

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2019

CORAM

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

W.P.Nos.32262, 32484 & 32489 of 2018
and

W.M.P.Nos.37510, 37687, 37688, 37696 & 37697 of 2018

W.P.No.32262 of 2018

The Chairman-cum-Managing Director,
Hindustan Photo Films Mfg.Co.Ltd.,
Indu Nagar,
Udhagamandalam,
The Nilgiris - 643 005
..Petitioner

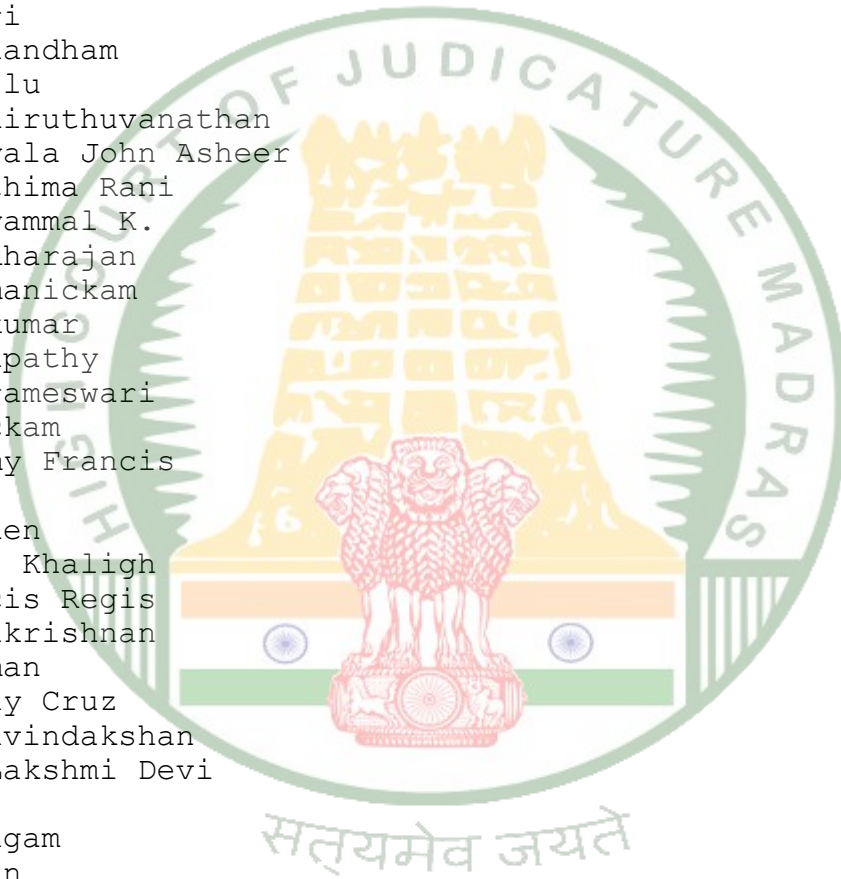
vs

- 1.The Deputy Chief Labour
Commissioner(Central)
The Appellate Authority under
The Payment of Gratuity Act, 1947
A-Wing, 5th Floor, Shastri Bhavan
No.26, Haddows Road,
Chennai - 600 006
- 2.The Regional Labour Commissioner(Central)
The Controlling Authority under
The Payment of Gratuity Act, 1947
New No.5, Old No.1-A(II Floor)
Lady Doak College Road,
Chinna Chockikulam, सत्यमेव जयते
Madurai - 625 002

- 3.A.Raman
- 4.D.Chandrasekaran
- 5.N.Jayakumar
- 6.Smt.Lynda David
- 7.A.Jesudas
- 8.Smt.A.Philomina
- 9.M.Prabhakaran
- 10.Smt.L.Pankajavalli
- 11.Smt.Mary Philomina
- 12.Y.Mohammed Shaw
- 13.Smt.S.Maria Louis

