

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.09.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.Nos.37461 of 2002, 2693 of 2005, 13281 of 2006
and W.M.P.Nos.56252 of 2002, 2977 of 2005

The Commissioner,
Pollachi Municipality,
Pollachi,
Coimbatore District.

... Petitioner in all Wps.

..Vs..

- 1.Tmt.Chinnal
- 2.Thiru.Maran
- 3.Tmt.Massani
- 4.Thiru.Aaran (Deceased)
- 5.Tmt.Kuppammal
- 6.Thiru.Muthusamy
- 7.Tmt.Chinnammal
- 8.The Controlling Authority,
(Under Payment of Gratuity Act),
Assistant Commissioner of Labour,
O/o.Deputy Commissioner of Labour,
Coimbatore 18.
- 9.Tmt.Nagammal
- 10.Tmt.Kairammal
- 11.Thiru.Krishnan
- 12.Tmt.Lakshmi
- 13.Thiru.Rajendran

(R9 to R13 substituted as legal representatives in the place
of 4th deceased respondent as per order of Court dated
11.08.2003 in WPMP 12907/2003)

.. Respondents in WP No.37461/02

- 1.Tmt.Nachimuthu
- 2.Rajan
- 3.Ammasai
- 4.Paramasivam
- 5.Tmt.Mari
- 6.Tmt.Muniyammal
- 7.Tmt.Lakshmi
- 8.Controlling Authority,

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(under the Payment of Gratuity Act),
Assistant Commissioner ,
O/o. The Deputy Commissioner of Labour,
Coimbatore 18.

..Respondents in WP No.2693/05

- 1.A.Palanisamy
- 2.Thirumoorthy
- 3.Kittan
- 4.Subramanian
- 5.The Controlling Authority,
(under the Payment of Gratuity Act),
(Assistant Commissioner of Labour) ,
O/o. The Deputy Commissioner of Labour,
Coimbatore 18.

..Respondents in WP No.13281/06

Prayer in all the W.Ps. : Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for records on the file of the 8th respondent in connection with the order passed in (W.P.No.37461 of 2002) G.A.Nos. 264/2001, 265/2001, 266/2001, 267/2001, 268/2001, 269/2001 and 270/2001 dated 29.04.2002 (W.P.No.2693 of 2005) G.A.Nos.183/04,184/04,185/04,186/04,187/04,188/04 and 189/04 dated 22.11.2004 and (W.P.No.13281 of 2006) G.A.Nos.6/05,7/05,8/05,9/05 dated 29.08.2005) and quash the same.

For petitioner : Mr.G.Sankaran,
(in all 3 WPs)

For respondents in : Mr.MA.P.Thangavel,
WP No. 37461 of 2002 for R1 to R3 & R5 to R7

Mr.K.Ravikumar,
Additional Government Pleader,
for R8

For respondents in : Mr.MA.P.Thangavel,
WP No. 2693 of 2005 for R1 to R7
Mr.K.Ravikumar,
Additional Government Pleader,
for R8

For respondents in : Mr.MA.P.Thangavel,
WP No. 13281 of 2006 for R1 to R4

Mr.K.Ravikumar,
Additional Government Pleader,
for R5

C O M M O N O R D E R

Since the issue raised in these writ petitions are one and the same and the relief sought for is also same, with the consent of both sides, these writ petitions were heard together and are being disposed of by this common order.

2. In all these three writ petitions, the writ petitioner is the Municipality. In all these writ petitions, the private respondents were working as employees either as sweepers or as sanitary workers and after superannuation, all of them retired. However, they have not been paid gratuity by the petitioner Municipality and therefore, all these private respondents seem to have approached the Controlling Authority under Payment of Gratuity Act. The official respondents herein have filed appropriate petitions and those petitions had been considered by the Controlling Authority and orders were passed whereby, the plea raised by the petitioner Municipality had been rejected and a direction was given by the Controlling Authority that, these private respondents are entitled to get gratuity, under the Payment of Gratuity Act and that shall be calculated on completion of 30 days from the date of superannuation or from the date of death of the private respondents and to be paid to them with 10% interest. Aggrieved over the said orders passed by the Controlling Authority under the Payment of Gratuity Act, in favour of all these respondents, the employer i.e., the petitioner/Municipality has filed all these three writ petitions with the aforesaid prayer.

3. I have heard Mr.G.Sankaran, the learned counsel for petitioner Municipality and Mr.MA.P.Thangavel, the learned counsel appearing for the private respondents.

4. Learned counsel appearing for the private respondents has submitted that, the issue raised in these writ petitions are covered by a number of decisions of this Court. In this regard, he would further submit that, the issue had already been settled as early as in the year 2004 itself, by a Division Bench of this Court, in W.A.Nos.3088 to 3090 of 2004 batch, following which, number of orders have been passed. He has also submitted that subsequently, some more writ appeals filed by the very same Municipality in W.A.Nos.460 and 461 of 2012 also, were dismissed by a yet another Division Bench of this Court by order dated 16.04.2012. By relying upon these orders, the learned counsel appearing for the private respondents would submit that, since the issue between the employee and the very same employer had already been concluded by a number of orders as has been

referred to above, these private respondents are entitled to get the gratuity from the petitioner Municipality as the said issue is no more res integra. Hence, he submits that, these writ petitions have to be dismissed as the orders impugned herein are strictly in consonance with the entitlement of the private respondents in getting gratuity.

