



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.02.2018

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P(MD)No.9876 of 2016

and

WMP(MD)No.7797 of 2016

M/s.Tamil Nadu Cements Corporation Ltd,
Alangulam Cement Works,
Tamil Nadu Cements Post-626 127,
Via Rajapalayam,
Virudhunagar District.
Rep.by its Unit Head

... Petitioner

Vs.

1. The Assistant Commissioner of Labour,
Controlling Authority under
Payment of Gratuity Act,
Bharathi Ula Road,
K.Pudur, Madurai - 625 002.

2. R.Gurunathan

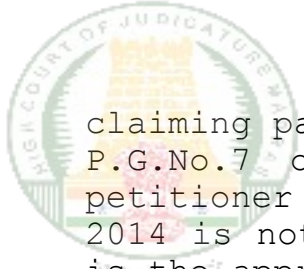
... Respondents

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 of the first respondent in I.A.No.51 of 2015 in P.G.No.7 of 2014 and quash the order dated 03.03.2016 passed therein.

For Petitioner	: Mr.T.Ravichandran
For Respondents	: Mrs.S.Srimathy, Spl.Govt Pleader for R1 Mr.Saranya for Mr.N.Sathisbabu for R2

ORDER

The petitioner is a company owned by the Government of Tamil Nadu. It is having manufacturing units in Tamil Nadu and also marketing depots not only in various regions in Tamil Nadu but also in the State of Kerala. The second respondent was employed as Assistant Manager (Marketing). He was also posted at Palakkad. The second respondent reached the age of superannuation on 31.05.2014. He filed an application dated 14.07.2014 before the first respondent



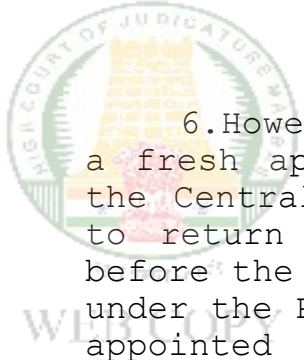
claiming payment of gratuity. The first respondent took the same as P.G.No.7 of 2014 and issued notice to the petitioner. The petitioner raised a preliminary issue pointing out that P.G.No.7 of 2014 is not maintainable as it is only the Central Government which is the appropriate Government. The said application was however not accepted by the first respondent and an order to that effect was passed in I.A.No.51 of 2015 filed by the petitioner herein. The same is impugned in this writ petition.

2.The question is before this Court is which is the appropriate Government in relation to the petitioner. The expression "appropriate Government" is defined under Section 2(a) of the Payment of Gratuity Act, 1972. In relation to an establishment having been branches in more than one State, the appropriate Government will be the Central Government. In the present case, it is admitted that the petitioner is having depots in Kerala. In fact, the second respondent himself was transferred to Palakkad Depot.

3.The learned counsel appearing for the second respondent would point out that only if the petitioner is having a branch in more than one state, Central Government will be the appropriate Government. Merely having depots in another State will not make the Central Government as the appropriate Government in this case. But, as rightly pointed out by the learned counsel appearing for the petitioner, the expression "branch" has not been defined in the statute.

4.In similar circumstances, the Bombay High Court in the decision reported in **(2005) III LLJ 166 Bom (Rhone Poulenc (India) Ltd vs. Anjali Devrukhar And Ors)** held that the Central Government would be the appropriate Government. It is true that the petitioner is having manufacturing units at Ariyalur and Rajapalayam. But, that will not make the State of Tamil Nadu as the appropriate Government. As the Bombay Higher observed the expression "branch" must bear the meaning which is attributed in common parlance. A branch is essentially a limb of an organization or an arm of the organization through which the organization carries on business. Looked at from this perception marketing depots in the State of Kerala will obviously have to be construed as branches.

5.This Court is in respectful agreement with the aforesaid decision of the Bombay High Court. Therefore, the controlling authority must be held to have erred in rejecting the preliminary objection raised by the petitioner in regard to the jurisdiction. The appropriate Government being the Central Government, the controlling authority and the appellate authority appointed by the State Government under Section 3 of the Payment of Gratuity Act, 1972 cannot have any jurisdiction. Therefore, the order impugned in the writ petition is liable to be quashed and the writ petition is to be necessarily allowed.



6.However, instead of permitting the second respondent to file a fresh application before the controlling authority appointed by the Central Government, this Court can direct the first respondent to return the application filed by the workman for presentation before the controlling authority appointed by the Central Government under the Payment of Gratuity Act, 1972. The controlling authority appointed by the Central Government, shall on receipt of the applications, proceed to dispose them of in accordance with law within a period of six months thereafter.

7.The order dated 03.03.2016 made in I.A.No.51 of 2015 in P.G.No.7 of 2014 is quashed. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner of Labour,
Controlling Authority under
Payment of Gratuity Act,
Bharathi Ula Road,
K.Pudur, Madurai - 625 002.

+ 1 CC TO Mr.T.RAVICHANDRAN, ADVOCATE IN SR No. 46702
+ 1 CC TO Mr.N.SATHISH BABU, ADVOCATE IN SR No. 46657

SKM

TE/JC/SAR-2 : 28/02/2018 : 3P/4C

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