

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal Nos.950 to 954 of 2016
and CMP.Nos.12260, 12261, 12263, 12265,
12262, 12264, 12266 and 12268 of 2016

The Managing Director
previously the Special Officer
The Maduranthagam Coop-Sugar Mills Ltd.,
Padalam-603 309
Kancheepuram District

... Appellant in all WAs

Vs.

1. The Joint Commissioner of Labour
(Appellate Authority under the
Payment of Gratuity Act, 1972)
DMS Compound, Teynampet
Chennai-600006
2. The Assistant Commissioner of Labour-II
(Controlling Authority under the Payment
of Gratuity Act, 1972)
DMS compound, Teynamepet
Chennai-600 006

... Respondents 1 and 2
in all the above WAs.

- 3.P.Pavunammal
- 4.R.Amsa

... Respondents 3 and 4
in W.A.950 of 2016

- 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 W.A.951/2016

3.E.Bhavani
4.P.Chandra
5.K.Chandra

...Respondents 3 to 5 in W.A.952/2016

3.K.Chitra
3.M.Mari
4.M.Kamala
5.John Porumainathan
6.V.Govindasamy
7.E.Govindasamy
8.M.Ansar Basha
9.J.Srinivasan

...Respondent No.3 in W.A.953/2016

...Respondents 3 to 9 in W.A.954/2016

Writ Appeal filed against the order dated 21.01.2016 made in W.P.Nos.30116 to 30120 of 2013.

W.P.Nos.30116 to 30120 of 2013 : 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 1st respondent dated 12.6.2013, made in P.G.A. Nos. 9 and 10 of 2012, P.G.A. Nos. 13 to 22 of 2012, P.G.A. Nos. 24 to 26 of 2012, P.G.A. No. 11 of 2012, P.G.A. Nos. 27 to 33 of 2012 on the file of the 1st 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 respectively.

For Appellant : Mrs.G.Thilakavathi

For Respondents : Mr.P.S.Sivashanmuga Sundaran,
Special Government Pleader
for R1 and R2

Mr.Balan Haridass for R3 and R4
in W.A.No.950/2015
for R3 to R12 in W.A.951/2016
for R3 to R5 in W.A.952/2016
for R3 in W.A.953/2016
for R3 to R9 in W.A.954/2016

COMMON JUDGMENT

(Judgment of the Court was made by HULUVADI G. RAMESH, J.)

Heard Mrs.G.Thilakavathy, learned counsel appearing for the appellant, Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader appearing for respondents 1 and 2 and Mr.Balan Haridass for respondents/workmen.

2. The Writ Appeal is filed as against the order of the learned Single Judge, rejecting the writ petitions, wherein, the writ petitioner sought for Certiorarified Mandamus to quash the order passed by the 1st respondent in P.G.A.Nos.9, 10, 13 to 22, 24 to 26 of 2012, dated 12.06.2013,

3. The learned counsel for the appellant reiterated her submissions made before the learned Single Judge stating that services of the respondents/workmen 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 the said capacity till the closure of the crushing season and the Management took into consideration the circulars and settled the gratuity benefits to them.

4. The learned Single Judge, on considering the overall circumstances and the relevant materials, pointed out the the issue involved in the 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, rejected prayer sought for by the Management.

5. Even though learned counsel for the appellant insisted that the order impugned in the writ petition was passed without taking into consideration the circular dated 20.08.1997, yet, we do not find any justifiable ground to accept this plea of the appellant. The learned Single Judge, in paragraph 10 of the order had pointed out as under:-

"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 20.08.1977, 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."

6. The learned Single Judge thus taken note of the fact that the circular relied on by the learned counsel for the Management 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. However, when the Management of Sugar Mill viz., the Writ Petitioner sought to produce the same before the learned Single Judge, the learned Single Judge having exercised his discretion found that there is no scope for interference. Furthermore, we have noticed that the respondents/workmen are working in the Mill for more than 10 years and it is nothing but camouflage to give benefits and exploit the service of the workmen under the guise of casual employees. Hence, we do not appreciate the stand of the appellant in these Writ Appeals. Accordingly, the Writ Appeals are dismissed. No costs. Consequently, connected CMPs are dismissed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Joint Commissioner of Labour
(Appellate Authority under the
Payment of Gratuity Act, 1972)
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Chennai-600006
2. The Assistant Commissioner of Labour-II
(Controlling Authority under the Payment
of Gratuity Act, 1972)
DMS compound, Teynamepet,
Chennai-600 006

+1cc to Mrs.G.Thilakavathi, Advocate, S.R.No.44551
+1cc to Mr.Balan Haridass, Advocate, S.R.No.44717

W.A.Nos.950 to 954 of 2016

KJI (CO)
CA(22/08/2016)



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