5. On the other hand Mr. G. Sankaran, the learned standing counsel appearing for the petitioner Municipality would submit that, these private respondents had been engaged for consolidated pay for some years and thereafter only, they have been absorbed. Therefore, if they are entitled to get the gratuity, they are entitled to get the same only under the Pension Rules that too by calculating the entire services rendered by them from the date of absorption and also only 50% of services rendered by them through the consolidated employment. However, since the Controlling Authority under the Payment of Gratuity Act have allowed the claim in toto, as if the private respondents are entitled to get full gratuity for the entire service period including the consolidated employment and also not taking into account that these private respondents have already been paid considerable amount under the Pension Rules, the said orders passed by the Controlling Authority, which are impugned herein is unsustainable and therefore, challenging the same, the petitioner Municipality moved these writ petitions.

6. I have considered the said submissions made by the learned counsel appearing for both sides and perused the earlier orders passed by the Division Bench of this Court, as well as the learned Judge of this Court, following the earlier Division Bench order.

7. For the sake of clarity, the order passed by the learned single Judge of this Court in W.P.No.8250 of 2002 dated 13.12.2011, in the matter of Commissioner, Pollachi Municipality Vs. M. Subben and another has been extracted herein, with relevant portions.

"4. The learned counsel for the petitioner fairly submits that identical issue came up for consideration before the Hon'ble Division Bench of this court in W.A.No.3088 to 3090 of 2004 and the petitioner-Municipality herein was the appellant in the said case. In the said batch of cases, an identical plea was raised by the erstwhile employees as well as the Municipality and the Hon'ble Division Bench after taking note of the decision of the Hon'ble Supreme Court reported in (1998) 7 SCC

221 [Municipal Corporation of Delhi vs. Dharam Prakash Sharma and another] as well as the decision of the Hon'ble Gujarat High Court reported in (1999) II LLJ 830 Guj [Rajkot Municipal Corporation vs. Aniruddh Fulshankar Shukla] disposed of the appeals with the following observations:

"4. In view of the above, it is brought to out notice by the learned Advocate General that after calculating the amount liable to be paid to the respondent employees, both under the Payment of Gratuity Act and under the Tamil Nadu Pension Rules, the amount, which is favourable to the employees, may be paid in their favour.

5. Admittedly, it is a case wherein the appellant has not obtained any exemption under Section 5 of the Payment of Gratuity Act. Therefore, when once the provisions of the Payment of Gratuity Act contemplate payment of the amount which is beneficial to the employees, we hold that the respondent employees are entitled to payment of gratuity under the Payment of Gratuity Act, after deducting the amount already paid under the Tamil Nadu Pension Rules, in the absence of any exemption obtained from the Government under Section 5 of the Act.

6. At this junction, it is brought to our notice that as per the interim order dated 24.08.2004 in WAMP.Nos.5749 to 5751 of 2004, the differential amount of gratuity between the Payment of Gratuity Act and the DCRG scheme was already paid to the respondent employees."

5. The learned counsel appearing for the first respondent brought to the notice of this Court the decision of this court made in W.P.No.21865 of 2000 dated 08.02.2010. The said also covers the claim of gratuity by the erstwhile employee of Coimbatore City Municipal Corporation. His Lordship Justice K.Chandru after taking into consideration the various decisions of the Hon'ble Supreme Court dismissed the writ petition filed by the Municipality.

6. In the light of the above, I am bound to follow the direction issued by the Hon'ble

Division Bench as quoted herein above.

7. Accordingly, this writ petition is disposed of by holding that the first respondent-employee is entitled to payment of gratuity under the Payment of Gratuity Act and such payment shall be made after deducting the amount already paid under the Tamil Nadu Pension Rules since the petitioner-Municipality has not obtained any order of exemption from the Government under Section 5 of the Act. The payment shall be effected as per the above directions within a period of twelve weeks from the date of receipt of a copy of this order. No costs."

8. On a perusal of the said order passed by a learned Judge of this Court as referred above, it became abundantly clear that, the issue in these writ petitions is no more res integra and also the issue has already been settled against the very same petitioner Municipality as early as in the year 2004 itself, in Writ Appeal Nos.3088 to 3090 of 2004. Where also, the similar plea had been raised by the very same Municipality stating that, the amounts have already been paid to the employees of the Municipality, who had retired or died, on the basis of the Pension Rules and therefore, they are not entitled to get the gratuity under the Payment of Gratuity Act. However, the same had been rejected by the Division Bench which has been taken into account by the learned Judge and ultimately, the learned Judge has held that, those employees in that writ petitions. were entitled to get payment under the Payment of Gratuity Act and of course, by deducting the amount already paid by the Municipality under the Pension Rule, if any. The said order was passed mainly on the ground that, the petitioner Municipality did not get any exemption under Section 5 of the Gratuity Act and therefore, whatever the plea raised in this regard on behalf of the Municipality since has already been rejected and an order to that effect has been passed by the learned Judge of course, following the earlier decision of the Division Bench of this Court, I am of the view that since the said orders have already been passed, the very same Municipality cannot now turn again and raise the very same plea in these writ petitions also before this court as these pleas had already been concluded.

