

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.09.2017

Pronounced on : 12.10.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
and
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU**

W.A.No.326 of 2015

1.The State of Tamil Nadu, rep. By its
Secretary to Government,
Tamil Development Culture and Religious
Endowment Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner,
Hindu Religious cum Charitable Endowment
Nungambakkam,
Chennai – 600 034.

... Appellants

-VS-

Tamil Nadu Temple's Retired Employees
Welfare Association, (Reg. No: 169/2010)
Rep. By its President C.Kandaswamy

... Respondent

PRAYER: Appeal filed under Clause 15 of the Letters Patent against the
order made in W.P.No.33936 of 2013 dated 07.04.2014 passed by the
learned Single Judge.

For Appellants : Mr.M.Maharaja
Special Govt. Pleader (H.R.&C.E.)

For Respondent : Dr.R.Gouri

JUDGMENT

M.VENUGOPAL, J.

The Appellants have focussed the instant Writ Appeal before this Court praying for passing of a Judgment by this Court to set aside the order dated 07.04.2014 in W.P.No.33936 of 2013 passed by the Learned Single Judge.

2.According to the Respondent/Association, it is a Society Registered under the provisions of Tamil Nadu Societies Registration Act (vide Registration 169/2010). The Respondent's society comprises of members, who had served in various posts in the temples of Tamil Nadu and attained superannuation.

3.The Learned Counsel for the Respondent/Association submits that the retired temple employees have filed W.P.No.33936 of 2013 praying for passing of an order by directing the Appellants to disburse the gratuity amount to the temple employees (members of the Respondent's Association) who are entitled to receive the same under the Payment of Gratuity Act, 1972.

4. Advancing her arguments, the Learned Counsel for the Respondent by placing reliance on the Full Bench Decision of this Court reported in **2013 (3) CTC 689 (between E.Gopal V. Arulmigu Dhandayuthapaniswamy Temple, Palani and two others), at special page 691 and 692**, whereby and whereunder, it is observed as follows:

“The Payment of Gratuity Act, 1972 is a self-contained and complete code by itself and its provisions impliedly exclude recourse to any other statute. Section 14 of the Payment of Gratuity Act has overriding effect over the provisions of any other enactment. It is not in dispute that the Central Act is more advantageous than that of the State Rules. In other words, the benefit availed by the employees of the Devasthanam under the State Rules is meager compared to the Gratuity payable under the Payment of Gratuity Act. Section 4(5) of the Act protects the right of the employee to receive better terms of gratuity under any award or agreement contract with the employer. The proviso to Rule 26 of the Rules provides that said Rule will not apply to any institution where the Contributory

Provident Fund Scheme is in force. By imposing a restriction, the Rules prohibit the employees enjoy the fruits of the beneficial Central Act and to that extent the Rules inconsistent with the Central Act. Therefore, we have no hesitation in holding the Rules are repugnant to the Central Act to the extent indicated above.”

5.Expatiating her submission, the Learned Counsel for the Respondent contends that as against the Judgment of the Full Bench of this Court in W.A.Nos.3825 of 2003 etc., batch, the Devasthanam preferred an Appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court, by an order dated 03.05.2013, in SLP in Petition(s) for Special Leave to Appeal (Civil)...CC.Nos.6008-6009/2013 had directed the tagging of the Civil Appeal No.897/2002 and other connected matters.

6.At this juncture, the Learned Counsel for the Respondent brings it to the notice of this Court that in Petition for Special Leave to Appeal CC.Nos.6008-6009 of 2013 [between Arulmighu Sankaranarayaswamy Devasthanam v. S.Srinivasan & others etc.] with S.L.P.(C)... CC No.8448-8449 of 2013, the Hon'ble Supreme Court had observed to the effect that

'both the counsels for the appellants made a statement that in the meanwhile, the appellants will continue to make payments to the employees as per the Payment of Gratuity Act, 1972. The appellants will make payments to the employee as and when they retire and will not drive them to go to the Payment of Gratuity Authority'.

