



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2139 of 2018

and

WMP(MD)No.2383 of 2018

R.Lakshmipathy

... Petitioner

Vs.

1. The Joint Commissioner of Labour,
TNHB Floor, Ellish Nagar,
Madurai - 625 016.

2. R.Ram Ambalam

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order passed by the first respondent Joint Commissioner of Labour, Madurai dated 10.07.2017 (Received on 12.10.2017), quash the same.

For Petitioner : Mr.T.Cibi Chakraborty
for Isaac Chambers

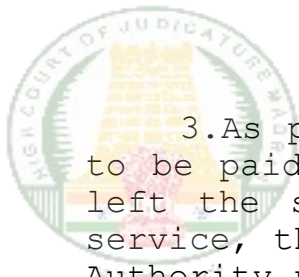
For Respondents : Mr.M.Jeyakumar,
Addl., Govt., Pleader for R1

Mr.R.Ram Ambalam (R2)
Party in person.

ORDER

The petitioner questions the impugned order dated 10.07.2017 passed by the first respondent. The first respondent as the Appellate Authority confirmed the order dated 05.08.2016 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 in P.G.No.111 of 2011 filed by the second respondent herein.

2.The learned counsel appearing for the petitioner submits that the petitioner is a Charitable Trust and is engaged in imparting education. The second respondent was employed as a Lecturer (EEE) on 05.08.2004. The terms of engagement are set out in the appointment order dated 05.08.2004. As per the said appointment order, he was paid the basic pay of Rs.3,000/- apart from the other allowances payable to him. After he completed four years, the terms of appointment order were renegotiated and the second respondent was appointed on consolidated basis.



3.As per the order dated 01.08.2008, the second respondent was to be paid consolidated pay of Rs.25,000/-. The second respondent left the service on 31.07.2010. After leaving the petitioner's service, the second respondent raised a claim before the Controlling Authority under the P.G Act, 1972 by filing P.G.No.111 of 2011. The Controlling Authority passed an order dated 05.08.2016 in favour of the second respondent holding that the management is liable to pay a sum of Rs.86,538/- as gratuity. A sum of Rs.17,308/- has already paid. The petitioner was liable to pay further sum of Rs.69,230/-. This order passed by the Controlling Authority was questioned by filing an appeal before the first respondent. The first respondent by order dated 10.07.2017 confirmed the order passed by the Controlling Authority. The same is assailed in this writ petition.

4.The learned counsel appearing for the petitioner contended that the service of the second respondent can be divided into two parts. In the first spell, he was in regular service for a period of four years and his basic pay was only Rs.3,000/- and together with other allowances payable to him. He would further contend that since there were negotiation between the parties, the second respondent came to be placed on consolidated basis. A sum of Rs.25,000/- was paid as consolidated monthly salary.

5.This Court is unable to agree with the said submission made by the learned counsel for the petitioner. A mere look at the order dated 01.08.2008 enclosed at Page No.17 of the typed set of papers would show that the management was only extending the service of the second respondent for the period ending July 31, 2009. Since the order passed by the management itself indicates that the service of the second respondent was extended by a further period, the stand of the petitioner herein that the entire service must be divided into two spells cannot be accepted. As per Section 4 (2) of the Payment of Gratuity Act, 1972, the management is obliged to pay gratuity to the employee at the rate of 15 days' wages based on the pay last drawn by the employee concerned.

6.In this case, it is beyond dispute that a sum of Rs.25,000/- was paid to the employee concerned as his monthly pay. In this case, the authorities have rightly applied the statutory provision to the case on hand and held that the management is liable to pay a further sum of Rs.69,230/- to the second respondent. Therefore, no interference is called for. There is absolutely no merit in this case.

7.This writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/



TO
The Joint Commissioner of Labour,
TNHB Floor, Ellish Nagar,
Madurai - 625 016.

+1CC to The Special Government Pleader in SR.No.53830
Madurai Bench Of Madras High Court,
Madurai.

+1CC to M/s.Isaac Chambers in SR.No.53875.

SKM
DS/KKR/SAR-3 :16.05.2018: 3P/4C

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