

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.6086 of 2018

The Management
Tamil Nadu Agricultural University
Horticultural Research Center
Ondikadai Post
Yercaud 636 601

Petitioner

-vs-

1. The Appellate Authority under the
Payment of Gratuity Act and
Joint Commissioner of Labour
Coimbatore

2. The Controlling Authority under the
Payment of Gratuity Act and the
Assistant Commissioner of Labour
Salem

3. Tmt.T.Sivamanickam

Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorari, calling for the
records relating to order dated 14.09.2017 in A.G.A.No.11 of
2017 passed by the first respondent and quash the same as being
illegal, arbitrary and unconstitutional.

For Petitioner :: Mr.Abdul Saleem

For Respondents:: Mr.V.Jayaprakash Narayanan
Special Government Pleader
for R1 & 2

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ORDER

This writ petition has been filed challenging the
correctness of the impugned order dated 14.9.2017 passed in
A.G.A.No.11 of 2017 directing petitioner to pay gratuity to the
third respondent for a period of 31 years applying the
provisions of the Act.

2. Learned counsel for the petitioner submitted that the third respondent was engaged as a casual labour in the Research Centre at Yercaud from 1983 on daily wage basis at the rate of Rs.80/- . When the third respondent was engaged in the agricultural field as and when need arose, her engagement was purely temporary. Since the persons like the third respondent were continued on need basis, the Government of Tamil Nadu, considering the plight of persons who were engaged on daily wage basis, issued G.O.Ms.No.352, Agriculture (AU) Department dated 24.11.2008 to bring the casual mazdoors into regular time scale of pay with effect from 1.4.2008 and after bringing them into the regular time scale of pay with effect from 1.4.2008, the third respondent also, attaining the age of superannuation, retired from service with effect from 30.6.2013. On her retirement, applying the G.O.Ms.No.78, Agriculture (AU) Department dated 23.4.2013 directing the petitioner to pay a sum of Rs.100/- towards DA and HRA and a sum of Rs.50,000/- as consolidated lumpsum at the time of retirement, the same were also paid by letter dated 31.7.2013. But the said payment has not been considered by both the controlling and the appellate authority under the Payment of Gratuity Act. Therefore, the non-consideration of the payment of Rs.50,000/- clearly shows that the impugned order is vitiated on account of non-application of mind.

3. This Court finds no merit in the said contentions. First of all, the petitioner has not even filed a copy of the counter affidavit to show as to what was their stand before the authorities. Secondly, it is the admitted case of the petitioner that the third respondent was engaged on daily wage basis in the year 1983 at the rate of Rs.80/- . After considering her continuous engagement, when the G.O.Ms.No.78, Agriculture (AU) Department dated 23.4.2013 was issued to pay a sum of Rs.100/- towards DA and HRA and another sum of Rs.50,000/- as a consolidated lumpsum at the time of retirement, the same were also paid. However, the said payment would not preclude the third respondent to receive the gratuity as per the provisions of the Payment of Gratuity Act. The reason is that when the provisions of the Payment of Gratuity Act clearly mentions that every employee is entitled to get gratuity for the total period of services rendered with the employer, merely for the reason that G.O.Ms.No.78 dated 23.4.2013 was passed to pay a sum of Rs.50,000/- as a consolidated lumpsum and therefore the petitioner need not pay the gratuity, is not only unsustainable but also bad in law. Therefore, the second respondent-Assistant Commissioner of Labour, rightly applying the provisions of the Act and calculating the last drawn wage at Rs.230.76 per day for the total period of 31 years of service with the multiplier 15, has directed the petitioner to pay the gratuity to the third respondent, which order has been confirmed by the first

respondent-Joint Commissioner of Labour impugned herein. Hence, this Court finds no infirmity with the impugned order. Accordingly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

ss

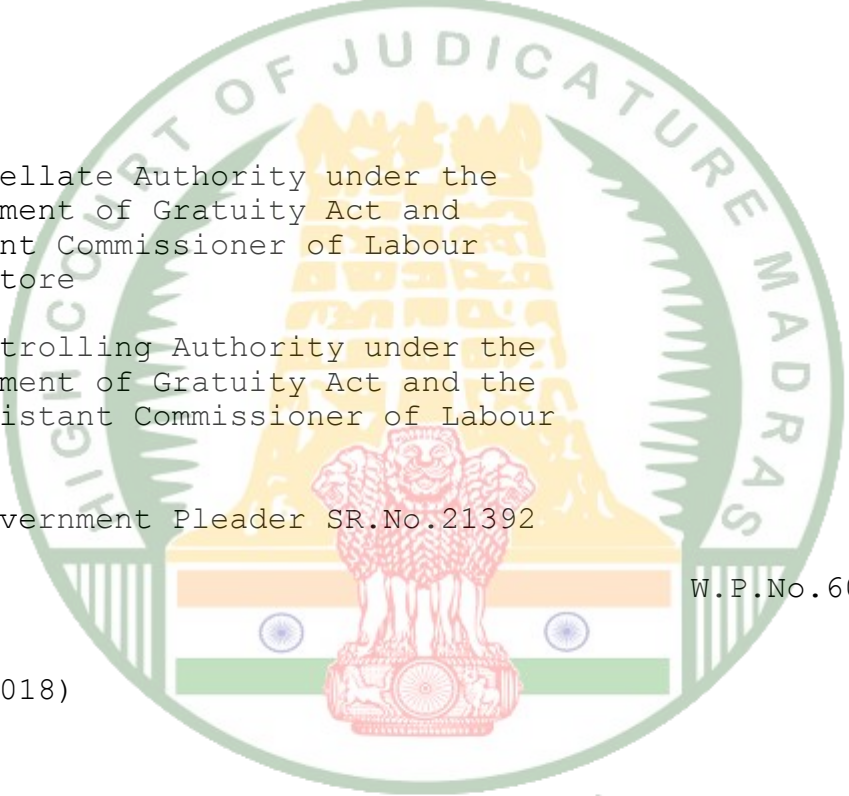
To

1. The Appellate Authority under the
Payment of Gratuity Act and
Joint Commissioner of Labour
Coimbatore
2. The Controlling Authority under the
Payment of Gratuity Act and the
Assistant Commissioner of Labour
Salem

+1cc to Government Pleader SR.No.21392

W.P.No.6086 of 2018

KK (CO)
GN (05/04/2018)



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