7.The Learned Counsel for the Respondent proceeds to point out that in W.P.(MD).Nos.927 to 932 of 2010, the Learned Single Judge of the Madurai Bench of this Court on 01.08.2013 relying on the order of the Hon'ble Supreme Court dated 03.05.2013 in S.L.P.Nos.6008-6009 of 2013 had proceeded to observe that there was no stay of the order of the Full Bench of this Court reported in 2013(3) CTC 689 (supra) and the decisions squarely applies to the Writ Petitioners therein and ultimately dismissed the Writ Petitions without costs.

8.The Learned Counsel for the Respondent/Association draws the attention of this Court to the fact that the Respondent/Association submitted a detailed representation apart from making oral claims to the representation seeking to disburse their gratuity amount, since the members of the Respondent Association were not been paid with any gratuity amount. The Respondent/Association was perforced to submit a

detailed representation dated 22.07.2013 addressed to the Hon'ble Chief Minister Cell and the same was forwarded to the Respondents for necessary action.

9. That apart, the Learned Counsel for the Respondent contends that the 2nd Appellant/Commissioner, Hindu Religious cum Charitable Endowment Board, Chennai – 600 034, by means of a communication dated 26.09.2013, had intimated the Respondent/Association that it is only the employees of the Sankarankoil and Palani Temple have approached this Court and obtained orders for payment of gratuity and as such, the Respondent/Association cannot claim the benefit of the same order. Further, the 2nd Appellant had informed that there is no separate orders obtained by the Respondent/Association from the Hon'ble High Court and therefore, the gratuity cannot be disbursed to them.

10. At this stage, the Learned Counsel for the Respondent projects an argument that the Respondent/Association filed W.P.No.33936 of 2013 before this Court and the Learned Single Judge of this Court, on 07.04.2013 at para 10, had observed the following and disposed of the Writ Petition, by issuing necessary directions.

“10. Accordingly, the petitioner association is directed to make a representation enclosing the list of names and details regarding service particulars of its members, to the respondents within a period of four weeks from the date of receipt of a copy of this order and on such representation being made, the second respondent is directed to consider the same and pass appropriate orders in accordance with law and in the light of interim orders of the Hon'ble Supreme Court in SLP Civil Case Nos.6008-6009 of 2013, within a period of two weeks thereafter. It is also made clear that the members of the petitioner association can also make representations individually to the respondents. If the facts are not in dispute, the Religious Institutions should release the gratuity amount immediately. If the facts are in dispute, it is open to the aggrieved persons to approach the Authority under the Payment of Gratuity Act, 1972.”

11.Per contra, it is the submission of the Learned Special Government Pleader for Appellants that the Appellants/Respondents have preferred W.A.No.326 of 2015 before this Court as against the order dated 07.04.2014 in W.P.No.33936 of 2013 passed by the Learned Single Judge, by mainly taking a plea that the Government viz., the 1st Appellant/1st Respondent and the 2nd Appellant/2nd Respondent are not parties to the Special Leave Petition.

12.The Learned Special Government Pleader for the Appellants brings it to the notice of this Court that in Contempt Petition (C)Nos.227-228 of 2014 with Interlocutory Application No... of 2014 (Application for clarification) in Civil Appeal Nos.4507-4508 of 2013 (Gopal V. Dhanapal and others) the Hon' ble Supreme Court had modified the interim order dated 03.05.2013 by confining the same to the employees of the Arulmigu Dhandayuthapani Swamy Temple, Palani and further made it clear that the direction to make payments to the employees of the Temple as per the provisions of payment of Gratuity Act, 1972 is under orders of the Court and not on the basis of any consent or statement of the Learned Counsels and accordingly, closed the Contempt Petitions.

13.The Learned Special Government Pleader for the Appellants emphatically points out that the Learned Single Judge failed to note that the S.L.P. is pending and no final orders were passed and therefore, any action taken in similar issues would create complication.

14.It is to be noted that in S.L.P.(C).Nos.6008-6009 of 2013 (Arulmighu Sankaranarayaswamy Devasthanam V. S.Srinivasan and others ets.), the Hon'ble Supreme Court on 05.04.2013 had passed the following order:

“Heard Mr.V.Prabhakar, learned counsel for the petitioner. Mr.Prabhakar states that the requisite payment will be made to the respondent concerned within a period of four weeks from today. Let the matter be placed thereafter.”

