

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.09.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.32774 of 2018

S.N.Kamatchi

... Petitioner

..Vs..

- 1.Joint Commissioner of Labour,
Appellate Authority under
The Payment of Gratuity Act, 1972,
Coimbatore - 18.
- 2.Assistant Commissioner of Labour,
Controlling Authority,
Under the Payment of Gratuity Act, 1972,
Salem - 7.
- 3.Superintending Engineer,
Purchase & Administration,
Mettur Thermal Power Station,
Mettur Dam - 6.
- 4.Tamil Nadu Generation And
Distribution Corporation Ltd.,
Rep by its Chairman cum Managing Director,
10th Floor, NPKRR Maaligai,
144 Anna Salai, Chennai - 600 002.
- 5.State of Tamil Nadu,
Rep by its Principal Secretary,
Energy Department,
Fort St.George, Chennai - 600 001.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Manadamus, calling for the records of first respondent in A.G.A.No.18 of 2011 quash the order dated 25.08.2011 passed in A.G.A.No.18 of 2011; and further direct respondent No.3 to revise the pension of the petitioner and pay the arrears of pension and gratuity for the period of service between 02.08.1989 till 30.04.1999.

For Petitioner : Mr.M.Pradeep Shankar,
for Ms.V.Pushpa

For Respondents : Mr.D.Raghu, G.A.
(for R.1, R.2 & R.5)
Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.,
(for R.3 & R.4)

O R D E R

The writ on hand is filed challenging the order dated 25.08.2011, passed by the first respondent in A.G.A.No.18 of 2011.

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.

3. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner seeks the benefit including the period of services rendered by him as a casual labourer. However, this Court is of the considered opinion that all those merits raised by the petitioner were considered and he was permanently absorbed into Boards services in the year 1999

and served till the date of superannuation and after attaining the age of superannuation, now the writ petitioner cannot seek the benefit including the period of services as casual labourer which is highly belated and impermissible.

4. The learned counsel appearing on behalf of the respondent opposed the contention by stating that the writ petition itself filed after a lapse 7 years from the date of order passed by the Appellate Authority. In this regard, the Appellate Authority passed an order on 25.08.2011 and the writ petition filed on 02.07.2018, after a lapse of 7 years. Thus, the writ petition is liable to be rejected on the ground of laches. Consequently, the Government issued G.O.Ms.No.699 (Labour and Employment Department), dated 16.03.1983, granting exemption to the Tamil Nadu Electricity Board, under Section 5 of the Payment of Gratuity Act, 1972. Thus, the Payment of Gratuity Act, 1972 is not applicable in respect of the employees working in the Tamil Nadu Electricity Board more specifically in Pensionable Services.

5. Considering the submissions, this Court is of the considered opinion that the writ petition is filed after a lapse of 7 years from the date of passing of the order passed by the Appellate Authority under the Payment of Gratuity Act and further the Act itself was exempted in respect of the employees working in the Tamil Nadu Electricity Board under the pensionable services.

6. Thus, the writ petition is devoid of merits and liable to be rejected on the ground of laches and consequently, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pns

To

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3. Superintending Engineer,
Purchase & Administration,
Mettur Thermal Power Station,
Mettur Dam - 6.

4. The Chairman cum Managing Director,
Tamil Nadu Generation And
Distribution Corporation Ltd.,
10th Floor, NPKRR Maaligai,
144 Anna Salai, Chennai - 600 002.

5. The Principal Secretary,
State of Tamil Nadu,
Energy Department,
Fort St. George,
Chennai - 600 001.

+1cc to M/s.V.Pushpa, Advocate Sr.79135
+1cc to M/s.T.S.Gopalan, & Co., Advocate sr.78731
+1cc to the Government Pleader Sr.79295
+1cc to M/s.V.Pushpa, Advocate Sr.79135 [10/12/2019]

W.P.No.32774 of 2018

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srg 05/11/2019

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