



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.01.2017
CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

W.P (MD) No. 24861 of 2016

and

W.M.P (MD) No. 18059 of 2016

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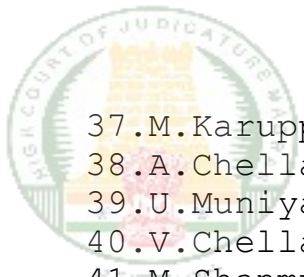
The Joint Commissioner/Executive Officer,
Arulmigu Ramanathaswamy Temple,
Rameswaram.

... Petitioner

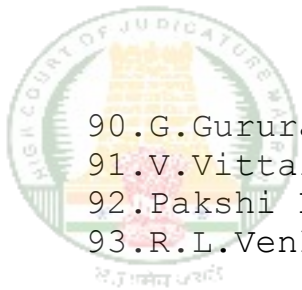
Vs.

1. The Assistant Commissioner (Labour)
cum Controlling Authority of
Payment of Gratuity,
Madurai.

2. A. Madhavan
3. T. Mariyappan
4. M. Nagalingam
5. M. Kannusamy
6. M. Ramayee
7. K. Subbiah
8. N. Krishnan
9. R. Vedarajan
10. S. Ramasamy
11. S. Muthulakshmi
12. K. Thillaivanam
13. S. Namburajan
14. S. Nambukumar
15. P. Kandasamy
16. M. Vadivel
17. M. Nagalingam
18. V. Nagarajan
19. M. Mathuresan
20. K. Thillaimarimuthu
21. R. Veeramuthu Kumar
22. S. Sitharanjandass
23. R. Velayutham
24. M. Namburajan
25. A. Rajendran
26. S. Thangavelu
27. A. Muniyandi
28. K. Ganesa Moorthy
29. M. Chellamal
30. M. Ramakrishnan
31. P. Kuppamuthu
32. S. S. Sankaranarayanan
33. S. Kathiresan
34. S. Rajendran
35. M. Paulsamy
36. G. Kalimuthammal



- 37.M.Karuppayee
- 38.A.Chellam
- 39.U.Muniyammal
- 40.V.Chellam
- 41.M.Shanmugam
- 42.R.Viswanathan
- 43.G.Ramanathan
- 44.B.Krishnan
- 45.M.A.Nagarathinam
- 46.S.Jothikumar Bose
- 47.K.Subramanian
- 48.A.Balakrishna Gokhale
- 49.S.Muthukrishnan
- 50.P.Maruthurajan
- 51.R.Nambuselvan
- 52.K.Namburajan
- 53.M.Ramanathan
- 54.M.Muniyandi
- 55.K.Alagesan
- 56.K.Dhanushkodi
- 57.M.Karuppayee
- 58.K.Poomayil
- 59.G.Sankararaman
- 60.M.Pandi
- 61.S.Arasu
- 62.R.Gopal
- 63.R.M.Pandi
- 64.R.Kalyanaraman
- 65.G.Lakshmi
- 66.S.Kalimuthammal
- 67.K.Subbammal
- 68.R.Lakshmikanthan
- 69.K.Krishnan
- 70.M.Ganesan
- 71.Pakshi Ananthanarayanan
- 72.P.R.N.Ramanathan
- 73.G.Saptharishigan
- 74.A.Nagarajan
- 75.T.Arumugam
- 76.P.Nagammal
- 77.R.Ramayee
- 78.K.Marithai
- 79.V.Poomadevi
- 80.G.Panchavarnam
- 81.C.Udayanachi
- 82.S.Nambinarayanan
- 83.R.Karuppiah
- 84.C.Namburajan
- 85.S.Manoharan
- 86.K.Nagarajan
- 87.T.Namburajan
- 88.N.Karuppiah
- 89.C.Sivaramaganapadigal



90.G.Gururajan
91.V.Vittal Parve
92.Pakshi Ramarathina Pattar
93.R.L.Venkatraman

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the common order passed by the first respondent in case number Pa.Gr.Interlocutory Applications No.138/13 to 233/13, dated 23.09.2016, on the file of the 1st respondent and quash the same as illegal, incompetent, without jurisdiction and void.