15.Further, the Hon'ble Supreme Court, in the aforesaid Special Leave to Appeal CC Nos.6008 – 6009 of 2013, on 03.05.2013, had observed the following:

“Learned counsel for the parties point out that the issue as to whether a charitable trust is an industry has been referred to a larger Bench by this Court's

order in Civil Appeal no.897 of 2002: State of U.P Vs. Jai Bir Singh, and other connected matters, which is reported in (2005) 5 SCC 1. In view thereof, leave is granted in these cases.

To be tagged with Civil Appeal No.897/2002 and other connected matters.

Both the counsel for the appellants make a statement that in the meanwhile, the appellants will continue to make payments to the employees as per the Payment of Gratuity Act, 1972. The appellants will make payments to the employees as and when they retire and will not drive them to go to the Payment of Gratuity Authority.”

16.It transpires that in Contempt Petition (C) Nos.227-228 of 2014 with Interlocutory Application No... of 2014 (Application for clarification) in Civil Appeal Nos.4507-4508 of 2013 (between Gopal V.Dhanapal and others), the Hon'ble Supreme Court on 01.08.2014 had passed the following order:

“Upon hearing the learned counsels for the

parties, we modify the interim order dated 03.05.2013 by confining the same to the employees of the Arulmigu Dhandayuthapani Swamy Temple, Palani. We also make it clear that the direction to make payments to the employees of the Temple as per the provisions of Payment of Gratuity Act, 1972 is under orders of the Court and not on the basis of any consent or statement of the learned counsels.

In view of the modification of the interim order passed by this Court, I.A., for clarification stand disposed of accordingly and the contempt petitions do not survive. The contempt petitions are accordingly closed."

17.It is to be pointed out that the Payment of Gratuity Act, 1972, as is clear from its preamble, is to provide for a scheme for the payment of gratuity to employees engaged in factories, mines oil-fields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. Section 7 of the Payment of Gratuity Act, 1972 provides for determination of the sum of gratuity

enables under sub-section (1), a person who is eligible for payment of gratuity under the Act or any person authorised in writing to act on his behalf, to send a written application to the employer within such time and in such form as may be prescribed for payment of such gratuity. Sub-section (2) of the Act obliges an employer, whether an application referred to in sub-section (1) has been made or not, to determine the amount of gratuity, as soon as it becomes payable and give notice in writing to the person whom it is payable and also to the Controlling Authority specifying the amount of gratuity so decided.

18.As a matter of fact, as per Section 7(3) of the Act, an employer is bound to arrange to pay the amount of gratuity within such time, as may be prescribed to the person to whom it is payable. Section 7(4) of the Act enjoins the Controlling Authority to decide the amount of gratuity payable to an employee, after the enquiry and after giving the parties to the dispute a reasonable opportunity of being heard in case there is any dispute about the amount of gratuity payable or to the admissibility of any claim of an employee for payment of gratuity.

19.Indeed, Section 7(7) of the Act provides for an Appeal by an affected party by the order passed by the Controlling Authority. Section

7(8) of the Act speaks of the Appellate Authority to confirm, modify or reverse the decision of the Controlling Authority after providing reasonable opportunity to the parties to the appeal of being heard. As per Section 8, where an amount of gratuity payable under the Act is not paid by the employer within the prescribed time, to the person entitled thereto, the Controlling Authority to get it recovered through the Collector arrears of land revenue for payment to the person entitled. Section 14 of the Act postulates that the provisions of the Act and the Rules made thereunder shall have effect, notwithstanding anything inconsistent therewith contained in any enactment, other than the Act or in any instrument or contract having effect by virtue of any enactment other than the Act.

20. In fact, the gratuity paid to the employees is to aid them after retirement whether the retirement is a result of rules of superannuation or physical disability or otherwise. By and large, the principle is that by the length of service concerned employees are entitled to claim a certain amount as a retiral benefit. The Retirement Gratuity is a gratuitous demand given to an employee on discharge or demise.

