

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.45390 of 2006

and

M.P.No.1 of 2006

The Superintending Engineer,
Purchase & Administration,
Mettur Thermal Power Station,
Mettur Dam - 636 406

..Petitioner

vs

1.Appellate Authority under the Payment
of Gratuity Act,
Joint Commissioner of Labour,
Coimbatore.

2.I.Anthonisamy

..Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records of the 1st Respondent relating to his
proceedings dated 19.06.2006 passed with the Award in AGA No.226
of 2004 and quash the same.

For Petitioner : Mr.Anand Gopalan
For M/s.T.S.Gopalan & Co

For Respondents : R1 - Mr.D.Suriya Narayanan
Additional Government Pleader
R2 - No appearance

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O R D E R

The writ on hand is filed to quash the order dated
19.06.2006 passed in AGA No.226 of 2004.

2. The writ petition is filed by the Superintending
Engineer, mainly on the ground that the provisions of the
Payment of Gratuity Act is not applicable for the employees of
the Establishment.

3. It is contended that the 1st respondent had erroneously proceeded with the matter without deciding the preliminary issue regarding the maintainability of the petition under the provisions of the Gratuity Act. The applicability of the provisions of the Act was considered by this Court in W.P.No.32774 of 2018 dated 13.09.2019 and it is found that the writ petitioner Board was exempted in respect of the employees working in the Tamil Nadu Electricity Board. In view of the exemption already granted and further, the payment of gratuity regulated with reference to the rules in force in the Board, the 1st respondent has committed an error in entertaining the petition under the General Act. The relevant paragraph of the judgment is extracted hereunder:

"2. The petitioner claims that he joined as a Contract Labourer on 02.08.1989, in the post of Helper. He was directly employed under 4th respondent, Salem and pursuant to the report of Justice Khalid Committee, he was permanently absorbed in the Tamil Nadu Generation and Distribution Corporation Limited on 01.05.1999. Admittedly, the writ petitioner is now brought under the regular establishment under the Pensionable Services. Thus, the service conditions as applicable to the regular employees of the Board would be applicable to the writ petitioner also. The writ petitioner attained the age of superannuation and as per the Service Rules in force the terminal and pensionary benefits were settled in favour of the writ petitioner including the gratuity. Not satisfied with the payment of terminal and pensionary benefits, as per the Service Rules applicable to the Tamil Nadu Electricity Board, the petitioner filed a petition before the Controlling Authority under the Payment of Gratuity Act, 1972 claiming the balance gratuity amount. The Controlling Authority allowed the claim of the writ petitioner and directed the Electricity Board to pay balance gratuity amount by calculating under the Payment of Gratuity Act, 1972. The appeal was filed by the Electricity Board and the Appellate Authority reversed the order and rejected the petition filed by the writ petitioner under the Payment of Gratuity Act on the ground that the Act itself was exempted in respect of the employees working in the Tamil Nadu Electricity Board under the Pensionable Services and therefore, no petition can be entertained under the provisions of the Payment of Gratuity Act, 1972."

4. In view of the fact that the writ petitioner Electricity Board is exempted from the provisions of the Gratuity Act and the order impugned is perverse and untenable. Thus, the order of the 1st respondent dated 19.06.2006 passed in AGA.No.226 of 2004 is quashed and the writ petition stands allowed. The amount deposited by the writ petitioner with the 1st respondent is directed to be returned within a period of four weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

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To

Joint Commissioner of Labour,
Appellate Authority under the Payment
of Gratuity Act,
Coimbatore.

+1 CC to Mr.T.S. Gopalan and Co, sr 86298.

W.P.No.45390 of 2006

LN (CO)
SP (18/11/2019)

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