

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.17507 of 2003
and
W.P.M.P.No.21867 of 2003

The Commissioner
Tiruchengode Municipality
Tiruchengode, Namakkal District. Petitioner
Vs.

1.S.Kandayee
2.The Assistant Commissioner of Labour
Salem. Respondents

Prayer:Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the second respondent in his G.A.No.77/01 dated 30.03.2002 and quash the same.

For Petitioner : Mr.V.Jayaprakash Narayanan

For Respondents : Mr.M.Kumaravelu
For Mr.K.Surendranath [For R1]
Mr.K.S.Suresh, Govt. Advocate [For R2]

O R D E R

Heard, Mr.V.Jayaprakash Narayanan, learned counsel appearing for the petitioner, Mr.M.Kumaravelu, representing Mr.K.Surendranath, learned counsel appearing for the First Respondent and Mr.K.S.Suresh, learned Government Advocate appearing for the Second Respondent.

2.The Petitioner is a Municipality within the meaning of the Tamil Nadu District Municipalities Act, 1920 and has extended to its employees the benefit of Death cum Retirement Gratuity (hereinafter referred to as 'DCRG' for brevity) and pension as applicable to the servants of the Government of Tamil Nadu, which put together would be higher than the amount of gratuity payable under the

Payment of Gratuity Act, 1972. The First 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 First Respondent made a claim in G.A.No. 77 of 2001 for the differential sum of gratuity before the Second Respondent /Assistant Commissioner of Labour Gratuity under Section 7(4) for the payment of Gratuity Act, 1972, which was granted after hearing the Petitioner by order dated 30.03.2002. Aggrieved thereby, the Petitioner has challenged the said order of the Second Respondent in this Writ Petition.

3.Learned Counsel appearing for the First Respondent has filed a memo stating that the notice sent by him to the First Respondent informing of the final hearing of this Writ Petition has been returned unserved with a postal endorsement as 'addressee deceased' and that he has intimated the counsel for the Petitioner regarding the same by letter dated 27.01.2017, which has been produced. Since the legal representatives of the deceased First Petitioner have not been brought on record, the Writ Petition stands abated as against the First Respondent. Be that as it may, this Court also does not find any merit in the contentions raised the Writ Petition for the reasons stated hereinafter.

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

5.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 First Respondent is also receiving pension, 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 Second 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 under the DCRG, the Petitioner is liable to pay the differential amount of gratuity to the First Respondent, as rightly held in the impugned order which does not suffer from any infirmity.

6.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 08.02.2010 in W.P. No. 21865 of 2000 has rejected the writ petition filed by the Coimbatore City Municipal Corporation against the grant of differential amount of gratuity to its employees in which the same contention as made by the petitioner herein, were raised.

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

Sd/-

Assistant Registrar(CS vii)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner of Labour
Salem.

+1 cc to Mr.V.Jayaprakash Narayanan Advocate SR.NO. 43529
W.P.No.17507 of 2003

ASK(03/09/2018)