

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.07.2018
C O R A M
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU
W.P.No. 24301 of 2002
and
W.P.M.P.Nos.33402 & 33403 of 2002

Chennai Metropolitan Water Supply
& Sewerage Board
Rep by its Managing Director
No.1, Pumping Station Road
Chindadripet, Chennai-600 002.

... Petitioner

Vs.

1.Assistant Commissioner of Labour
Gratuity I
[Controlling Authority under the
payment of Gratuity Act, 1972]
Chennai - 600 006.

2.Joint Commissioner of Labour
Appellate Authority under Payment
of Gratuity Act, 1972
Chennai - 600 006.

3.N.Kothandapani

... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent in PG No.436 of 2000 dated 29.12.2000 as confirmed by the second respondent in PGA No.235 of 2001 dated 07.05.2002 and quash the same.

For Petitioner : Mr.N.Ramesh

For Respondents: Mr.K.S.Suresh, Govt. Advocate [For R1 & R2]

No appearance-R3

O R D E R

Heard, Mr.N.Ramesh, learned counsel appearing for the petitioner and Mr.K.S.Suresh, learned Government Advocate appearing for the first and the second respondents. Though the third respondent has been served there is no representation for him.

2.The Petitioner is a Statutory Board constituted under the Chennai Metropolitan Water Supply and Sewerage Act, 1978, and in the exercise of powers conferred under Section 81(2)(c) of that Act, service regulations have been framed for the employees of

the petitioner, which contains provisions for payment of the Death cum Retirement Gratuity (hereinafter referred to as 'DCRG' for brevity) and pension which put together would be higher than the amount of gratuity payable under the Payment of Gratuity Act, 1972. The Third Respondent, who was an employee of the Petitioner was paid DCRG and pension on his retirement from service. However, as the amount of DCRG was lesser than the amount of gratuity payable under the Payment of Gratuity Act, 1972, the Third Respondent made a claim bearing P.G.No. 436 of 2000 for the differential sum of gratuity before the First Respondent /Assistant Commissioner of Labour under Section 7(4) for the payment of Gratuity Act, 1972, which was granted after hearing the Petitioner by order dated 29.12.2000. The appeal bearing P.G.A. No.235 of 2001 preferred by the Petitioner against that order under Section 7(7) of the Payment of Gratuity Act, 1972, was rejected by order dated 07.05.2002 passed by the Second Respondent/ Joint Commissioner of Labour. Aggrieved thereby, the Petitioner has challenged the said order of the Second Respondent confirming the order of the First Respondent in this Writ Petition.

3.The learned counsel for the Petitioner submits that inasmuch as the amount of DCRG along with pension paid under the service regulations of the Petitioner is higher than the amount of gratuity payable under the provisions of the Payment of Gratuity Act, 1972, the Third Respondent is not entitled to the differential amount of gratuity that has been granted under the impugned orders.

4.Section 14 of the Payment of Gratuity Act, 1972, in no uncertain terms states that the provisions of that Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than that Act or in any instrument or contract, having effect by virtue of any enactment other than that Act. This would obviously mean that merely because the Second Respondent is also receiving to pension under the service regulations, it would not absolve the liability of the Petitioner to pay gratuity in accordance with the provisions of the Payment of Gratuity Act, 1972, unless the establishment of the Petitioner has been exempted under Section 5 of the Payment of Gratuity Act, 1972, on being satisfied that the employees are in receipt of gratuity and pensionary benefits not less favourable than the benefits conferred under that Act. It is not in dispute that the petitioner has not obtained any such exemption. Hence, the amount of gratuity that the Third Respondent is entitled would have to be computed only in accordance with the provisions of the Payment of Gratuity Act, 1972 and after deducting the amount already paid towards DCRG, the Petitioner is liable to pay the differential amount of gratuity to the Third Respondent, as

rightly held in the impugned orders which do not suffer from any infirmity.

5.This view is fortified by the binding decision of the Hon'ble Supreme Court of India in Municipal Corporation of Delhi -vs- Dharam Prakash Sharma [(1998) 7 Supreme Court Cases 221]. This Court by order dated 20.01.2010 in W.P. Nos. 15114 and 15115 of 2000 has rejected the Writ Petitions filed by the Petitioner against the orders passed by the authorities under the Payment of Gratuity Act, 1972, for grant of differential amount of gratuity to its similarly placed employees.

6.In view of this incontrovertible legal position, the Writ Petition is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

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Appellate Authority,
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KGK(CO)
sm:6.9.2018

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