

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.Nos.10368 and 10369 of 2018
and
W.M.P.Nos.12335 and 12337 of 2018

Dhanalakshmi College of Engineering
Rep.by its Chairman Dr.V.P.Ramamurthi
Dr.V.P.R.Nagar, Manimangalam
Tambaram, Chennai - 601 301. Petitioner in both the W.Ps.

Vs.

1. The Assistant Commissioner of Labour
(Controlling Authority under the Payment
of Gratuity Act, 1972),
Chennai 600 006. R1 in both the W.Ps.
2. M.s.Natarajan R2 in W.P.No.10368 of 2018
3. P.Parthiban R2 in W.P.No.10369 of 2018

Prayer in W.P.No.10368 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the order dated 18.01.2018 in P.G.No.9 of 2017 of the 1st respondent herein and to quash the same.

Prayer in W.P.No.10369 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the order dated 18.01.2018 in P.G.No.10 of 2017 of the 1st respondent herein and to quash the same.

For Petitioner : Mr.ARL. Sundaresan for
M/s.A.L.Gandhimathi

For Respondent : Mr.N.Srinivasan,
Addl.Govt.Pleader - for R1
in both cases
Mr.A.Thirumaran - for R2
in both the W.Ps.

COMMON ORDER

The Management has filed the above writ petitions, challenging the order of the first respondent, directing the payment of gratuity to the second respondent in both the writ petitions.

2. The primary question raised by the Management is as to whether "teacher" would be covered under the definition of "employee" under Section 2(e) of the Payment of Gratuity Act. The contention raised by the learned counsel for the Management is that as per the reported decision of the Supreme Court in (2004) 1 S.C.C.755 "Ahmedabad Primary Teacher's Association -Vs- Administrative Officer", teachers are not covered under the definition of "employee" under Section 2(e) of the Payment of Gratuity Act and therefore, the order passed by the first respondent is liable to be set aside.

3. Learned counsel appearing for the second respondent in both the writ petitions, pointed out that amendment was made to Section 2(e) of the Payment of Gratuity Act, in the year 2009, and the definition of "employee" reads as under :-

"2(e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual, or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of Gratuity."

4. Learned counsel relied upon the judgment reported in 2012 (4) (AIIMR) 158 "R.K.Deshpande, President / Secretary, Vidarbha Youth Welfare Institutions (Society) -Vs- Pradipkumar", in which it was held as follows,

"7. In view of the law laid down by the Apex Court in the judgment in the case of Ahmedabad Pvt Primary Teachers Association, a Teacher was not covered by the definition of "employee" under Section 2(e) of the said Act. It was suggested in para 25 of the said judgment that the definition has to be couched in the wide language, as is contained

in the definition of "employee" under Section 2(f) of the Employees' Provident Funds Act, 1972. Taking note of such observation, the Legislature has amended the definition of 'employee' under Section 2(e) of the said Act with effect from 03.04.1997, which is in tune with the observations made in para 25 of the judgment of the Apex Court. The Objects and reasons of such amendment make the intention of the Legislature very clear to apply the provisions of Payment of Gratuity Act to the teachers also. The amended definition is wide enough to cover the category of the teachers for the purpose of applicability of the said Act. There is no escape but to hold that a Teacher is an 'employee' within the meaning of Section 2(e) of the said Act and hence the provisions of the said Act are applicable."

5. The above judgment makes it clear that the "teachers" are also covered under the definition of "employee" under Section 2 (e) of the Payment of Gratuity Act. Therefore, the benefits under the social welfare legislation can be extended to them as well. Under such circumstances, the order of the first respondent dated 18.01.2018 directing that the second and third respondents herein are entitled to payment of gratuity in terms of Section 2(e) of the Payment of Gratuity Act is confirmed, and the writ petitions filed by the management are liable to be dismissed. The petitioner is directed to pay the Gratuity amount to the respondents 2 and 3 within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Assistant Commissioner of Labour
(Controlling Authority under the Payment
of Gratuity Act, 1972), Chennai 600 006.

+2 Ccs to Mrs.A.L. Gandhimathi, Advocate sr 74981 & 74982.

+2 Ccs to Mr.A.Thirumaran, Advocate sr 74471 & 74472.

+1 CC to The Govt. Pleader sr 74879.

W.P.Nos.10368 and 10369 of 2018

SP(11/12/2018)