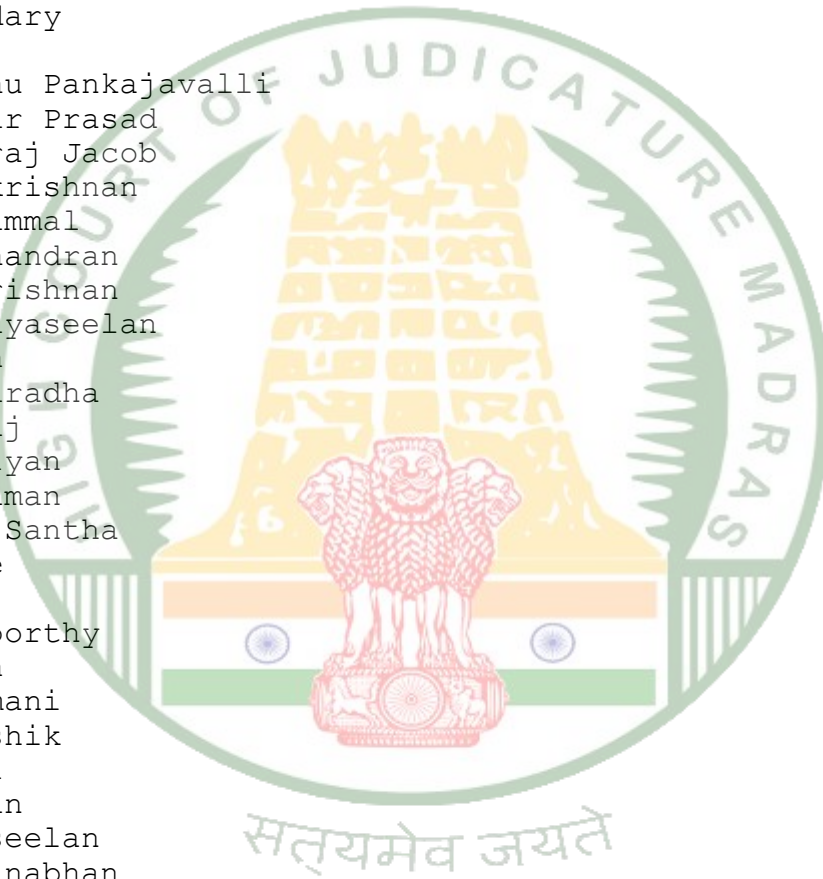
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14.G.N.Raju
15.K.Murthy
16.K.Mohan
17.A.Aruldas
18.I.Rangaraju
19.Abraham Thomas
20.B.Arjunan
21.J.R.Bojan
22.M.Sundari Bai
23.Smt.S.P.Saroja
24.B.Mani
25.M.A.Raman
26.K.B.Kari
27.B.Sivanandham
28.B.S.Bellu
29.J.M.TRhiruthuvanathan
30.Smt.Shyala John Asheer
31.Smt.Fathima Rani
32.Smt.Jayammal K.
33.K.Varadharajan
34.K.Rajamanickam
35.V.Premkumar
36.V.Raghupathy
37.Smt.Parameswari
38.D.Manickam
39.Munusamy Francis
40.S.Raj
41.L.Stephen
42.H.Abdul Khaligh
43.D.Francis Regis
44.G.Radhakrishnan
45.H.Thimman
46.G.Antony Cruz
47.V.K.Aravindakshan
48.Smt.S.Lakshmi Devi
49.S.Kamal
50.S.Arumugam
51.T.Rangan
52.C.Krishnan
53.Antony Dass
54.P.Xavier
55.T.V.Jaya Prakash
56.N.Manoharan
57.Nachimuthu
58.A.M.Rufudeen
59.Smt.D.Mariammal
60.Smt.Danapakkiam
61.E.Thomas
62.I.Palanisamy
63.K.Lalyana Sundaram



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64.Smt.G.Mahita
65.R.Pethaiah
66.Smt.D.Marimuthammal
67.M.K.P.Haran
68.Smt.Feebikamala
69.Smt.K.P.B.Banu
70.S.Yeganathan
71.Smt.J.Hallan
72.K.Pappannan
73.M.Rajendran
74.K.Farook
75.B.Mathan
76.H.R.Bandary
77.Babu
78.Smt.Muthu Pankajavalli
79.M.Manohar Prasad
80.Thiyagaraj Jacob
81.B.Muthukrishnan
82.Smt.Jayammal
83.K.Balachandran
84.Gopalakrishnan
85.D.P.F.Jayaseelan
86.A.Samson
87.Smt.M.Saradha
88.V.Ramaraj
89.K.M.Madiyan
90.M.Jayaraman
91.Smt.K.P.Santha
92.B.Bellie
93.S.Lazer
94.M.Ramamoorthy
95.A.Mastan
96.R.Subramani
97.G.S.Koushik
98.T.Gandhi
99.P.Gopalan
100.A.Jayaseelan
101.B.Padmanabhan
102.Chandramohan
103.T.J.Gundan
104.Smt.S.Kamala
105.K.Subramani
106.Smt.Pushpa
107.S.Muthu
108.S.Hameed
109.V.Manickam
110.B.Mahan
111.S.Dharman
112.K.Susheela
113.S.Krishnaraj



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114.K.Radhakrishnan
115.Basheer Ahmed
116.K.Raghunatha Rao
117.K.Vasu
118.N.Chinnathambi
119.K.Swaminathan
120.J.H.Halu
121.Balasubramani
122.Smt.Dhanalakshmi

..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 relating to the order dated 31.08.2017 passed by the Regional Labour Commissioner(Central), Madurai, the Controlling Authority under the payment of Gratuity Act, 1972, the 2nd respondent herein G.A.Nos.48/10 to 121, 125 to 132 of 2017 and quash the same.

