



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.8285 of 2016

and

WMP (MD) No.6713 of 2016

The Veerakkal Village Panchayat,
Aathur Panchayat Union,
Dindigul District,
Rep.by its President V.Thangavel

... Petitioner

Vs.

1.The Assistant Commissioner of Labour,
Dindigul.

2.V.Karnamagarajan

3.The Block Development Officer,
O/o. Aathur Block Development Office,
Sempaty, Dindigul District.

... Respondents

PRAYER: Writ petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records of the first respondent's impugned order in P.G.No.246 of 2015 dated 13.01.2016 and quash the same as illegal, unlawful and against law.

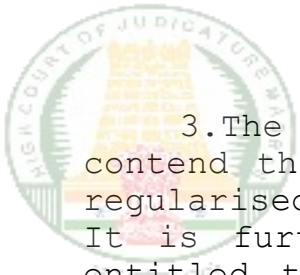
For petitioner : Mr.K.Anandan

For Respondents : Mrs.S.Srimathy,
Spl., Govt.Pleader for R1 & R3
Mr.D.Selvaraj for R2

ORDER

The petitioner is a village panchayat. Aggrieved by the order passed by the controlling authority under the Payment of Gratuity Act, 1972 directing the petitioner-panchayat to pay a sum of Rs.38,400/- with interest to the second respondent herein, this writ petition has been filed.

2.It is admitted in the affidavit filed in support of this writ petition that the second respondent herein worked as a Over Head Tank Operator in the petitioner-panchayat. According to the second respondent, he was employed as a casual labour on daily wages from 30.07.1989 and that he retired on 02.05.2015.



3.The learned counsel appearing for the petitioner would contend that since the services of the second respondent were not regularised till his superannuation, he cannot be granted gratuity. It is further contended that village panchayat servants are not entitled to gratuity. Another submission is that the number of employees employed in the panchayat were less than 10. Since the village panchayat employees are less than 10 persons, it would not be an establishment falling under the purview of the Act.

4.This writ petition is liable to be rejected on more than one ground. The first respondent is the controlling authority under the Payment of Gratuity Act, 1972. He has passed the impugned order under Section 7(4) of the Act. As per Section 7(7) of the Act, an appeal can be lodged before the appellate authority. In this case, the order in question was passed on 13.01.2016. No reason has been assigned in the affidavit filed in support of this writ petition for by-passing the aforesaid alternative remedy. For non exhaustion of the alternative remedy available under the statute, this writ petition is liable to be dismissed.

5.But, this Court is not however dismissing this writ petition on the said ground. On the direction of this Court, the second respondent filed an affidavit undertaking that on the date of his retirement as many as 15 persons were employed in the writ petitioner panchayat. Their respective names have also been mentioned. There is no rebuttal to this affidavit filed by the second respondent. The fact that the second respondent was not regularised is of no consequence. The expression "employee" has been defined in Section 2 (e) of the Act. It is an all inclusive definition. The second respondent would definitely fall within the said expression "employee" in terms of the Section 2(e) of the Act.

6.This Court therefore holds that an employee of the Village Panchayat even if his services have not been regularised, would still be entitled to claim the benefits set out under the Payment of Gratuity Act, 1972 if he is otherwise eligible. A village panchayat is certainly an establishment coming under the purview of the Act. In this case, it has been established that more than 10 persons were employed when the second respondent reached the age of superannuation.

7.For all these reasons, this Court finds no merit in this writ petition. It stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CO)

/True copy/



To

1. The Assistant Commissioner of Labour,
Dindigul.

2. The Block Development Officer,
O/o. Aathur Block Development Office,
Sempaty, Dindigul District.

+1cc to Special Government Pleader, SR.No.48653.

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SKM

RAM/SV MMS/SAR 4/30.05.2018/3P/4C