

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27529 of 2018
and
W.M.P.Nos.32039 & 32044 of 2018

The Management
Rep.by the Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Coimbatore Region, Goundanpalayam,
Coimbatore-641 030.

..Petitioner

vs

1.The Additional Commissioner of Labour
Coimbatore,
(Appellate Authority as under the
Payment of the Gratuity Act, 1972).

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

3.P.Natarajan

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 1st respondent, the Additional Commissioner of Labour, Coimbatore, Controlling Authority as under the Payment of the Gratuity Act, 1972 in G.A.No.442/2015 dated 13.07.2017 and to quash the same.

For Petitioner : M/s.P.Paramasiva Doss

For Respondents : Mr.J.Ramesh
Additional Government Pleader
for RR1 & 2
Mr.K.M.Ramesh for R3.

O R D E R

The order passed by the Appellate Tribunal under the Payment of the Gratuity Act, 1972 in A.T.Mu.No.Aa.895/18 dated 23.04.2018 and confirmed the order of the 2nd respondent/The Assistant Commissioner of Labour, Coimbatore Controlling Authority as under the Payment of the Gratuity Act, 1972 in G.A.No.4422/2015 dated 13.07.2017 is under challenge in the present writ petition.

2. The writ petitioner states that the third respondent/employee was initially recruited as a Apprentice Trainee/Trainee Bill Clerk on 21.11.1978. He was subjected for training from 21.11.1978 till 30.05.1990. Thereafter, his services were regularized from 01.06.1990. He was promoted to various posts and finally he was holding the post of Bill Clerk in the Petitioner Corporation in Coimbatore Region. On attaining the age of superannuation on 31.07.2011, he was allowed to retire from service. The writ petitioner/Management settled the terminal benefits payable to the 3rd respondent and the gratuity amount was paid without considering the services rendered by the third respondent as Trainee Bill Clerk from 21.11.1978 to 30.05.1990. Thus, the third respondent filed an application before the Controlling Authority under the provisions of the Gratuity Act, who in turn, considered the issues as well as verified the service records of the third respondent and allowed the petition by stating that the third respondent is entitled for gratuity by reckoning the period of services rendered as Trainee Bill Clerk from 1978 to 1990. Accordingly, gratuity was calculated and directed to be settled in favour of the third respondent. The writ petitioner/Management filed an appeal before the Appellate Authority, who in turn, confirmed the order passed by the Controlling Authority. Thus, the writ petitioner is constrained to move the present writ petition.

3. The writ petitioner states that the training period cannot be reckoned as a qualifying service and therefore, the third respondent is not entitled for gratuity for the period from 1978 to 1990. The respondents 1 and 2 have erroneously considered the case of the third respondent and directed the writ petitioner/Management to settle the gratuity by counting the training period from 1978 to 1998. It is reiterated that the Trainee Bill Clerk is not entitled for gratuity for the training period. Accordingly, the orders are liable to be scrapped.

4. The learned counsel appearing on behalf of the third respondent opposed the contentions by stating that the training period for 12 years itself is incorrect because a person cannot

be in the post of Bill Clerk for a period of 12 years. Further, the third respondent was working as a regular employee for all purposes and performing the duties and responsibilities of the Bill Clerk and was drawing salary from 1978 onwards.

5. This being the factum, there is no reason for denying gratuity for the period of services rendered by him from 1978 to 1990. The Controlling Authority as well as the Appellate Authority under the Gratuity Act rightly granted the relief and there is no reason whatsoever to entertain the writ petition as the grounds raised are untenable.

6. In support of the said contention, the learned counsel for the writ petitioner cited the judgment of this Court dated 05.04.2018 passed in W.P.No.14321 of 2018, the relevant paragraph No.4 is extracted hereunder:

"4. The learned counsel for the writ petitioner states that the first respondent-workman had not served 30 years in the writ petitioner-Corporation. The first respondent-workman was appointed as a Trainee Salesman on 25.04.1978 and his services were confirmed as a permanent employee only with effect from 02.06.1990. Therefore, the calculation of 30 years of service for the purpose of granting gratuity is erroneous and the first respondent-workman had served about 18 years in the writ petitioner-Corporation. Therefore, the orders passed by the respondents 2 and 3 are in violation of the provisions of the Gratuity Act.

7. The third respondent, admittedly, was employed in the year 1978 and continuously working as Bill Clerk and was drawing the salary as applicable. This being the factum, this Court is of the opinion that the period of services rendered by the third respondent from the year 1978 is to be reckoned for the purpose of calculating the qualifying services for settlement of gratuity in accordance with Act itself. In this view of the matter, the respondents 1 and 2 have not committed any perversity or infirmity and the findings are in consonance with the legal principles. Consequently, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy//

Sub Assistant Registrar

To

- 1.The Additional Commissioner of Labour
Coimbatore,
(Appellate Authority as under the
Payment of the Gratuity Act, 1972).
- 2.The Assistant Commissioner of Labour,
Coimbatore,
(Controlling Authority as under the
Payment of the Gratuity Act, 1972).

+1cc to Mr.P.Paramasiva Doss, Advocate, SR.No.99916.
+1cc to Mr.K.M.Ramesh, Advocate, SR.No.99518.
+1cc to Government Pleader, SR.No.99963.

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M.P.Nos.32039 & 32044 of 2018

CP(CO)
CSR:22/01/2020