

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.03.2016

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

WP.Nos.23127 to 23129 of 2015 &
MP.Nos.1 to 1 & 2 to 2 of 2015 &
W.P.Nos.25088 to 25091 of 2015 &
M.P.Nos.2 to 2 of 2015 &
W.P.Nos.25707 & 25732 of 2015 &
M.P.Nos.2 & 2 of 2015

Union of India,
Rep by Administrative Officer-III,
Heavy water plant,
Department of Atomic Energy,
Government of India,
Tuticorin-628 007. ... Petitioner in all WPs.

Versus

- 1.The Regional Labour Commissioner(Central) Cum
Appellate Authority Under the payment of Gratuity Act1972,
Office of the Regional Labour Commissioner,
No.26, Haddows Road,
Shastri Bhavan,
Chennai-600 006.
- 2.The Assistant Labour Commissioner(Central) and
Controlling Authority Under the payment of Gratuity Act 1972,
Ministry of Labour & Employment,
Government of India,
New No.5, Old No.1-A, (IInd Floor),
Lady Doak College Road,
Chinna Chokkikulam,
Madurai-625 002.

1st & 2nd respondents in all WPs.

- 3.S.Swamy ... 3rd respondent in W.P.No.23127
of 2015
- 4.K.Muthusamy ...3rd respondent in W.P.No.23128
of 2015
- 5.C.Palraj ...3rd respondent in W.P.No.23129
of 2015
- 6.P.Servaikaran ...3rd respondent in W.P.No.25088
of 2015

7.S.Sudalayandi	..3rd respondent in W.P.No.25089 of 2015
8.K.Sathianesan	..3rd respondent in W.P.No.25090 of 2015
9.M.Chendurpandi	..3rd respondent in W.P.No.25091 of 2015
10.R.Velapushpam	..3rd respondent in W.P.No.25707 of 2015
11.K.Arumugam	..3rd respondent in W.P.No.25732 of 2015

Writ petitions are filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus:-

(i) to call for the record relating to the order passed by the first respondent herein in GA No.4 of 2014 dated 20.04.2015 and the order of the second respondent in GA No.13 of 2011 dated 31.05.2013 quash the same and further direct the second respondent herein to refund of Rs.41,652/- deposited by the petitioner. (W.P.No.23127 of 2015).

(ii) to call for the record relating to the order passed by the first respondent herein in GA No.2 of 2014 dated 20.04.2015 and the order of the second respondent in GA No.11 of 2011 dated 30.04.2013 quash the same and further direct the second respondent herein to refund of Rs.98,165/- deposited by the petitioner. (W.P.No.23128 of 2015).

(iii) to call for the record relating to the order passed by the first respondent herein in GA No.9 of 2014 dated 20.04.2015 and the order of the second respondent in GA No.18 of 2011 dated 17.07.2013 quash the same and further direct the second respondent herein to refund of Rs.22,229/- deposited by the petitioner. (W.P.No.23129 of 2015).

(iv) to call for the record relating to the order passed by the first respondent herein in GA No.5 of 2014 dated 20.04.2015 and the order of the second respondent in GA No.14 of 2011 dated 31.05.2013 quash the same and further direct the second respondent herein to refund of Rs.12,423/- deposited by the petitioner. (W.P.No.25088 of 2015).

(v) to call for the record relating to the order passed by the first respondent herein in GA No.11 of 2014 dated 20.04.2015 and the order of the second respondent in GA No.23 of 2011 dated 17.07.2013 quash the same and further direct the second respondent herein to refund of Rs.28,000/- deposited by the petitioner. (W.P.No.25089 of 2015).

(vi) to call for the record relating to the order passed by the first respondent herein in GA No.10 of 2014 dated 20.04.2015 and the order of the second respondent in GA No.19 of 2011 dated 17.07.2013 quash the same and further direct the second respondent herein to refund of Rs.19,903/- deposited by the petitioner. (W.P.No.25090 of 2015).

(vii) to call for the record relating to the order passed by the first respondent herein in GA No.8 of 2014 dated 20.04.2015 and the order of the second respondent in GA No.17 of 2011 dated 28.06.2013 quash the same and further direct the second respondent herein to refund of Rs.1,47,317/- deposited by the petitioner. (W.P.No.25091 of 2015).

(viii) to call for the record relating to the order passed by the first respondent herein in GA No.14 of 2014 dated 20.04.2015 and the order of the second respondent in GA No.5 of 2013 dated 31.05.2013 quash the same and further direct the second respondent herein to refund of Rs.16,173/- deposited by the petitioner. (W.P.No.25707 of 2015).

