

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.09.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.27117 of 2017

&

W.M.P.Nos.28970 & 28971 of 2017

The Management,
Tamil Nadu State Transport Corporation,
(Coimbatore) Limited,
Erode Region, Chennimalai Road, Erode.
Rep by its General Manager.

...Petitioner

..Vs..

1.Thiru K.Lakshman

2.The Assistant Commissioner of Labour/
(Controlling Authority as under Payment
of Gratuity Act, 1972),
Salem.

...Respondents

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, the Controlling Authority, (under the Payment of Gratuity Act, 1972)/the Assistant Commissioner of Labour, Salem in P.G.No.217/2016, dated 13.04.2017 and to quash the same as illegal.

For Petitioner : Mr.J.Sivakumar

For Respondents : No appearance for R.1
M.Elumalai, G.A. (for R.2)

ORDER

The order dated 13.04.2017 passed in P.G.No.217/2016 under the Payment of Gratuity Act, 1972, is under challenge in the present writ petition.

2.The petitioner is the Management, Tamil Nadu State Transport Corporation, (Coimbatore) Ltd. The first respondent/workman joined in the services of the writ petitioner/Transport Corporation as Conductor on 24.12.1986. On account of the allegation of unauthorized absence, the first

respondent/workman was dismissed from service on 21.02.2006. The first respondent filed a petition before the second respondent viz., Controlling Authority, (under the Payment of Gratuity Act, 1972) in P.G.No.217/2016 for a grant of Rs.91,550/- as a sum payable as gratuity along with interest on the delayed payment of Gratuity as under Section 4 of the Payment of Gratuity Act, 1972. The second respondent allowed the claim of the first respondent/workman on 13.04.2017 in P.G.No.217/2016 by holding that first respondent is eligible for gratuity to the tune of Rs.91,550/- with interest.

3.Challenging the said order, the present writ petition is filed. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was a dismissed employee of the Tamil Nadu State Transport Corporation. The dismissed employees are not entitled for gratuity, as the punishment of dismissal amounts to forfeiture of the past services rendered by the employees. Even as per the Service Rules in force, the punishment of termination or dismissal, the said punishment results into forfeiture of the past services rendered by the employee. Thus, the very application submitted before the second respondent is not maintainable as the first respondent/workman is not entitled for gratuity even as per the Service Rules.

4.As per the Rule 7 of the Payment of Gratuity (Central) Rules, 1972, the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused. Sub Clause (2) stipulates that gratuity payable to an employee shall be wholly forfeited -

(a)if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(b)if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

5.Even as per the conduct Rules applicable to the employees of the Transport Corporation, the employee who was imposed with the punishment of termination or dismissal is not entitled for gratuity as the major penalty of termination amounts to forfeiture of the past services rendered by an employee.

6.This being the factum, the second respondent/Controlling Authority committed an error in allowing the petition filed by the first respondent under the Payment of Gratuity Act. The

first respondent who was dismissed employee of the State Transport Corporation is not entitled for gratuity and therefore, the writ petitioner deserves to be considered. Accordingly, the order dated 13.04.2017 passed in P.G.No.217/2016 dated 13.04.2017 by the second respondent/ Assistant Commissioner of Labour / Controlling Authority is quashed and the writ petition stands allowed. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrm
To

The Assistant Commissioner of Labour/
(Controlling Authority as under Payment
of Gratuity Act, 1972),
Salem.

+1cc to Mr.J.Sivakumar, Advocate SR.81250

W.P.No.27117 of 2017

PPA(CO)
CB(07/11/2019)