

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26-11-2019
CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.16623 of 2015
And
M.P.Nos.2 and 3 of 2015

The Management,
Tamil Nadu State Transport Corporation
(Salem) Limited,
12, Ramakrishna Road,
Salem-636 007,
Represented by its General Manager. ... Petitioner

-vs-

1.The Appellate Authority,
Under the Payment of Gratuity Act, 1972,
The Joint Commissioner of Labour,
Coimbatore.

2.The Controlling Authority,
(Under the Payment of Gratuity Act, 1972),
The Assistant Commissioner of Labour,
Salem.

3.S.Sankaran ... Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of a Writ of Certiorari, calling for the
records of the order of the first respondent, the Appellate
Authority (Under the Payment of Gratuity Act, 1972), The Joint
Commissioner of Labour, Coimbatore made in வழக்கு எண்.ப.கொ.மே.மு.AGA
56/14, dated 01.09.2014 and the order passed by the second
respondent, The Controlling Authority (Under the Payment of
Gratuity Act, 1972), The Assistant Commissioner of Labour, Salem
made in பணிக்குறைவு வழக்கு எண். 35/2012, dated 04.01.2013 and to quash the
same as illegal.

For Petitioner : Ms.Rajeni Ramadoss

For Respondents-1&2 : Mr.S.N.Parthasarathy,
Government Advocate.

For Respondent-3 : Mr.D.Sadhasivan

ORDER

The order passed by the first respondent-Appellate Authority and the order passed by the second respondent-Controlling Authority, are under challenge in the present writ petition.

2. The writ petitioner is the Tamil Nadu State Transport Corporation (Salem) Limited.

3. The learned counsel appearing on behalf of the writ petitioner states that the third respondent joined in the writ petitioner-Corporation as a Conductor with effect from 01.01.1980 and his services were regularised with effect from 01.02.1981. The third respondent attained the age of superannuation on 31.03.2009 and was allowed to retire from service.

4. The learned counsel for the writ petitioner contended that the gratuity, as applicable under the provisions of the Payment of Gratuity Act, 1972, was already been settled in favour of the third respondent-employee. However, the third respondent-employee filed an application before the Controlling Authority under the Payment of Gratuity Act, 1972, claiming differential amount for the non-qualifying service of 5 years, 11 months and 10 days. The said application filed by the third respondent was allowed by the Controlling Authority and the appeal filed by the writ petitioner-Management was also rejected by the Appellate Authority, against which the writ petitioner-Management, is constrained to file the present writ petition.

5. The learned counsel for the writ petitioner-Management contended that the third respondent-employee is not entitled for gratuity payment for the non-qualifying service of 5 years, 11 months and 10 days. The said period was treated as leave on loss of pay and therefore, the same cannot be regulated as a qualifying service for the purpose of reckoning the qualifying service for payment of gratuity under the Payment of Gratuity Act, 1972. Thus, the orders impugned are perverse and are liable to be scrapped.

6. The learned counsel appearing on behalf of the third respondent-employee disputed the contentions of the learned counsel for the writ petitioner, by stating that the non-qualifying service of the third respondent-employee were regularised by the writ petitioner-Management. Treating the leave period of the third respondent-employee as a non-qualifying service by the writ petitioner-Management itself is impermissible as the period of leave was regulated by the writ petitioner-Management. Therefore, the third respondent-employee is entitled for the gratuity in respect of the leave period,

which is also to be calculated as a qualifying service.

7. This Court of is of the considered opinion that the period of leave on loss of pay, which was already regularised, cannot be omitted for the purpose of calculating the qualifying services. The leave period, which was already regularised also is to be calculated as a qualifying service for payment of gratuity.

8. Once the leave on loss of pay duration was regulated by the authorities competent, the said period of leave is also to be treated as qualifying service for all purposes, more specifically, for settlement of pensionary benefits. Thus, the stand taken by the writ petitioner-Management that the leave on loss of pay period of 5 years, 11 months and 10 days, to be treated as a non-qualifying service, is unacceptable and the said period of leave is to be treated as qualifying service for all purposes, more specifically, for the purpose of settlement of gratuity.