For Petitioner : Mr.S.Ramesh

ORDER

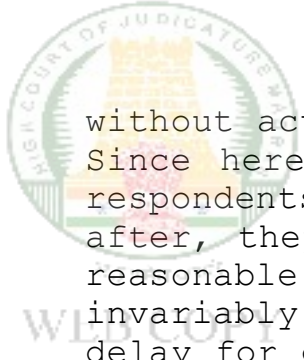
The prayer in the Writ Petition is for a Writ of Certiorari to call for the records relating to the common order passed by the first respondent in case number Pa.Gr. Interlocutory Application Nos.138/13 to 233/13, dated 23.09.2016 and to quash the same.

2. The petitioner/temple has come out with this Writ Petition challenging the common order passed by the first respondent under which the first respondent has allowed the applications filed by the respondents 2 to 93, who are the erstwhile employees of the petitioner/temple, to condone the delay in filing the applications seeking for payment of gratuity.

3. The learned counsel appearing for the petitioner would contend that whether the petitioner/temple is amenable to provisions of the Payment of Gratuity Act, 1972 itself is a question in view of the issue that as to whether charitable Institutions like temple are to be brought under the purview of the Payment of Gratuity Act, has been referred to for a decision before the constitutional Bench of the Honourable Apex Court and the same is pending consideration.

4. The learned counsel for the petitioner further submitted that the private respondents are not at all entitled to claim gratuity. That apart, as per Rule 7(1) of the Payment of Gratuity Rules, 1973 (Tamil Nadu Rules), an employee who is eligible for payment of gratuity under the Act, shall apply in Form-I, within thirty days from the date on which the gratuity becomes due. When the Central Act as well as the State Rules having similar provisions prescribing a period of thirty days within which an employee is expected to file application to get gratuity, such application should have been filed by the private respondents herein within such time.

<https://hcservices.courts.gov.in/hcservices> 5. The learned counsel for the petitioner would contend that though there is a provision to entertain such applications filed belatedly, by the authority concerned, if reasonable cause is given for delay that would not *ipso facto* be a leverage to an employee to file an application after having spent several years

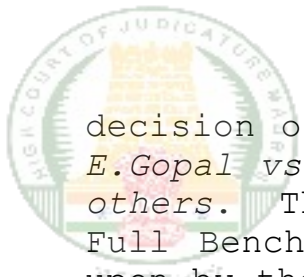


without acted upon to claim his benefit if he is advised to do so. Since here in the case on hand, admittedly, none of the private respondents have filed application within thirty days and even after, they had not come forward to file any application within a reasonable delay of few days or few months. In all these cases, invariably the delay were for more than several years. The total delay for each of the application filed by the private respondents before the authority seeking gratuity was 5640 days. The reason given according to the private respondents for such a huge delay is that they had awaited for a decision to be made by the Honourable Apex Court where the core issue as to whether the employees of a temple are entitled to get gratuity was pending. Even assuming that they had awaited for the decision of the Honourable Apex Court, even today, no such verdict has come and still, the same issue is pending for consideration and therefore, the reason now adduced by the respondents for filing the applications under Section 7(2) of the Payment of Gratuity Act, is totally unjustifiable. Without considering these aspects, the first respondent has passed the order, which is impugned herein by virtue of that the temple authorities are greatly prejudiced as the very issue of payment of gratuity itself is in question for the employee of the petitioner/temple being a charitable Institution governed by H.R & C.E Act. It is further contended that the present order allowing such large number of applications with huge delay, is totally prejudicial to the interest of the temple administration of the petitioner. Hence, the learned counsel for the petitioner submits that the impugned order is liable to be interfered with.

