

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.25 of 2018 and
C.M.P.No.250 of 2018

The Management,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan House, Anna Salai,
Chennai-600 002. ... Appellant

-vs-

- 1.T.Perumal
- 2.The Assistant Commissioner of Labour-I,
D.M.S.Complex, 1st Floor,
Teynampet, Chennai-600 006.
- 3.The Joint Commissioner of Labour-I,
D.M.S.Complex, VI Floor,
Teynampet, Chennai-600 006. ... Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.20116 of 2014 dated 22.12.2015.

Writ Prayer:-Writ petition filed challenging the order passed by the third respondent, the Joint Commissioner of Labour-I rejecting the appeals filed by the petitioner Management challenging the order passed by the second respondent exercising powers under the payment of Gratuity Act 1972(herein after referred to as 'Act') as being barred by limitation. The controlling Authority under the Act computed the gratuity payable to each of the respondent workmen and directed payment to be effected together with interest at 10% The controlling Authority found that the action of the Management in attempting to effect recovery beyond the period of retirement after having allowed the workmen to retire from service is improper.

For Appellant :: Mr.M.Chidambaram

For Respondents:: Mr.S.T.Varadarajulu for R1
Mr.P.S.Sivashanmugasundaram,
Spl.GP for R2 and R3

JUDGMENT

(Made by HULUVADI G.RAMESH, J.)

The first respondent herein was employed as Driver in the appellant Management. The first respondent herein and some other workmen who were all employed as Drivers and Conductors by the appellant Management, have completed more than 30 years of service and attained the age of superannuation and retired from service. They filed petitions before the Controlling Authority under the Payment of Gratuity Act to compute the gratuity payable based upon the increase in the Dearness Allowance, which was ordered to be paid by the Government. Their claim for revised gratuity is based on the increased Dearness Allowance announced by the Government and ordered to be paid was with retrospective effect to be made applicable to the Workmen, as they were in service during the relevant point of time.

2.The Workmen have claimed the difference in gratuity based on the revised Dearness Allowance and filed claim petitions before the Controlling Authority as their representations were not considered by the Management.

3.The defence raised by the Management is that though the Dearness Allowance was increased by the Government, the Workmen cannot claim that their gratuity should be calculated based upon the increase in Dearness Allowance, since the announcement of such increase was made by the Government after the workmen retired.

4.The above aspect of the matter was considered by the Controlling Authority and found to be not tenable, as the Dearness Allowance was increased with retrospective effect and consequently should be extended to all those employees, who were in service at the relevant time.

5.Challenging the orders passed by the Controlling Authority, the Management preferred writ petitions in W.P.Nos.20116 to 20122 of 2014 etc.batch, before this Court and this Court by a common order dated 22.12.2015, dismissed those writ petitions, observing that the Management has not made out any case for interference with the orders passed by the Controlling Authority. Since the entire gratuity amount as computed by the authority have been deposited, the workmen were permitted to withdraw the same in full by making an application before the Controlling Authority. Further, with regard to interest on the gratuity, the learned single Judge has held that as per Section 7(3A) of the Payment to Gratuity Act, interest is payable at 10%.

6.Challenging the common order passed by the learned single Judge, the present appeal has been filed by the Management in respect of T.Perumal, who is the first respondent in the present writ appeal.

7. Heard the learned counsel on either side and perused the materials available on record.

8. With regard to calculation of gratuity based upon the increase in Dearness Allowance, the learned single Judge has dealt with the matter in detail in proper perspective and confirmed the order passed by the Controlling Authority, in that respect. With regard to payment of interest on the gratuity amount, the learned single Judge has relied upon Section 7(3A) of the Payment of Gratuity Act, and held that the interest is payable at 10%. Since the entire gratuity amount as computed by the authority have been deposited, the workmen were permitted to withdraw the same in full by making an application before the Controlling Authority. Even in respect of cases where the gratuity was not deposited, the same was directed to be deposited. The learned single Judge has also observed that since the claim made by the workmen being one for gratuity, which is a payment given to a retired employee, were not extended the benefit on their representation and were compelled to approach the Controlling Authority under the Act and had conducted the proceedings before the Controlling Authority for nearly four years, the award of interest at 10% cannot be termed to be either arbitrary or irrational. Considering the facts and circumstances of the case, we deem it fit to reduce the interest rate from 10% to 6% per annum.