9. Thus the first and the second respondents have not committed any error in respect of treating the period of leave as a qualifying service and accordingly, directed the first and the second respondents to pay the differential amount of gratuity to the third respondent-employee.

10. It is brought to the notice of this Court that the claim amount awarded by the second respondent-Controlling Authority, which was confirmed by the first respondent-Appellate Authority, was deposited by the writ petitioner-Management before the second respondent-Controlling Authority.

11. This being the facts and circumstances, there is no perversity or infirmity in respect of the order passed by the second respondent-Controlling Authority, which is confirmed by the first respondent-Appellate Authority.

12. Accordingly, the third respondent-employee is entitled for the Award amount with interest as ordered and consequently, the writ petition stands dismissed. However, there shall be no order as to costs. Connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Appellate Authority,
Under the Payment of Gratuity Act, 1972,
The Joint Commissioner of Labour,
Coimbatore.

2.The Controlling Authority,
(Under the Payment of Gratuity Act, 1972),
The Assistant Commissioner of Labour,
Salem.

3.The General Manager.
The Management,
Tamil Nadu State Transport Corporation
(Salem) Limited,
12, Ramakrishna Road,
Salem-636 007,

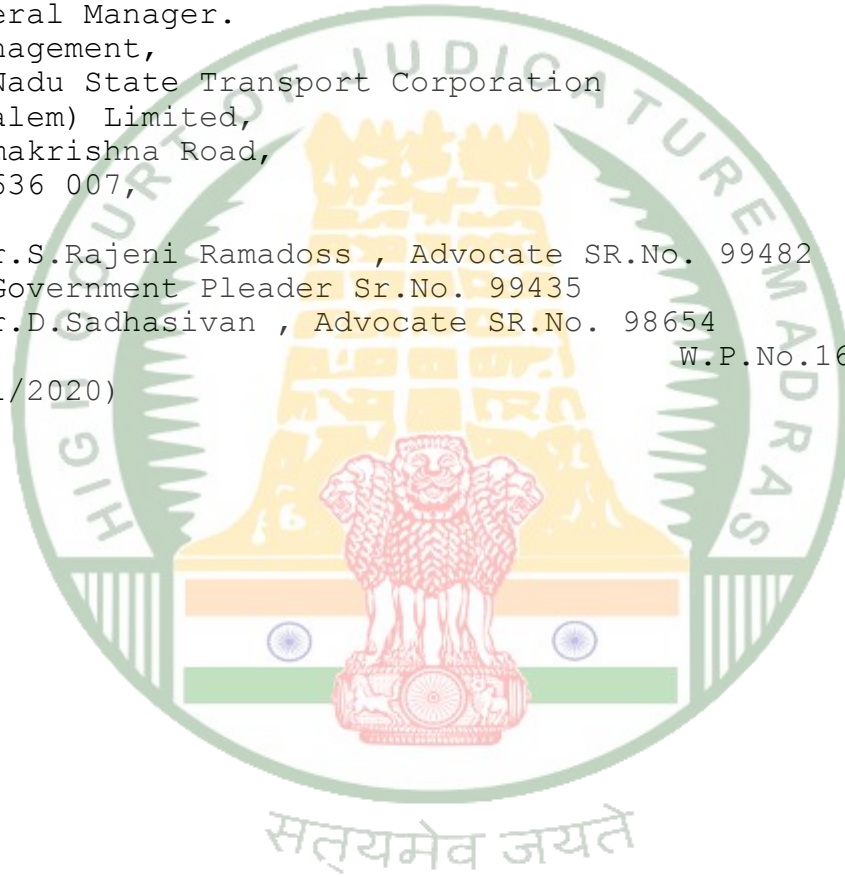
+1cc to Mr.S.Rajeni Ramadoss , Advocate SR.No. 99482

+1 cc to Government Pleader Sr.No. 99435

+1cc to Mr.D.Sadhasivan , Advocate SR.No. 98654

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A.SK(06/01/2020)



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