

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 06.02.2018****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P (MD) No.13385 to 13396 of 2016****and****WMP (MD) Nos.10013 to 10024 of 2016**

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KARUR AGRICULTURAL PRODUCERS
COOPERATIVE MARKETING SOCIETY LTD R378,
REP. BY ITS DEPUTY REGISTRAR /
MANAGING DIRECTOR LOGANATHAN,
145-JAWAHAR BAZAAR,
KARUR - 639 001.

... PETITIONER IN WPs.

VS.

THE ASSISTANT COMMISSIONER OF
LABOUR (GRATUITY), DINDIGUL.

... IST RESPONDENT IN WPs

R.GANESHA MOORTHY	...	2 nd Respondent in WP (MD) No.13385 of 2016
S.JAYARAJ	...	2 nd Respondent in WP (MD) No.13386 of 2016
R.PASUPATHY	...	2 nd Respondent in WP (MD) No.13387 of 2016
S. GANDHI	...	2 nd Respondent in WP (MD) No.13388 of 2016
M.NATESAN	...	2 nd Respondent in WP (MD) No.13389 of 2016
V.RAJALINGAM	...	2 nd Respondent in WP (MD) No.13390 of 2016
V.PITCHAIMUTHU	...	2 nd Respondent in WP (MD) No.13391 of 2016
G.RAJARAMAN	...	2 nd Respondent in WP (MD) No.13392 of 2016
P.SELVARAJ	...	2 nd Respondent in WP (MD) No.13393 of 2016
M. DEVADOSS	...	2 nd Respondent in WP (MD) No.13394 of 2016

1 TMT.M.KRISHNAVENI

2 M.KAVITHA

3 M.SURESH BABU ... 2 to 4 Respondent in WP (MD) No.13395 of 2016

K.SADAYAPPAN ... 2nd Respondent in WP (MD) No.13396 of 2016

Prayer in WP (MD) No.13385/ 2016 : 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.164 of 2015 dated 18.05.2016 and the consequential order passed by the first respondent in his proceedings in Na.Ka.AA1/4081/2016 dated 15.07.2016, and quash the same.

Prayer in WP (MD) No . 13386/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed in P.G.No. 76/2014 dated 18.05.2016 and the consequential order passed by the 1st Respondent in his proceedings in Na.Ka.AA1/4086/16 dated 15.07.2016 and quash the same.

Prayer in WP(MD)No . 13387/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed in P.G.No.2/2016 dated 18.05.2016 and the consequential order passed by the 1st respondent in his proceedings in Na.Ka.AA1/4091/16 dated 15.07.2016 and quash the same.

Prayer in WP(MD)No . 13388/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed in P.G.No. 71/2014 dated 18.05.2016 and the consequential order passed by the 1st respondent in his proceedings in Na.Ka.AA1/4084/16 dated 15.07.2016, and quash the same.

Prayer in WP(MD)No . 13389/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed in P.G.No. 68/2014 dated 18.05.2016 and the consequential order passed by the 1st Respondent in his proceedings in Na.Ka.AA1/4087/16 dated 15.07.2016 and quash the same.

Prayer in WP(MD)No . 13390/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed in P.G.No.72/2014 dated 18.05.2016 and the consequential order passed by the 1st respondent in his proceedings in Na.Ka.AA1/4090/16 dated 15.07.2016 and quash the same.

Prayer in WP(MD)No . 13391/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed in P.G.No. 69/2014 dated 18.05.2016 and the consequential order passed by the 1st respondent in his proceedings in Na.Ka.AA1/4083/16 dated 15.07.2016, and quash the same.

Prayer in WP(MD)No . 13392/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed in P.G.No.



1/2016 dated 18.05.2016 and the consequential order passed by the 1st Respondent in his proceedings in Na.Ka.AA1/4089/16 dated 15.07.2016 and quash the same.

Prayer in WP(MD)No . 13393/ 2016 :

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Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed in P.G.No.67/2014 dated 18.05.2016 and the consequential order passed by the 1st respondent in his proceedings in Na.Ka.AA1/4088/16 dated 15.07.2016 and quash the same.

Prayer in WP(MD)No . 13394/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed in P.G.No. 70/2014 dated 18.05.2016 and the consequential order passed by the 1st respondent in his proceedings in Na.Ka.AA1/4092/16 dated 15.07.2016, and quash the same.

Prayer in WP(MD)No . 13395/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed in P.G.No. 3/2016 dated 18.05.2016 and the consequential order passed by the 1st Respondent in his proceedings in Na.Ka.AA1/4082/16 dated 15.07.2016 and quash the same.

Prayer in WP(MD)No . 13396/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed in P.G.No.04/2016 Dated 18.05.2016 and the consequential order passed by the 1st respondent in his proceedings in Na.Ka.AA1/4085/16 dated 15.07.2016 and quash the same.

For Petitioner : Mr.G.Rajendran
for Mr.T.R.Janardhanan, in all WPs

For Respondents : Mr.J.Gunaseelan Muthaiah,
Addl, Govt., Pleader for R1,
in all WPs

Mr.M.Saravanan for
Mr.R.Subramanian for R2, in all WPs
and R3 and R4 in WP(MD)No 13395 of 2016

**COMMON ORDER**

All these 12 writ petitions have been filed by the Agricultural Producers Cooperative Marketing Society Limited. The challenge in all these writ petitions is in respect of the orders passed by the controlling authority under the Payment of Gratuity Act, 1972. In all these cases, the second respondents were the employees in the petitioner society.

2.A settlement under Section 18(1) of the Industrial Disputes Act, 1947 was entered into them and the management and there was a marginal increase in their basic pay. 9% Dearness Allowance was 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 employees also retired from service. Since their gratuity dues were not settled, the employees took out application before the controlling authority.

3.The controlling authority quantified the gratuity dues payable to the respondent employees 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 are payable to the employee concerned in view of the aforesaid audit objection. But, then the controlling authority passed the orders impugned in the writ petitions directing the payment of certain sums of money to the respective employees.

5.As already pointed out, the computation was based on the last drawn wages of the concerned employees. 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 employees concerned were drawing dearness allowance as agreed between them 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 take away the dearness allowance benefit that was conferred on them by the settlement before the retirement. The controlling authority has to go by what was drawn by the applicants as wages.



7. The learned counsel appearing for the writ petitioners would submit that the employees were not entitled to dearness allowance and that there were recovery orders. 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 in the writ petitions 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 specified 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 these writ petitions, 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 employees, this Court is not inclined to interfere with the orders impugned in the writ petitions. These writ petitions lack merits. All these writ petitions stand dismissed. No costs. Consequently, connected Miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner of Labour (Gratuity),
Dindigul.

+12cc to Mr.R.Subramanian, Advocate Sr.No.46517
+1cc to Spl.Government Pleader Sr.No.46846,47236

SKM

VB/SKN/RSK/SAR4/25.05.2018/5P/15C

**W.P (MD) No.13385 to 13396 of 2016
and**

**WMP (MD) Nos.10013 to 10024 of 2016
06.02.2018**