(ix) to call for the record relating to the order passed by the first respondent herein in GA No.13 of 2014 dated 20.04.2015 and the order of the second respondent in GA No.25 of 2011 dated 12.08.2013 quash the same and further direct the second respondent herein to refund of Rs.98,330/- deposited by the petitioner. (W.P.No.25732 of 2015).

For Petitioner(in all WPs) : Mr.Venkataswamybabu
For RR1 & 2 (in all WPs) : Mr.V.Venkatesan, SCGSC
For R3 (in all WPs) : Mr.S.T.Varadarajulu

COMMON ORDER

Heard Mr.Venkataswamybabu, learned counsel appearing for the petitioner, Mr.V.Venkatesan, learned Senior Central Government Standing counsel appearing for the first and second respondents and Mr.S.T.Varadarajulu, learned counsel who accepts notice on behalf of the third respondent in all petitions and with their consent, the writ petitions are taken up for final disposal.

2. Learned counsel on either side agree that the issues involved in these writ petitions are squarely covered by the common order passed in W.P.Nos.23577 to 23579 of 2015 dated 29.01.2016. The said writ petitions were dismissed by the said order and the operative portion of the order reads as follows:

"..16. Furthermore, the petitioner establishment has not obtained any permission from the Government of India by invoking Section 5 of the Act.

17. In such circumstances, the mere fact is that Gratuity has been provided as per the Pension Rules will not disentitle the respondents 3 to 6 to get their Gratuity computed and paid as per the Act. It is not the case of the respondents 3 to 6 that they seek for gratuity both under the Act and as per the Pension Rules. They are claiming Gratuity under the Act and that they claim only the difference in Gratuity arising out of computation under the Act after giving credit to the Gratuity paid under the Pension Rules. Hence, for all the above reasons both the legal issues have to be necessarily answered against the petitioner.

18. The other contention raised by the learned counsel appearing for the petitioner is that the claim made by the respondents is a belated claim as the respondents 3 to 6 retired from service in the year 2007 and claim petitions had been filed in the year 2011. The application for payment of Gratuity would arise from the date on which the employee becomes eligible for the payment of Gratuity. In the instant case, prior to the retirement, Gratuity was computed in accordance with the Pension Rules and paid and thereafter, after obtaining legal advice, the respondents have moved the Controlling Authority. In terms of Rule 10 of the Payment of Gratuity (Central) Rules 1972, the employee may file an application within 90 days from the occurrence of the cause for the application and apply Form No.'N'. The application filed before the second respondent, Controlling Authority, was entertained and the Authority having been satisfied, directed the application to be taken on file. It appears that the petitioner establishment did not raise any objection before the second respondent with regard to limitation and therefore at this juncture they are not entitled to raise such plea. In any event, the respondents 3 to 6

having served for more than 35 years cannot be shut out at threshold and the applications could not have been rejected on the ground of limitation when there is no allegation of any malafide intention for belatedly approaching the Authority. Therefore, on this ground also, this Court is unable to accept the contention of the learned counsel for the petitioner.

19. The decision relied upon by the learned counsel appearing for the petitioner in the case of Pallavan Transport Corporation (Metro), Ltd., Madras and Ms. Simrose and Others arose out of slightly a different factual situation and taking note of the definition of employees as defined under Section (2) (e) of the Act, this Court held that the employee therein cannot seek for counting the service rendered by him with the Government for computation of Gratuity. However, in the instant case, the petitioner establishment has been declared as a Public Utility Service by the Government of India and fall under the purview of Section 2(n) of the Industrial Disputes Act and therefore, the petitioner establishment is an employer as contemplated under Section 2(f) of the Act.

20. For all the above reasons, the petitioner has not made out any case for interference with the impugned orders. Accordingly, the writ petitions fail and they are dismissed. As the amount computed as difference of Gratuity has already been deposited by the petitioner organisation before the second respondent, the second respondent is directed to forthwith release the amount to the respondents 3 to 6, on production of copy of this order. Consequently, connected miscellaneous petitions are closed. No costs."

Following the same, these writ petitions are dismissed and the amount computed as difference of Gratuity has already been deposited by the petitioner organisation before the second respondent, the second respondent is directed to forthwith release the amount to the respondents 3 to 11, on production of

copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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New No.5, Old No.1-A, (IInd Floor),
Lady Doak Collage Road,
Chinna Chokkikulam,
Madurai-625 002.
- +1 cc to Mr.S.T.Varadarajulu Advocate sr.20242
+1 cc to Mr.V.Venkatesan SCGSC Advocate sr.20205
+9 ccs to Mr.Venkatasamy babu Advocate sr.20564 to 20573

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