



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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W.P. (MD) No.17016 of 2015

The Management,
Lakshmi Ammal Polytechnic College,
Nalattinpathur,
Kovilpatti Taluk,
Tuticorin District.

... Petitioner

Vs.

1.The Appellate Authority under the
Payment of Gratuity Act, 1972
(Joint Commissioner of Labour),
Madurai.

2.The Controlling Authority under the
Payment of Gratuity Act, 1972,
(Assistant Commissioner of Labour),
Tirunelveli.

3.A.Sakthivel.

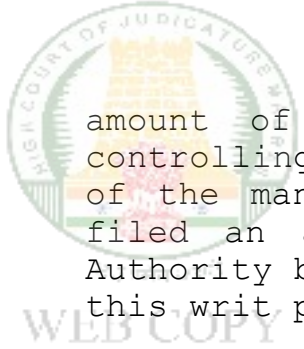
... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the second respondent in PG.No.9/2012 dated 27.02.2013 which was confirmed by the first respondent in P.G.A.No.15/2013 dated 19.12.2014 quash the same.

For petitioner	: Mr.V.Perumal
For R1	: No Appearance
For R2	: Mrs. S.Srimathy Special Government Pleader
For R3	: Mr.R.Siva Ilayaraja

O R D E R

The writ petitioner is a Polytechnic College. It questions the order passed by the authorities under the Payment of Gratuity Act, 1972 in favour of the third respondent herein who was employed as Workshop Instructor. It is admitted on both sides that the third respondent joined service on 02.07.1984 and retired on 31.05.2004. The third respondent filed PG.No.9/2012 before the Controlling Authority, Tirunelveli seeking payment of gratuity amount due to him. The said Application was resisted by the writ petitioner herein on the ground that the management is not liable to pay any



amount of Gratuity to the third respondent herein. But the controlling Authority by order dated 27.02.2013, rejected the stand of the management and allowed PG.No.9 of 2012. The management filed an appeal before the Appellate Authority. The Appellate Authority by order dated 19.12.2014 dismissed PG.No.15/2013. Hence, this writ petition has been filed.

2.The learned counsel appearing for the management contended that the teachers were originally not included within the definition of the term "Employee". Only by virtue of the Amendment Act 1947 of 2009, the expression "employee" as per Section 2(e) of the Payment of Gratuity Act, 1972 was amended with effect from 03.04.1997 and only by virtue of the said amendment, teachers came to be included within the said definition.

3.The learned counsel for the petitioner would therefore contend that at best the third respondent herein can claim Gratuity for the period from 03.04.1997 till his date of retirement. The learned counsel appearing for the third respondent would contend that the third respondent was treated only as a non teaching staff and that he was only a Workshop Instructor. He would dispute the contention of the management that he was a teacher.

4.In any event, according to the learned counsel for the third respondent, the petition will have to be dismissed by following the decision of the Bombay High Court reported in 2012-I-LLJ-350 (Ms.Ananta Vishwanathan v. Shri Narayana Guru High School and Others). This Court went through the aforesaid decision. Without going into the question of whether the third respondent is to be treated as a Teacher or as a Non Teaching Staff (Workshop Instructor), this Court is of the view that the issue has already been decided in favour of the workman.

5.Identical contention now raised by the management was also projected before the Bombay High Court. The Bombay High Court held that the provisions of the PG Act have been made applicable to the employee for the service rendered whether before or after commencement of the Amendment Act. Admittedly, the Amendment Act, 1947 of 2009 came into force with effect from 03.04.1997. On the said date, the third respondent herein was employed in the petitioner's polytechnic college. Therefore, automatically he was eligible to invoke the benefits of the said statute. The statute being a beneficial legislation, this court cannot hold that the period of service rendered by the third respondent prior to 03.04.1997 is excluded.

6.In any event, the Bombay High Court has dealt with the very same contention now raised and held against the management. This Court respectfully adopts the reasons set out therein. Following the aforesaid decision, this Court has to be necessarily dismiss the petition filed by the petitioner herein.



7. Accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

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/True Copy/

Sub Assistant Registrar

To

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

+1cc to M/S.R.Siva Ilayaraja, Advocate SR.No. 46819

+1cc to M/S.V.Perumal, Advocate SR.No. 47070

+1cc to Special Government Pleader, SR.No. 47438

ORDER MADE IN
W.P. (MD) No.17016 of 2015
07.02.2018

pnn/skm

JM/SV MMS/SAR 1/24.04.2018/3P/5C