(Prayer amended as per order dated 27.09.2019 in W.M.P.No.27025/2019 in W.P.No.32262/2018)

W.P.No.32484 of 2018

The Chairman-cum-Managing Director,
Hindustan Photo Films Mfg.Co.Ltd.,
Indu Nagar,
Udhagamandalam,
The Nilgiris - 643 005

vs

..Petitioner

1.The Deputy Chief Labour
Commissioner(Central)
The Appellate Authority under
The Payment of Gratuity Act, 1947
A-Wing, 5th Floor, Shastri Bhavan
No.26, Haddows Road,
Chennai - 600 006

2.The Regional Labour Commissioner(Central)
The Controlling Authority under
The Payment of Gratuity Act, 1947
New No.5, Old No.1-A(II Floor)
Lady Doak College Road,
Chinna Chockikulam,
Madurai - 625 002

3.G.Gunaseelan
4.M.Krishnamoorthy
5.S.Vaidyanathan
6.S.Jayaraman
7.K.Gopal

8.J.Kanna
9.P.Selvaraj
10.S.Maialagan
11.Smt.K.Radha
12.J.Benjamin Jayaraj
13.P.Manoharan
14.E.Abdul Kader
15.R.Devendran
16.P.Henri
17.N.Chandran
18.V.Ganesan
19.J.Issac
20.K.Savivariraj
21.P.Nagaraj
22.A.Duraisamy
23.S.Kandasamy
24.K.Bhojaraju
25.V.Shivalingam
26.T.Gunasekaran
27.K.Selvaraju
28.P.Kanakaraj
29.M.Sundaram
30.S.Vadivel

...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 relating to the order dated 31.08.2017 passed by the Regional Labour Commissioner(Central), Madurai, the Controlling Authority under the payment of Gratuity Act, 1972, the 2nd respondent herein G.A.Nos.48/65 to 92 of 2017 and quash the same.

(Prayer amended as per order dated 27.09.2019 in W.M.P.No.27029/2019 in W.P.No.32484/2018)

W.P.No.32489 of 2018

The Chairman-cum-Managing Director,
Hindustan Photo Films Mfg.Co.Ltd.,
Indu Nagar,
Udhagamandalam,
The Nilgiris - 643 005

...Petitioner

vs

1.The Deputy Chief Labour
Commissioner(Central)
The Appellate Authority under
The Payment of Gratuity Act, 1947
A-Wing, 5th Floor, Shastri Bhavan
No.26, Haddows Road,
Chennai - 600 006

2.The Regional Labour Commissioner(Central)
The Controlling Authority under
The Payment of Gratuity Act, 1947
New No.5, Old No.1-A(II Floor)
Lady Doak College Road,
Chinna Chockikulam,
Madurai - 625 002

3.C.Arjunan
4.R.Chandran
5.M.Sadasivam
6.A.Ranganathan
7.A.Mohamed Yakub
8.B.Krishnan
9.M.M.Thukkaram
10.E.S.Krishnamoorthy
11.P.K.Ratnamma
12.A.David Manoharan
13.R.Lalitha
14.V.Narayanan
15.A.Shajehan
16.Smt.M.Savithiri
17.V.Selvaraj
18.P.Rajan

..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 relating to the order dated 31.08.2017 passed by the Regional Labour Commissioner(Central), Madurai, the Controlling Authority under the payment of Gratuity Act, 1972, the 2nd respondent herein G.A.Nos.48/509 to 524 of 2017 and quash the same.

