



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.01.2017

CORAM

THE HON'BLE Mr. JUSTICE R. SURESH KUMAR

W.P. (MD) No.5668 of 2011

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Union of India
represented by its Administrative Officer,
S.S.Boopathy ... Petitioner
-vs-

- 1.The Assistant Labour Commissioner (Central)
& Controlling Authority,
under the payment of Gratuity Act, 1972,
Ministry of Labour and Employment,
Office of the Assistant Labour Commissioner (C)
New No.5, Old No.1-A (II Floor), Lady Doak
College Road,
Chinna Chokkikulam, Madurai-625 002.
- 2.The Regional Labour Commissioner (Central) &
Appellate Authority,
Under the payment of Gratuity Act, 1972
Office of the Regional Labour Commissioner(c), Chennai
- 3.K.Muthuraj ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records in respect of the order passed in G.A.No.36/2010 on the file of the respondent No.2, the Appellate Authority (RLC), Chennai, thereby confirming the order passed in G.A.No.2/2010 on the file of the respondent No.1, the Controlling Authority (ALC) Madurai and to quash the order of the respondent No.2 Appellate Authority (RLC) in G.A.No.36/2010 dated 28.02.2011 thereby confirming the order passed in G.A.No.2/2010 on the file of the respondent No.1 the Controlling Authority (ALC), under the payment of Gratuity Act 1972 and consequently direct the respondent No.2 to reimburse the deposit amount of Rs.67,163/- to the petitioner.

For Petitioner	: Mr.R.Murugappan
For Respondents	: Mr.S.Jeyasingh for R1 & R2 (Central government Standing Counsel) Mr.S.Sathya chidambaram for R3 *****

O R D E R

<https://hcservices.ecourts.gov.in/hcservices/> Confirming the order of the 2nd respondent thereby confirming the order of the 1st respondent and for a consequential direction to reimburse the deposit amount of Rs.67,163/- to the petitioner, the petitioner has come out with this writ petition.



2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. The learned counsel for the third respondent submits that the issue raised in this writ petition is squarely covered by a decision, in a batch of cases in W.P.No.23127/2015 etc. batch, of the learned Judge (Principal Seat, Madras), dated 31.03.2016.

4. The learned counsel for the petitioner would fairly submit that the same petitioner, though have filed set of writ petitions in the said batch of cases have suffered with an order, by which, their writ petitions had been dismissed by this Court in the order cited supra.

5. In the said order dated 31.03.2016, the learned Judge, after having extracted the earlier orders passed by this Court in W.P.No.23577/2015 dated 29.01.2016, had dismissed those batch of cases also.

6. For the sake of convenience, the relevant portion of the order dated 29.01.2016, is reproduced hereunder:

"..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 <https://hcservices.ecourt.gov.in/hcservices>, 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."

<https://hcservices.ecourts.gov.in/Aservices/> recording the said order of this Court, the learned Judge has dismissed the batch of cases in the order referred to above dated 31.03.2016. In fact, those cases had also been filed by the same petitioner.



8. In view of the said facts, since the issue is fully covered by the said order of this Court, there is no merit, otherwise, in the present writ petition. Hence, this writ petition is also dismissed with the following directions:

9. Since the amount, which is due to be paid to the third respondent has already been deposited by the petitioner, at the first respondent office, the first respondent is directed to forthwith release the said amount to the third respondent herein on production of a copy of this order.

No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar[Writs]

/True copy/

Sub Assistant Registrar

To

1.The Assistant Labour Commissioner (Central)
& Controlling Authority,
Ministry of Labour and Employment,
Office of the Assistant Labour Commissioner (C)
New No.5, Old No.1-A (II Floor), Lady Doak College Road,
Chinna Chokkikulam, Madurai.

2.The Regional Labour Commissioner (Central) &
Appellate Authority,
Under the payment of Gratuity Act, 1972
Office of the Regional Labour Commissioner,
Chennai.

+1cc to Mr.S.Jeyasingh,Advocate,SR.593

+1cc to Mr.S.Sathya Chidambaram,Advocate,SR.394

+1cc to Mr.R.M.Murugappan,Advocate,SR.416

RR

KK-GSV-SV-23.01.17-4P-6C

W.P. (MD) No.5668 of 2011
and M.P.No.1/2011 and WMP No.16428/2016
03.01.2017