



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.02.2018

CORAM :

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.13254 of 2017  
and  
WMP(MD)No.10323 of 2017

Karur Agricultural Producers  
Cooperative Marketing  
Society Ltd R378,  
Rep. by its Deputy Registrar /  
Managing Director Loganathan,  
145-Jawahar Bazaar,  
Karur - 639 001.

... Petitioner

**Vs.**

1. The Assistant Commissioner of  
Labour (Gratuity), Dindigul.

2. K.N.Arumugam

... Respondents

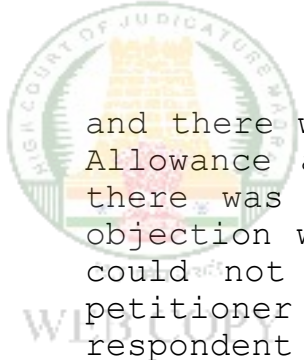
**Prayer** : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed in P.G.No.166 of 2016 dated 28.04.2017 and quash the same.

For Petitioner : Mr.G.Rajendran  
for T.R.Janardhanan

For Respondents : Mr.S.Srimathy,  
Spl., Govt Pleader for R1  
Mr.M.Saravanan for  
Mr.R.Subramanian for R2

**ORDER**

This writ petitions have been filed by the Karur Agricultural Producers Cooperative Marketing Society Limited. The challenge in this writ petition is in respect of the order passed by the controlling authority under the Payment of Gratuity Act, 1972. The second respondent was an employee in the petitioner society.



and there was a marginal increase of their basic pay. 9% Dearness Allowance also agreed to be paid to the employees. Subsequently, there was an audit objection raised in this regard. The audit objection was to the effect that the increase in dearness allowance could not have been granted. But, then the management of the petitioner society chose to disregard the audit objections. The respondent employee also retired from service. Since his gratuity dues were not settled, the employee took out an application before the controlling authority.

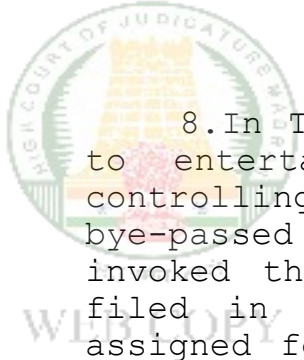
3.The controlling authority quantified the gratuity dues payable to the respondent employee in terms of Section 4(2) of Payment of Gratuity Act, 1972. The said provisions states that the employer shall pay gratuity to the employee at the rate of 15 days' wages based on the rate of wages last drawn by the employee concerned.

4.In this case, the fact remains that even though there was an audit objection, it was not given effect to by the employer. But, the employer filed counter affidavit contending that no gratuity dues were payable to the employee concerned in view of the aforesaid audit objection. But, then the controlling authority passed the orders impugned in the writ petition directing the payment of certain sums of money to the employee.

5.As already pointed out, the computation was based on the last drawn wages of the concerned employee. Section 2(s) of the Payment of Gratuity Act, 1972 defines what is "wages". It includes dearness allowance. In this case, on the date of retirement, the employee concerned was drawing dearness allowance as agreed between him and the management in terms of the settlement made under Section 18(1) of the Industrial Disputes Act, 1947.

6.It is a matter of record that the management did not downgrade the wages payable to the second respondent herein or take away the dearness allowance benefit that was conferred on him by the settlement before retirement. The controlling authority has to go by what was drawn by the applicant as wages.

7.The learned counsel appearing for the writ petitioner would submit that the employee was not entitled to dearness allowance and that show cause notice as well as recovery orders were issued. But, then these are all post retirement developments. The controlling authority rightly did not take note of them. More than anything else, the main impediment that stands in the way granting relief to the writ petitioner is that the petitioner herein did not avail the statutory appeal remedy as per Section 7(7) of the Payment of Gratuity Act, 1972. Any person aggrieved by an order under sub section (4) may within 60 days prefer an appeal to the appropriate Government or such other authority as specified by the Government in this behalf.



8. In Tamil Nadu, the appellate authorities have been empowered to entertain the appeals against the orders passed by the controlling authority. In this case, the writ petitioner has bye-passed the said statutory appeal remedy and straight away invoked the writ jurisdiction of this Court. In the affidavits filed in support of this writ petition, no reasons have been assigned for bye-passing the statutory appeal remedy. Since this Court has already held that the controlling authority was justified in passing the orders impugned in the writ petition and correctly quantified the gratuity amounts payable to the employee, this Court is not inclined to interfere with the order impugned in the writ petition. This writ petition lacks merit. It stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

**To**

The Assistant Commissioner of  
Labour (Gratuity),  
Dindigul.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 47196, 46847

SKM

TE/SV-MMS/SAR-2 : 28/02/2018 : 3P/3C

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