6. The learned counsel for the petitioner would further submit that even in the issue, which is pending before the Honourable Apex Court in Civil Appeal Nos.4507 - 4508 of 2013, the Honourable Apex Court by way of interim arrangement, given direction to the temple authority namely Arulmigu Dhandayuthapani Swamy Temple, Palani, to make payments to the employees of the temple as per the provisions of the Payment of Gratuity Act, 1972, only by an order of Court. Therefore, the issue is no doubt pending before the Honourable Apex Court and yet to be resolved finally and before which, if the applications of the private respondents are allowed, ie., the condone delay petitions for a huge delay of more than 5000 days, then the natural corollary would be that the petitioner/temple had to pay huge amount by way of gratuity to the private respondents before a decision is taken by the Honourable Apex Court, in the core issue. Therefore, on that score also, the impugned order is liable to be interfered with.

7. The aforesaid submissions made by the learned counsel for the petitioner has been carefully considered and this Court has given anxious consideration to the said submissions.

8. When the learned counsel appearing for the petitioner made such a submissions, he has also fairly submitted the Full Bench



decision of this Court reported in 2013-2-L.W.97 in the matter of *E.Gopal vs. Arulmigu Dhandayuthapani Swami Temple, Palani and two others*. The learned counsel has produced the said decision of the Full Bench of this Court, because the same has also been relied upon by the first respondent in the order impugned.

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9. On perusal of the said Full Bench judgment of this Court, it is found that the core issue raised with regard to the right of the private respondents, who claim gratuity from the petitioner/temple, to the opinion of this Court, has been resolved in favour of the employees. The following paragraphs of the Full Bench Judgment of this Court, would resolve the issue raised in this Writ Petition for the present. Therefore, those paragraphs are re-produced herein for better appreciation of this issue.

13. Before coming to a conclusion as to whether the temple would come under the term "establishment" as stated in the aforesaid decisions, it is appropriate to examine the decisions relied on by the other side.

19. A reading of the aforesaid decisions rendered by the learned single Judge and confirmed by the Division Bench would show that neither the decision of the Apex Court or the other High Courts or this Court had been relied on/referred to in order to arrive at a conclusion that a religious institution does not come under the purview of the Payment of Gratuity Act, 1972. The learned single Judge merely on the basis of facts encircling the case proceeded to observe that Section 1(3) of the Act is not applicable to religious institutions. Neither the learned single Judge nor the Division Bench had the benefit of going through the decisions of the Hon'ble Supreme Court rendered in the context of applicability of the term "establishment".

21. In Bangalore Water Supply & Sewerage Board case (cited supra), while analysing the question whether Charitable Institutions are Industries, laid down three categories (already extracted above) and we are concerned with the second category, where the institution makes no profit but hires the services of employees as in other like business. To fall under the second category as laid down by the Hon'ble Supreme Court one has to see whether the charitable institution is exactly like a commercial minded employer and there is relationship of employer and employee as like that of the industries. In the present case, though the Management may state that they fall under establishment is oriented on a humane mission



fulfilled by man who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution, from the materials on record and the documents produced by either side, we are not inclined to accept that the respondent Devasthanam fall under the third category. From the orders passed by the authorities below there is no dispute that there is employer and employee relationship between the Management and the appellants/ employees and the employees are paid wages according to the work done and they are entitled to leave as per the Rules. From the part of the employees the Devasthanam is not a charity and it is only an establishment working for profit. It is also brought to our notice that the temples in question were paying salary in Crores of rupees to the employees, which fact is not in dispute. The other decisions relied on and extracted by us viz., Administrator, Shri Jagannath's case The management of SIET College, Sri Venkataramana Temple Sri Hale Mariyamma Temple, etc., (cited above) would only pave a way to the conclusion that the Religious Institutions would also be attracted by the term "establishment" under the Payment of Gratuity Act and it would not stop within the meaning prescribed to the "establishment" defined under the Tamil Nadu Shops and Establishments Act.

