

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No. 17562, 17925, 20710,
and 21535 of 2016

DATED 26TH JULY, 2016

BETWEEN

The General Manager,
South Central Railway,
Railnilayam, Secunderabad and anr

....Petitioners in all WPs

And

The Assistant Labour Commissioner,
(Central) Hyderabad & Controlling Authority
Under the Payment of Gratuity of 1972 and others

..Respondents in all WPs

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No. 17562, 17925, 20710,
and 21535 of 2016

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COMMON ORDER:

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All these Writ Petitions are filed challenging the orders passed by the original authority constituted under the Payment of Gratuity Act, 1972 on the applications filed by the second respondent in the Writ Petitions.

The Controlling Authority constituted under the Gratuity of Payment of Act, 1972 (for short 'the Act') passed the orders

directing the petitioners herein to pay respective gratuity amounts along with simple interest at 10% per annum from the date of filing the petitions till the payment of gratuity to the applicants. Against the said orders of the original authority, there is a provision of appeal under Section 7 of the Act.

The learned Counsel for the second respondent in these cases pointed out that when identical matters came up for consideration before this Court in Writ Petition No. 15659 of 2004 and Batch, a learned single Judge of this Court by common order dated 06.04.2005 disposed of the Writ Petitions with liberty to the petitioners therein to avail alternative remedy of appeal within thirty days from the date of the said order. Challenging the said order, the petitioners therein preferred Writ Appeal No.1025 of 2005, which was dismissed by a Division Bench of this Court through order dated 20.12.2006. Following the same, it appears that in some of the matters, appeals are filed and the same are pending adjudicating before the appellate authority. The learned Counsel for the second respondent further submits that these Writ Petitions are filed only to drag on the proceedings.

The learned Counsel for the petitioners submits that since an amendment was made after disposal of the batch of Writ Petitions on the earlier round of litigation, the present Writ Petitions are filed after the order of the original authority. It is made clear that with regard to the effect of amendment and seeking exemption, the original authority observed as follows:

“ As regards to exemption from the operation of the Act, the Respondents claimed that Railway Administration is exempted under Section 5 of the Act. The Applicant stated that Railways have applied for

exemption under Section 5 of the Act and to frame their own rules i.e. Railway Services Pension Rules, 1993, for payment of pension and gratuity and the same was permitted by the Government to pay pension and gratuity to their pensioners by framing their own rules. The Railway pension Rules are framed inconsistently and hence they are not valid as per the Act.

Section 5(2) of the Act empowers the appropriate Government, by notification, and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which the Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

Delhi University approached the Ministry of Labour and Employment, New Delhi, for exemption of their employees from the provisions of the Act. The Ministry of Labour and Employment, Government of India, rejected to exempt the employees of Delhi University from the provisions of the Act under Section 5 of the P.G. Act, 1972, stating that as the amount of gratuity as proposed by D.U. under CCS(Pension) Rules, 1972 read with statute 28-A of Delhi University Act, 1922 is less than the gratuity payable under PG Act 1972. The Honourable Delhi High Court dismissed the W.P.(C) No. 2467/2015 (Delhi University Vs. Subhash Chandra Chopra and others) held that statutory provisions of the Act are applicable to Delhi University.

In view of the above position, exemption under Section 5 of the Act is not applicable to the Railway Administration, as the Applicant herein received gratuity amount under the Railway Services Pension Rules, 1993, less favourable than that of the P.G. Act”

The above defence also can be considered by the

appellate authority. In view of the availability of the alternative remedy, this Court is not inclined to admit the present Writ Petitions. However, thirty days time from the date of receipt of a copy of this Court is given to the petitioners to prefer appeals, if they so choose.

The Writ Petitions are accordingly disposed of.

Miscellaneous petitions pending consideration if any in the Writ Petitions shall stand closed in consequence. No order as to costs.

JUSTICE A.RAMALINGESWARA RAO

DATED 26th JULY, 2016.
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