

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.22561 of 2008

THE AREA MANAGER
Food Corporation of India,
District Office, Xaverian Building,
23-B Beach Road,
Tuticorin-628 001.

...Petitioner
vs.

1. R.Padmanapan
- 2.The Appellate Authority
under Payment of Gratuity Act and
Regional Labour Commissioner
(Central) Shastri Bhavan
Chennai-600 006.
- 3.The Controlling Authority,
under the payment of Gratuity Act and
Assistant Labour Commissioner
(Central) Madurai-625 002.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the second respondent relating to order dated 09.07.2008 made in Gratuity Appeal No.331 of 2007 confirming the order of the third respondent dated 29.06.2007 made in G.A.No.121 of 2006 and to quash the same.

For Petitioner : Mr.M.Imthias

For Respondents : M/s.R.Durugarani
CGSC for RR2 & 3
Non-appearance for R1

O R D E R

The order dated 09.07.2008 passed in Gratuity Appeal No.331 of 2007 confirming the order of the third respondent dated 29.06.2007 made in G.A.No.121 of 2006, are sought to be quashed in the present writ petition.

2. The writ petitioner is the Food Corporation of India. The learned counsel for the writ petitioner states that the first respondent/workman was initially engaged by the Labour Cooperative Society, which is a Cooperative Society registered under the provisions of the Tamil Nadu Cooperative Societies Act, the administration of the Cooperative Society is no way connected with the administration of the Food Corporation of India. The society was a separate legal entity and registered under the Tamil Nadu Cooperative Societies Act and therefore, the engagement of a Labour Cooperative Society is only a contract employment and no way connected with the employment of the Food Corporation of India. In other words, when the respondent workman was engaged by the Labour Cooperative Society, there was no employer-employee relationship existed between the Food Corporation of India as well as the respondent workman.

3. Thus, the contract labourer engaged by the Cooperative Society was subsequently considered for payment under the Direct Payment System by the Food Corporation of India. The contract labourer was performing the ancillary duties for the Food Corporation of India through the Cooperative society, the Food Corporation of India brought them under the Direct Payment System and thereafter, they are entitled for gratuity under the provisions of the Gratuity Act, 1972.

4. In this regard, the fact remains that the respondent workman was brought under the Direct Payment System by the Food Corporation of India in the year 1997 and he worked for three years and relieved from service in the year 2000. In view of the fact that the workman was completed the minimum requirement period of five years, he is not entitled for gratuity under the provisions of the Gratuity Act and accordingly, the writ petitioner not paid the gratuity under the scheme. However, the respondent workman approached the Controlling Authority under the Payment of Gratuity Act and the Controlling authority allowed the claim, stating that the reckoning of the qualifying service is to be taken into account from the date of appointment made by the Labour Cooperative Society. Based on the services rendered in the Cooperative Society, the Controlling authority directed the Food Corporation of India to settle the gratuity under the Gratuity Act. The writ petitioner preferred an appeal before the Appellate authority, who in turn, confirmed the order of the Controlling Authority, against which, the present writ petition is filed.

5. The first respondent/employee admittedly had worked as an employee in the Food Corporation of India from 01.05.1996 to 30.06.2000. Therefore, he is entitled for gratuity under the provisions of the Gratuity Act. As he had not completed the minimum service of five years which is a requisite qualification for grant of gratuity under the Act, the third

respondent included the services rendered by him in a Co-operative Society, without any rules to that effect. Therefore, joining the services of the first respondent rendered in a Co-operative Society on temporary basis, is the error committed by the Controlling Authority as well as the Appellate Authority.

6. The learned counsel for the writ petitioner reiterated that the workman was not the employee of the Food Corporation of India and he was engaged by the Labour Cooperative Society, which is a separate society registered under the Tamil Nadu Cooperative Societies Act and the Food Corporation of India is a Principal employer. The Principal employer is not liable in respect of the service benefits and the Principal employer has settled the wages as per the terms and conditions of the agreement with the Cooperative society. Thus, the services of the contract labourer engaged by the Labour Cooperative society cannot be taken into account for the purpose of calculating the services rendered by such contract labourer as a direct payment employees under the Food Corporation of India.

6. This being the principles to be followed, this Court is of an opinion that the services rendered as a casual labourers with the Cooperative society cannot be counted for the purpose of calculating the minimum required service with reference to Section 4(1) of the Payment of Gratuity Act, 1972. As per Section 4(1) of the Payment of Gratuity Act, the minimum service of five years is the qualification for the purpose of granting payment of gratuity under the Act. The respondent workman had served about three years with the Food Corporation of India as direct payment employees and therefore, the services rendered by them with the Labour Cooperative society cannot be reckoned as a qualifying services for the purpose of settling gratuity with reference to Section 4(1) of the Act.

7. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssb

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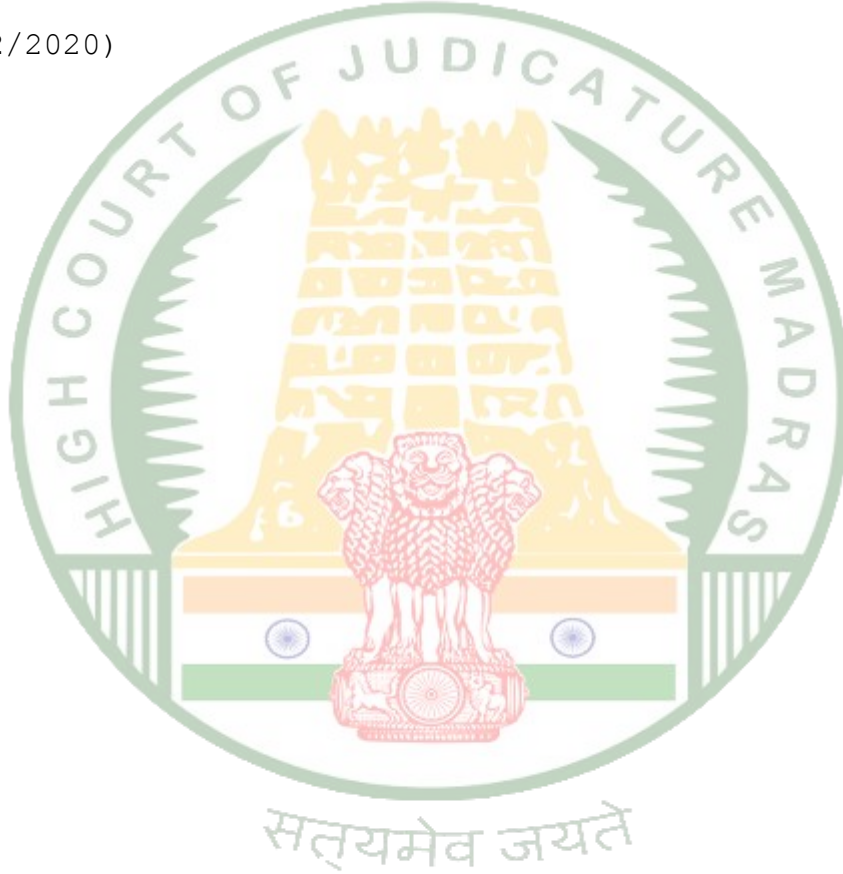
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+1cc to M/s.R.D.Durgarani , Advocate SR.No. 94015
+1cc to Mr.N.Imthiyas , Advocate SR.No. 94036

W.P.No.22561 of 2008
M.P.No.2 of 2008

rr
A.SK(03/02/2020)



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