



WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 13.08.2018**

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.117 of 2011

and

M.P(MD)No.1 of 2011

Madurai District Co-operative Milk Producers'
Union Limited,
Aavin,
Sathamangalam,
Madurai-625 020,
through its General Manager. ..Petitioner

Vs

1. S.Marichamy,
C/o.General Labour Union,
31, Nanmai Tharuvar Koil Arichikara Street,
Madurai -1.
2. The Controlling Authority under the Payment of
Gratuity Act,
(The Assistant Commissioner of Labour),
O/o.The Deputy Commissioner of Labour.
142/1, Sundaram Theatre Road,
K.K.Nagar,
Madurai-20.
3. The Appellate Authority under the
Payment of Gratuity Act,
(Joint Commissioner of Labour),
East Marett Street,
Madurai. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certioari calling for the records from the third respondent herein in case No.Pa.Ko.Me.Mu.No.41 of 2009(PGA No.41 of 2009) and to quash the order dated 5.4.2010 passed therein.

For Petitioner :Mr.P.Chandra Bose

For Respondent-1 :No appearance

For Respondents :Mr.M.Pandiarajan
2 and 3 Addl.Govt.Pleader

**ORDER**

The Petitioner has come forward with this Writ Petition challenging the order of the Controlling Authority, dated 10.7.2018 made in P.G.No.26 of 2007 and also the order affirming the order of the Controlling Authority by the Appellate Authority in P.G.A.No.41 of 2009.

2.The sum and substance of the issue on hand is that:

The first respondent has joined the service of the Government Department in Milk Project of the Dairy Development Department and worked from 1.2.1981. As the said department was wound up, the employee namely the first respondent was absorbed in the Petitioner/federation w.e.f. 1.2.1981 with continuity of service. The first respondent has attained the age of superannuation on 31.10.1996. and that the first respondent was paid gratuity for the service rendered by him from 1.2.1981 to 31.10.1996 which was received by the first respondent on 21.2.1997. Similarly the first respondent was also paid a sum of Rs.3,332/- on 7.10.1997 by the Government for the service rendered to the Government from 24.2.1971 to 31.1.1981. It is represented that payment of gratuity is not applicable to the Government employees and that is the reason why gratuity for the service rendered from 1.2.1981 has been calculated and paid, based on his last drawn wages. Without taking into account such factor and that the Petitioner has worked for 25 years including the service rendered in the Government, the authorities proceeded on the basis that he has rendered 29 years of service and directed to pay the difference in gratuity for the entire service from 1981 namely the service rendered to the Government.

3.There is no representation for the first respondent, even though his name was printed in the cause-list.

4.The only contention from the pleading of the first respondents is that there is continuity of service. For the sake of convenience, Section 2(e) of the Payment of Gratuity Act, 1972 is extracted below:

''((e))''employee'' means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory,mine, oil field, plantation, Port, Railway company, shop or other establishment, to which this Act applies, but does not include any such person who holds a post under the Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.''



5.A reading of Section 2(e) of the Payment of Gratuity Act makes it clear that it excludes such person, who is employed in a managerial or administrative capacity, or who holds a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950, the Army Act, 1950, or the Navy Act, 1957.

6.A perusal of the definition would make it clear that the first respondent's service under the Petitioner alone need to be calculated for the purpose of payment of gratuity. The first respondent has received payment from the Government for the service rendered by him from 1971 to 31.1.1981,

7.As the first respondent has already received amount from the Government, even though the same has been paid, the first respondent is entitled to get interest for the said amount for the service rendered to the Petitioner at the rate of 12% p.a from the Government and certainly not from the Writ Petitioner. However, the Petitioner has deposited the difference amount which has not been withdrawn by the employee. The first respondent is not an employee under the Corporation from 24.2.1971 to 31.1.1981, more particularly, that the employee herein is excluded from payment of Gratuity Act and the first respondent has received the amount. Hence, it is open to the Petitioner/Federation from the recovering the amount in accordance law., if the amount is paid to the employee. If the first respondent wants interest on the gratuity amount paid by the Government for the service rendered between 24.2.1971 to 1.2.1981, he can do so , after repaying the amount to the Federation, if received from the deposit.

8.This Court also passed an interim order on 6.12.2013. The first respondent had the benefit of interest from the date of deposit of the amount of Rs.27,482/- .If the amount is lying to the credit of P.G.No.26 of 2007, the same shall be refunded to the Writ Petitioner within 15 days from the date of receipt of this order.

9.The Writ Petition stands allowed with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)



To

1. The Controlling Authority under the Payment of
Gratuity Act,
(The Assistant Commissioner of Labour),
142/1, Sundaram Theatre Road,
K.K.Nagar,
Madurai-20.

2. The Appellate Authority under the
Payment of Gratuity Act,
(Joint Commissioner of Labour),
East Marett Street,
Madurai.

+1cc to Mr.P.Chandra Bose, Advocate Sr.No.78449

+1cc to Spl.Government Pleader Sr.No.78424

VSN

VB/RSK/SAR1/17.09.2018/4P/5C

**ORDER MADE IN
W.P(MD)No.117 of 2011
and
M.P(MD)No.1 of 2011**

13.08.2018