21. After all, 'Gratuity' compensates an employee when he grows old, knows that some compensation for the gradual destruction of his wage

earning capacity is being built up, as per decision of the Hon'ble Supreme Court in ***Burhanpur Tapti Mills Ltd., V. Burhanpur Tapti Mills Mazdoor Sangh, AIR 1965 SC 839.***

22.It cannot be lost sight of that there is no limitation for claiming gratuity by an employee, since it is an obligation of an employer to give notice to the employee satisfying his amount of gratuity. Of course, it is for an employee not an employer who is to prove 'Continues Working' for entitlement of gratuity.

23.It is to be mentioned that 'Gratuity' is a gift for the services rendered are return for favours received 'Gratuity' is a sum unconnected with any consideration and not resting upon it. It is to be considered something given without recompense it has no cementing platform on any legal liability, but a bounty arising out of an appreciation and graciousness mainly to get over post-retiral life.

24.It is to be pointed out that no specific period within which the amount of gratuity has to be paid is prescribed under the Payment of Gratuity Act, 1972 as per decision ***Prasada Rao D. V. A.P. State Co-operative Bank, Hyderabad and another, 2003 (3) L.L.J. 334.***

25. On careful consideration of the respective contentions, this Court taking note of the aforesaid facts and circumstances of the present case has to point out that the decision of the Full Bench of this Court in the judgment ***dated 17.09.2012 in W.A.Nos.3825 of 2003*** etc batch reported in ***2013 (3) CTC 689*** in the case of ***E.Gopal v. Arulmigu dhandayuthapani Temple, Palani*** has categorically held that the 'Religious Institutions' defined in the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 would be "Establishments" within the meaning of Section 1(3)(b) of the Payment of Gratuity Act, 1972, in view of the liberal interpretation made by the Hon'ble Supreme Court in ***State of Punjab v. Labour Court, Jalander [1980 (1) SCC 4]***. Since the decision of the Full Bench of this Court continues to be binding as it has not been stayed by the Hon'ble Supreme Court of India, the impugned order rightly proceeds on the basis that the Payment of Gratuity Act, 1972 is applicable to the employees of the Religious Institutions under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which cannot be faulted.

26. At this juncture, it requires to be highlighted here that Section 1(3)(b) of the Payment of Gratuity Act, 1972, provides that it shall apply to every shop and establishment within the meaning of any law for the time being in force in relation to shops and establishments in the State in which

ten or more persons are employed or were employed on any day of the preceding 12 months, while Section 1(3A) declares that a shop or establishment to which that Act has become applicable shall continue to be governed by that Act notwithstanding that the number of persons employed therein had any time after it has become so applicable falls below ten. In other words, the relevant provisions of the Payment of Gratuity Act, 1972, would be applicable to an 'establishment' under Section 1(3)(b) of that Act only from the time when ten or more persons are employed or had been employed after the commencement of the Payment of Gratuity Act, 1972, which came into force from 16.09.1972. This would mean that when the number of employees engaged by a Religious Institution has never crossed ten persons at any time after the commencement of the Payment of Gratuity Act, 1972, the employees of those institutions would not be eligible for gratuity under that Act.

27.Hence, this Court holds that in respect of the Religious Institutions where ten or more persons have been employed at any time after the commencement of Payment of Gratuity Act on 16.09.1972, the employees of those institutions from that time would be entitled to apply for gratuity under the Payment of Gratuity Act, 1972 and it would be the obligation of the concerned Religious Institutions to make payment of the

same within thirty days from the date on which date it falls due, failing which interest would also have to be paid at the rate notified under Section 7(3A) of the Payment of Gratuity Act, 1972, in addition to penal action for imprisonment or fine under Section 9 stipulated in that Act.

28. In order to identify the Religious Institutions, in which ten or more persons had been employed after the commencement of Payment of Gratuity Act, 1972, which come into force on 16.09.1972, the second appellant/ Commissioner, Hindu Religious and Charitable Endowments Department, Government of Tamil Nadu is required to annually publish the list of such institutions on the first day of January every year starting from 01.01.2018. The retired employees of the aforesaid list of Religious Institutions would be entitled to make their claim for the eligible amount of gratuity to their respective employers/religious institutions in terms of the Payment of the Gratuity Act, 1972 and in the event of refusal to do so or if any dispute arises regarding the quantum thereof, such retired employees could seek redressal by making necessary applications claiming the eligible amount of gratuity from their employers/religious institutions before the Controlling Authority under the provisions of Payment of Gratuity Act, 1972.