9. In the result, the impugned order which is under challenge in this appeal is confirmed partly and the writ appeal stands disposed of accordingly. No costs. Consequently the connected miscellaneous petition is closed. It is for the first respondent workman to file application before the Controlling Authority for release of the gratuity amount with the modified interest rate at 6% per annum, out of the deposit already made by the Management as per the order passed by the Controlling Authority. The appellant-Management is permitted to withdraw the balance amount lying in the deposit, on making proper application.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Assistant Commissioner of Labour-I,
D.M.S.Complex, 1st Floor,
Teynampet, Chennai-600 006.

2.The Joint Commissioner of Labour-I,
D.M.S.Complex, VI Floor,
Teynampet, Chennai-600 006.

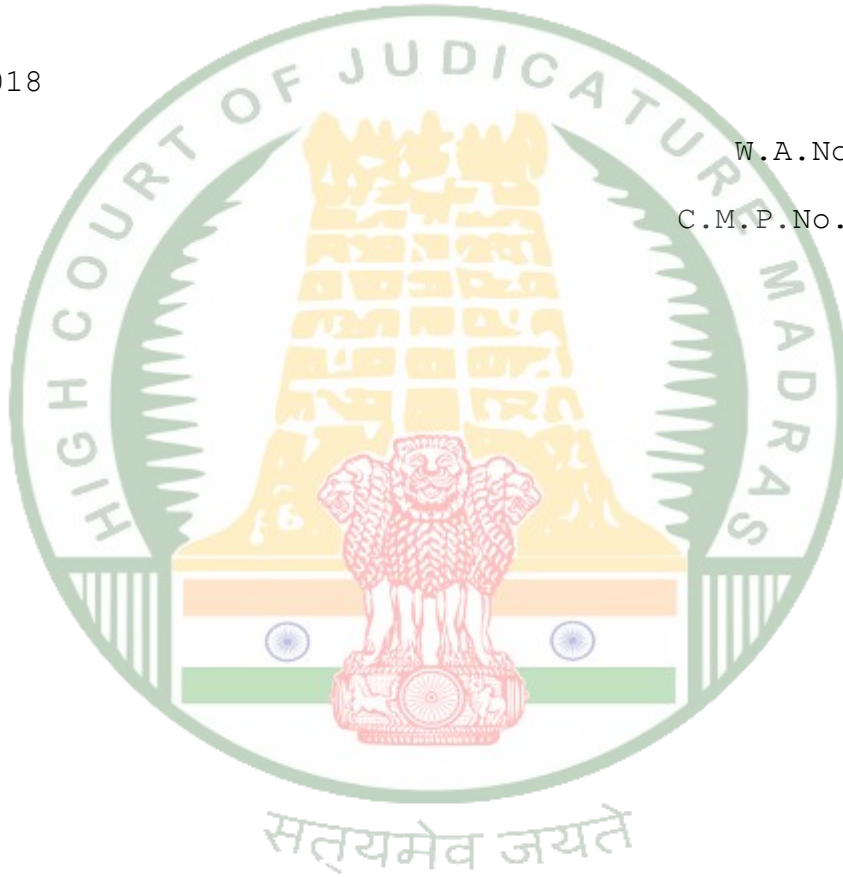
+lcc to Mr.M.Chidambaran, Advocate Sr.No.25143

+lcc to Mr.S.T.Varadarajalu, Advocate Sr.No.25346

SS(CO)

sm:25.4.2018

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