9. In view of the above, since the issue raised by the petitioner Municipality in these writ petitions, as has been rightly said by the learned counsel appearing for the private respondents, has already been settled, this Court has no

hesitation to hold that similar orders can be passed in these writ petitions also. In that circumstances, the following orders are passed in these writ petitions:

(i) The private respondents in all these three writ petitions are entitled to payment of Gratuity under the Payment of Gratuity Act.

(ii) Such payment shall be made by the petitioner/Municipality after deducting the amount already paid, if any, under the Tamil Nadu Pension Rules.

(iii) After deducting the said amount already paid if any, remaining amount to full entitlement of the private respondents for getting gratuity shall be calculated and be paid with 10% interest, from the date of due till the date of payment and such payment shall be made by the petitioner Municipality to the private respondents, within a period of three months, from the date of receipt of a copy of this order.

10. It is brought to the notice of this Court by the learned counsel appearing for the private respondents that, some of the private respondents already died during the pendency of these writ petitions. In view of the same, if the legal heirs of the respective parties, who died already, approaches the petitioner Municipality with legal heir certificate and death certificate of the employee concerned, the payment to be calculated as awarded above be paid to the legal heirs as indicated above.

With these directions and observations, all these writ petitions are dismissed. No costs. Consequently the connected Miscellaneous Petitions are also closed.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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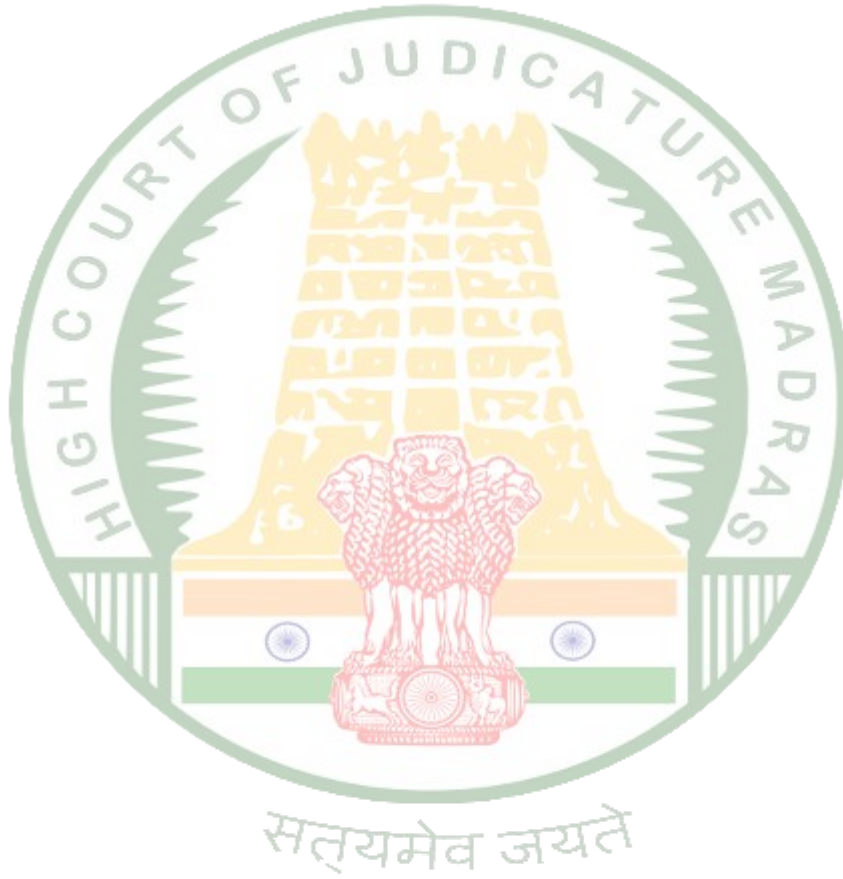
To

1.The Controlling Authority,
(Under payment of Gratuity Act),
Asst. Commissioner of Labour,
O/o.Deputy Commissioner of Labour,
Coimbatore 18.

+1 cc to Mr.Ma.P.Thangavel, Advocate Sr.No.66557
+1 cc to Mr.G.Sankaran, Advocate Sr.No.66031
+1 cc to The Government Pleader, Sr.No.66687

W.P.Nos.37461 of 2002,
2693 of 2005, 13281 of 2006

CSL/10.05.2019



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