

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.15358 of 2005

The Management

Alpha Matriculation Higher Secondary School

Rep.by its Correspondent Dr.Grace George

No.16, 3rd Cross Street

West CIT Nagar, Chennai-35.

...Petitioner

vs.

1. The Assistant Commissioner

Office of the Deputy Commissioner of Labour-I,

1st Floor, DMS Campus,

Teynampet, Chennai-6.

2. Tmt.Lucy Joseph.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring that the Payment of Gratuity Act, 1972 is not applicable to the Private Schools Recognized under Tamil Nadu Private schools (Regulation) Act, 1973 by virtue of the President to the said Act under Article 254(2) of the Constitution of India, which overrides the labour legislations including the Payment of Gratuity Act, 1972 as decided by the Apex Court and quash the same as without jurisdiction.

For Petitioner : Mr.Agnesh Lazar
for M/s. La Law

For Respondents : Mr.J.Ramesh
Additional Government Pleader
for R1.
Non-appearance for R2.

O R D E R

The notice issued by the first respondent on 21.03.2005 is under challenge in the present writ petition.

2. The petitioner states that the Payment of Gratuity Act, 1972 is not applicable to the Private Schools Recognized under Tamil Nadu Private Schools (Regulation) Act, 1973. It is contended that the Tamil Nadu Private Schools (Regulation) Act, 1973 have a special enactment that will prevail over a general law. Therefore, the Payment of Gratuity Act, 1972 is not applicable to the private schools including the petitioner.

3. It is contended that the petitioner is a Minority Unaided School Governed by the Provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973. The second respondent was appointed as a Teacher on 01.06.1998 and she worked upto 30.06.2004 and got relieved from the school on 30.06.2004. In view of the fact that the second respondent was appointed under the Provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, she is not entitled for gratuity.

4. The contention of the writ petitioner that the Payment of Gratuity Act, 1972 is not applicable to the teachers working in Unaided Schools cannot be accepted, in view of the fact that if any provision is enacted in the special enactment for grant of gratuity, then alone, the general law would not be applicable and not otherwise. Thus, if there is a provision for maintenance of gratuity fund or payment of gratuity to the employees under the Special enactment, then the special enactment will prevail over a general law. In the absence of any such specific provision for payment of gratuity under the special enactment, the general act will be applicable to the employees working in unaided schools. Thus, the contention of the writ petitioner that the Payment of Gratuity Act, 1972 is not applicable to the writ petitioner is unacceptable and in violation of the legal principles. If there is a separate fund under the special enactment, then the gratuity is to be paid under the special enactment and in the absence of any such special enactment, the gratuity is to be paid under the general law, namely, the Payment of Gratuity Act, 1972.

5. This being the principles to be followed, the contention of the writ petitioner cannot be accepted. This apart, the first respondent issued a notice dated 21.03.2005 and challenging the said notice, the present writ petition is filed.

6. No writ petition can be entertained against a notice in a routine manner. In view of the fact that the notice was issued under the provisions of the Payment of Gratuity Act, 1972, the writ petitioner is bound to submit their objection/explanation and defend their case before the competent authority. Contrarily, High Court cannot entertain this type of writ petition for adjudication on merits.

7. Under these circumstances, the writ petitioner is not exempted from the Provisions of the Payment of Gratuity Act, 1972 and in respect of notice dated 21.03.2005, they are at liberty to contest their case by following the rules in force. In this view of the matter, the writ petitioner has not established any acceptable ground for granting exemption from the Provisions of the Payment of Gratuity Act, 1972. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

ssb

To

The Assistant Commissioner
Office of the Deputy Commissioner of Labour-I,
1st Floor, DMS Campus,
Teynampet, Chennai-6.

+1cc to Government Pleader, High Court, Madras SR.No.81583

W.P.No.15358 of 2005
W.M.P.No.16777 of 2005

SP(CO)
GMY(01/11/2019)

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