(Prayer amended as per order dated 27.09.2019 in W.M.P.No.27034/2019 in W.P.No.32489/2018)

For Petitioner : Mr.T.R.Sathiyamohan all WPs

For Respondents : R1 & R2 - Mr.J.Madana Gopal Rao
Central Government
Standing Counsel(CGSC)
All WPs

R3 to R96
&
R98 to R122 - Mr.R.Santhana Raman in WP. 32262/18

R97 - Mr.S.Venugopal Raj
in WP. 32262/18

R3 to R18 - Mr.V.Sivakumar in WP. 32489/18
R3 to R30 - Mr.V.Sivakumar in WP. 32484/18

COMMON ORDER

The orders passed by the 2nd respondent in proceedings dated 31.08.2017 passed in G.A.Nos.48/10 to 121, 125 to 132 of 2017, G.A.Nos.48/65 to 92 of 2017, G.A.Nos.48/509 to 524 of 2017 are sought to be quashed in the present writ petitions.

2. The writ petitioner is Hindustan Photo Films Manufacturing Company Limited. In nutshell, the writ petitioner preferred an appeal under Section 7 read with Rule 18 of the Payment of Gratuity Act, 1972, challenging the orders passed by the Controlling Authority on 31.08.2017 under the Payment of Gratuity Act in G.A.No.48/10 to 132/2017, G.A.No.48/65 to 92/2017 and G.A.No.48/509 to 524 of 2017. The appeal filed by the writ petitioner under Section 7 of the Payment of Gratuity Act was returned by the Appellate Authority / 1st respondent in proceedings dated 28.11.2017 on the ground that

(i) The Demand Draft or Certificate issued by the Controlling Authority for depositing the awarded gratuity amount is not enclosed.

(ii) The Appeals should be preferred individually.

3. In respect of each Gratuity Appeal, instead of complying with the defects, the writ petitioner has chosen to file the present writ petitions, raising certain merits and the same cannot be adjudicated in the present writ petitions. Once an appeal is filed before the Appellate Authority under Section 7 of the Payment of Gratuity Act, the requirements as contemplated under the Act is to be complied with, which is mandatory.

4. In the present cases on hand, the Appellate Authority returned the appeal papers, directing the writ petitioner to comply with the requirements. Thus, the writ petitioner is bound to comply with the requirements and consequently, the Appellate Authority has to number the appeal, adjudicate the same by affording an opportunity to all the parties and decide on merits and in accordance with law.

5. Proviso to Section 7 of the Payment of Gratuity Act enumerates that "Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection (4), or deposits with the appellate authority such amount."

6. This being the mandatory provision for the purpose of entertaining an appeal by the Appellate Authority, the same cannot be dispensed with by the 1st respondent Appellate Authority. Thus, there is no infirmity in respect of the order dated 28.11.2017, returning the appeal papers to the writ petitioner for compliance.

7. By way of an amendment of Prayer in the present writ petitions, the petitioner has now sought for to quash the order dated 31.08.2017 issued by the Controlling Authority under the Payment of Gratuity Act, 1972. When the petitioner himself had already preferred appeals before the Appellate Authority, and the said appeals have been returned for compliance of certain requirements, this Court cannot adjudicate the correctness of the order dated 31.08.2017 on merits. This apart, the petitioner is bound to exhaust the statutory remedy available under the provisions of the Gratuity Act before approaching the High Court under Article 226 of the Constitution of India. When the appeal has already been preferred by the petitioner before the Appellate Authority, this Court cannot adjudicate the merits and the demerits of the issues by appreciating the evidences and documents in the writ jurisdiction under Article 226 of the Constitution of India. Thus, all such issues are to be adjudicated before the Appellate Authority by producing documents and by adducing evidences.

8. In this view of the matter, the writ petitioner is at liberty to comply with the requirements in consonance with the provisions of the Act and Rules and if the requirements are complied with, then the 1st respondent shall taken the appeal on file and hear the matters by following the procedures as contemplated.

9. Thus, the writ petitioner has failed to establish any acceptable ground for the purpose of assailing the orders impugned and consequently, the writ petitions are devoid of merits and stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Kak

To

1.The Deputy Chief Labour
Commissioner(Central)
The Appellate Authority under
The Payment of Gratuity Act, 1947
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2.The Regional Labour Commissioner(Central)
The Controlling Authority under
The Payment of Gratuity Act, 1947
New No.5, Old No.1-A(II Floor)
Lady Doak College Road,
Chinna Chockikulam,
Madurai - 625 002

+3cc to Mr.T.R.Sathiyamohan, Advocate, S.R.No.83420, 83419,
83471
+2cc to Mr.V.Sivakumar, Advocate, S.R.No. 83744, 83743
+1cc to Mr.J.Madanagopal, Advocate, S.R.No. 83798
+1cc to Mr.M.Santhanaraman, Advocate, S.R.No. 83302

W.P.Nos.32262, 32484 & 32489 of 2018

RK(CO)
GN(08/11/2019)

सत्यमेव जयते

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