



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.NOs.38433 to 38435 of 2016

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

.... Petitioner

Vs

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

.... R1 in all the W.Ps.

2. S.Dorothy

... R2 in W.P.No.38433/2016

G.Veeramani

... R2 in W.P.No.38434/2016

K.Punithamurthy

... R2 in W.P.No.38435/2016

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the common order dated 10.06.2016 in P.G.Nos.302 of 2014, 13 of 2015 and 3 of 2015 on the file of the first respondent and quash the same.

For Petitioner :M/s.A.L.Gandhimathi

For Respondent :Mr.N.Srinivasan,

Addl.Govt.Pleader - for R1

Mr.A.Thirumalan - for R2 in all the W.Ps.

O R D E R

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 all the three writ petitions.

2. The primary question raised by the management is as to whether "teacher" would be covered under the definition of "employee" as per 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 all 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."

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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 any social welfare legislation can be applied prospectively. Under such circumstances, the order of the first respondent dated 10.06.2016 directing that the second 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.

6. At this juncture, it is represented by learned counsel on either side that the amount of gratuity payable to the second respondents in these writ petitions has already been paid and therefore, nothing survives for further adjudication. In that view of the matter also, these writ petitions are liable to be dismissed and the same are accordingly dismissed recording that the order passed by the first respondent has been implemented. No costs. Consequently, connected miscellaneous petitions are closed.

kst

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to M/s.A.L.Gandhimathi, Advocate SR.NO.65458

+1cc to Government Pleader SR.NO.65513

VGII(CO)

sm:2.11.2018

W.P.Nos.38433 to 38435 of 2016