is only a casual labour and not a permanent seasonal employee and he has also failed to establish the same, either before the authorities or before the learned Single Judge of this Court. This contention is liable to be rejected, since the appellant management which has to maintain service

records of the employees, could have produced the same to establish that the third respondent is a 'casual' labour in the appellant sugar mill......

10. The endeavour of the learned counsel appearing for the petitioner Management is to convince this Court to state that the circular dated 20.08.1997 of the Director of Sugar was not taken into consideration. However, it appears that the said circular was not placed for consideration before the competent authority or the appellate authority and the authority took note of the circular dated 31.07.1991 issued by the Commissioner of Sugar. Furthermore, in the grounds of appeal filed by the petitioner Management before the first respondent/appellate authority, the petitioner did not place any reliance on the circular dated 20.08.1997, which is sought to be relied on before this Court during the course of argument. Therefore, at this stage of the matter, the question of entertaining a challenge to the impugned order based on a document, which were never placed before the lower authority, cannot be entertained. In any event, this Court is fully convinced that the issue involved in this Writ Petition is squarely covered by the decision of the Hon'ble First Bench of this Court in the case of Madurantakkam Coop., Sugar Mills Ltd., vs. The Joint Commissioner of Labour & Ors., in W.A.No.254 of 2013 and the order in W.P.No.8928 of 2008, dated 07.02.2012 and accordingly, the Writ Petitions fail and they are dismissed.

11. Pursuant to the interim orders, dated 19.11.2014, the private respondents have been permitted to withdraw 25% of the amount already deposited by the petitioner. In the light of the fact that the Writ Petitions are dismissed by this Court, the private respondents in all these Writ Petitions are entitled to withdraw the balance amount as computed by the competent authority lying in deposit. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Commissioner of Labour
   (Appellate Authority under the Payment
   of Gratuity Act, 1972),
   D.M.S., Compound, Teynampet,
   Chennai - 600 006.

2. The Assistant Commissioner of Labour II,
   (Controlling Authority under the Payment
   of Gratuity Act, 1972),
   Teynampet, Chennai - 600 018.

+1cc to Mr.Balan Haridas, Advocate, S.R.No.3589
+1cc to M/s.G.Thilakavathi, Advocate, S.R.No.3690
+1cc to the Government Pleader, S.R.No.3747

W.P.Nos.30116 to 30120 of 2013

PUR(CO)
CA(01/02/2016)