29.It is added by way of clarification that in cases where the religious Institutions in which ten or more persons had never been employed at any time, if any of its retired employee make any claim before the Controlling Authority under the Payment of Gratuity Act, 1972, such claim could be defended by the concerned Religious Institution with supporting evidence that the provisions of the Payment of Gratuity Act, 1972, do not apply to that Religious Institution.

30.Since it is only the persons employed in a religious institution, in which ten or more persons are employed would be eligible to receive gratuity under the provisions of the Payment of Gratuity Act, 1972, this Court is of the considered view that the directions issued by the learned Judge in the Writ Petition in the impugned order, permitting the Respondent/Association to make a representation enclosing the list of names and details regarding service particulars of its members would not be necessary and hence that part of the direction issued is hereby set aside.

31.As already pointed out, the members of the respondent association/retired employees of the Religious Institutions are entitled to pursue the legal remedy for payment of the eligible amount gratuity in the manner set out supra.

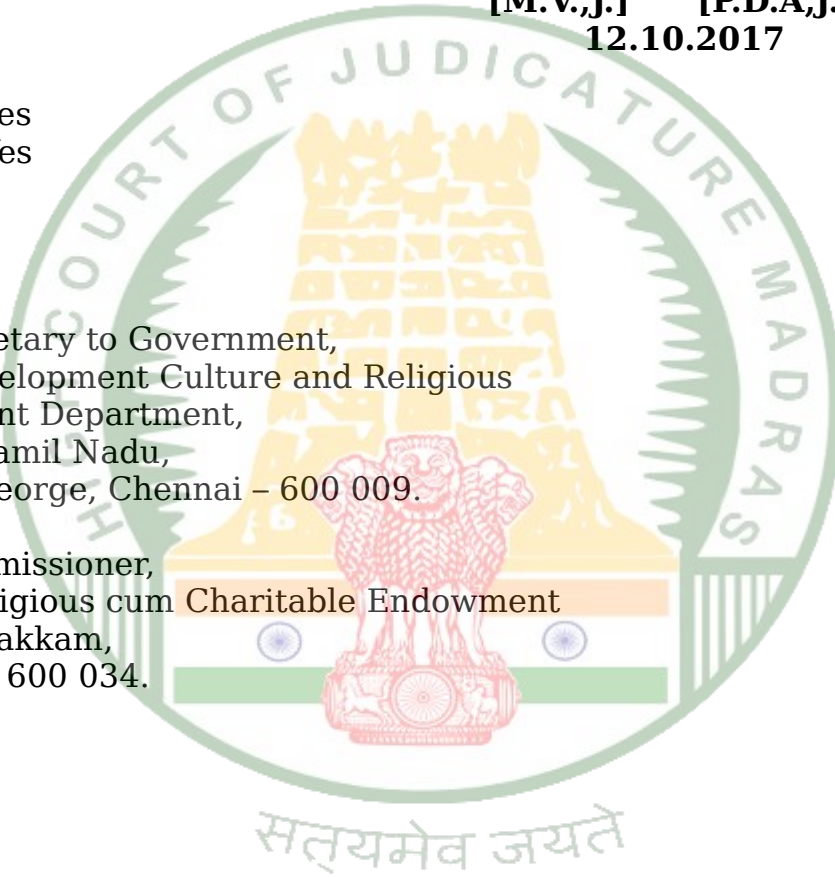
32.With the aforesaid modification in the order dated 07.04.2014 in W.P.No.33936 of 2013, this Writ Appeal is disposed of accordingly. No costs.

[M.V.J.] [P.D.A.J.]
12.10.2017

Index : Yes
Internet : Yes
sj

To

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- 2.The Commissioner,
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M.VENUGOPAL, J.
and
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sj



order in

W.A.No.326 of 2015

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Delivered on
12 .10.2017