

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 40755 of 2005 and CMP No.43737 of 2005

The Commissioner
Salem City Municipal Corporation,
Salem 636 001. ...Petitioner

vs.

1.B.Mohamed Bari
2. Controlling Authority,
(Under Payment of Gratuity Act),
O/o, Assistant Commissioner,
of Labour,
Salem 7. ... 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 on the file of the 2nd respondent in respect of the order passed in G.A.Nos.85/2003 dated 17.12.2004 and quash the same.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.S.Ayyathurai for R1.
Mr.J.Ramesh
Additional Government Pleader
for R2.

O R D E R

This writ petition has been filed to quash the order passed in G.A.No.85 of 2003 dated 17.12.2004.

2. The writ petitioner, Salem City Municipal Corporation, has filed this writ petition, challenging the order passed by the Controlling Authority under the Payment of Gratuity Act.

3. The only contention of the writ petitioner is that they had settled the gratuity in favour of the employee, as per the pension rules and therefore, the gratuity amount calculated by the second respondent/Controlling Authority is untenable.

4. The learned counsel for the writ petitioner reiterated that as per their own service rules as well as the gratuity scheme, the amount due to the workmen was settled long back. Therefore, the order of the Controlling Authority is liable to be scrapped.

5. However, any gratuity scheme by the employer, which is to be construed as a special rule or enactment or scheme, undoubtedly, will prevail over the general law. However, if the said special scheme or special rules is inconsistent with the provisions of the Gratuity Act or less advantages to the employees, then the Gratuity Act which is a General Act, will prevail over the special rules in force. Thus, the requirement in respect of such special rules are that the gratuity amount to be paid should not be disadvantage to that of the general law, mainly the Gratuity Act. The amount to be paid should not be in any way less or disadvantageous than that of the general law and in these circumstances, the employee concerned is entitled to approach the Controlling Authority under the provisions of the Gratuity Act, as is done in the present case. In the present case, the pension of the workmen was the amount of gratuity paid less than that of the Gratuity Act. Accordingly, the Controlling Authority allowed the claim and directed the writ petitioner to pay the same. On account of the litigations, the differential amount is yet to be paid.

6. The learned counsel for the writ petitioner made a submission that the Division Bench of this Court has already passed an order in this regard in W.A.Nos.3088 to 3090 of 2004 and citing the Division Bench order, the learned Single Judge has also passed an order in W.P.No.8250 of 2002 dated 13.12.2011. The relevant paragraph Nos.4, 5, 6 & 7 are extracted hereunder:

4. The learned counsel for the petitioner fairly submits that identical issue came up for consideration before the Hon'ble Division Bench of this Court in W.A.Nos.3088 to 3090 of 2004 and the petitioner-Municipality herein was the appellant in the said case. In the said batch of cases, an identical plea was raised by the erstwhile employees as well as the Municipality and the Hon'ble Division Bench after taking note of the decision of the Hon'ble Supreme Court reported in (1998) 7 SCC 221 [Municipal Corporation of Delhi vs.Dharma Prakash Sharma and another] as well as the decision of the Hon'ble Gujarat High Court reported in (1999) II LLJ 830 Guj [Rajkot Municipal Corporation vs. Aniruddh Fulshankar Shuklaj disposed of the appeals with the following observations:

"4. In view of the above, it is brought to our notice by the learned Advocate General that after calculating the amount liable to be paid to the respondent employees, both under the payment

of Gratuity Act and under the Tamil Nadu Pension Rules, the amount, which is favourable to the employees, may be paid in their favour.

5. Admittedly, it is a case wherein the appellant has not obtained any exemption under Section 5 of the Payment of Gratuity Act. Therefore, when once the provisions of the Payment of Gratuity Act contemplate payment of the amount which is beneficial to the employees, we hold that the respondent employees are entitled to payment of gratuity under the Payment of Gratuity Act, after deducting the amount already paid under the Tamil Nadu Pension Rules, in the absence of any exemption obtained from the Government under Section 5 of the Act.

6. At this juncture, it is brought to our notice that as per the interim order dated 24.08.2004 in W.A.M.P.Nos.5749 to 5751 of 2004, the differential amount of gratuity between the Payment of Gratuity Act and the DCRG Scheme was already paid to the respondent employees."

5. The learned counsel appearing for the first respondent brought to the notice of this Court the decision of this Court made in W.P.No.21865 of 2000 dated 08.02.2010. The said also covers the claim of gratuity by the erstwhile employees of the Coimbatore City Municipal Corporation. His Lordship Justice K.Chandru after taking into consideration the various decisions of the Hon'ble Supreme Court dismissed the writ petition filed by the Municipality.

6. In the light of the above, I am bound to follow the direction issued by the Hon'ble Division Bench as quoted herein above.

7. Accordingly, this writ petition is disposed of by holding that the first respondent-employee is entitled to payment of gratuity under the Payment of Gratuity Act and such payment shall be made after deducting the amount already paid under the Tamil Nadu Pension Rules since the petitioner-Municipality has not obtained any order of exemption from the Government under Section 5 of the Act. The payment shall be effected as per the above directions within a period of twelve weeks from the date of receipt of a copy of this Order. No costs."

7. In view of the orders cited above, the writ petition is disposed of by holding that the first respondent/employee is entitled to payment of gratuity under the Payment of Gratuity Act and such payment shall be made after deducting the amount already paid under the Tamil Nadu Pension Rules since the petitioner-Municipality has not obtained any order of exemption from the Government under Section 5 of the Act.

8. The learned counsel for the writ petitioner states that the portion of amount that was deposited also withdrawn. However, the unpaid dues are to be calculated and such unpaid dues are to be settled in favour of the first respondent with interest at the rate of 6%, as per the provisions of the Tamil Nadu Pension Rules, within a period of eight weeks from the date of receipt of a copy of this Order.

9. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Controlling Authority,
(Under Payment of Gratuity Act),
O/o, Assistant Commissioner,
of Labour,
Salem 7.

+1cc to Mr.G.Sankaran, Advocate Sr.88643
+1cc to Mr.S.Ayyathurai, Advocate Sr.87539

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