28. 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 advantageous than that of the State Rules. In other words , the benefit availed by the employees of the Devasthanam under the State Rules is meagre compared to the 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 or contract with the employer. The proviso to Rule 26 of the Rules provides that the 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 to enjoy the fruits of the beneficial Central Act and to that extent the Rules are inconsistent with the Central Act. Therefore, we have no hesitation in holding that the Rules are repugnant to the Central Act to the extent indicated above.



32. In view of the principle laid down by the Hon'ble Supreme Court in the aforesaid decisions, the Management could not have any more doubt with regard to payment of gratuity and the pension.

33. It is bought to our notice that the State Government has introduced the Employees Provident Fund in the temples by issuing G.O.Ms.No.54, dated 13.2.2006 and the Central Provident Fund scheme has been withdrawn and in future there would no bar as provided under Rule 26 for payment of gratuity and the employee would be entitled or under the Act, which ever is more beneficial to them. The issuance of the aforesaid G.O., will not be any way concerned with the present case as the persons affected are retired employees who have been agitating for years together.

34. The doubts raised by the Division Bench regarding the applicability of the ratio of a Division Bench decision of the Madras High Court in W.A.No.2626 of 2002, dated 2.9.2008 (Tiruchendur Arulmigu Subramaniasamy Kovil Oivupetra Paniyalargal Sangam v. Executive Officer, Tiruchendur Arulmigu Subramaniasamy Devasthanam, Tiruchendur) in the light of the law laid down by the Hon'ble Supreme Court in 1981(1)LLJ 354 (State of Punjab v. Labour Court, Jullundur) have been answered in the preceding paragraphs.

10. The contention of the learned counsel for the petitioner is that it is the duty of the employee to make the application within the time stipulated under the Rule ie., within thirty days and even also that if an application is filed belatedly, there must be a plausible reason for such a delay. Without being any acceptable reasons for belated application, the same ought not to have been accepted by the first respondent. Insofar as this contention of the learned counsel for the petitioner is concerned, the judgment of the Division Bench of the Delhi High Court in the matter of M.C.D and Nand Kishor, dated 04.12.2002, would be the answer. The Honourable Division Bench of the Delhi High Court has held that the non-payment of gratuity due to the employee was a continuing wrong and there was no question of delay in approaching the controlling authority. Relevant portion of the order of the Delhi High Court is re-produced herein.

The main grievance of the appellant is that the Controlling Authority did not take into consideration delay of the respondent in filing the application under the Payment of Gratuity Act, 1972 and the rules framed thereunder. The grievance of the appellant is misconceived as the



non-payment of gratuity due to the respondent was a continuing wrong and there was no question of any delay in approaching the Controlling Authority. Accordingly, we do not see any reason to interfere with the order passed by the Controlling Authority or the impugned order passed by the learned single Judge. In the circumstances, the appeal fails and therefore dismissed.

11. Exactly on the line of the said judgment referred to above, the first respondent has approached the issue raised before it on the issue of delay, wherein the first respondent has quoted the Rule 7(3) of the Payment of Gratuity Rules, 1973 (Tamil Nadu Rules), which says that the employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom gratuity is payable. Even though it mandates that an employee has to file an application within thirty days, the said provision also mandates the employer to arrange to pay the amount of gratuity within thirty days. Therefore, once the responsibility also lies on the shoulder of the employer, certainly the plea of delay that has been raised in the present case that the applications which were submitted beyond thirty days, that too, after a long delay to the extent of more than 5000 days, should not have been entertained, cannot have any substance.

12. In view of the aforesaid decisions as well as the orders passed by the Honourable Apex Court by way of interim arrangement, there can be no gainsaying on the part of the petitioner to state that the first respondent has wrongly accepted the applications filed belatedly after huge delay and therefore, this Court finds no infirmity in the order impugned herein and accordingly, the Writ Petition fails and hence, it is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub-Assistant Registrar

To

The Assistant Commissioner (Labour) cum Controlling Authority of Payment of Gratuity, Madurai.

Pm

RL/2C/8P/SS2/KSM/25.1.2017

W.P (MD) No. 24861 of 2016

05.01.2017