

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 29.04.2019

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**W.P. (MD) .No.10860 of 2019****and****W.M.P. (MD) No.8319 of 2018**

The Management,
Tamil Nadu Civil Supplies Corporation,
Through its Regional Manager,
Regional Office, Sipcot Campus,
Thoothukudi Post,
District 628 008

... Petitioner

-VS-

1) The Appellate Authority under the
Payment of Gratuity Act,
(Additional Commissioner Labour),
Housing Board Office Building,
Ellis Nagar, Madurai 625 016

2) The Authority of the
Payment of Gratuity Act,
O/o Deputy Commissioner of Labour,
Thirumagal Nagar,
Tirunelveli Post and District.

3) Banumathi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent vide his proceedings அ.தி.மு/ஈ./8785/2018 dated 22.01.2019 and consequential impugned order passed by the 2nd respondent made in P.G.No.33/2012 dated 09.03.2017 and quash the same as illegal and consequentially to direct the 2nd respondent to decide the case on merits and impleading the legal heirs of the 3rd respondent.



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For Petitioner : Mr.C.G.Pethanaraj

For Respondent : MR.N.Shanmugaselvam,

Additional Government Pleader

O R D E R

The instant writ petition has been filed challenging the order dated 22.01.2019 passed by the first respondent in அ.தி.மு.ந./8785/2018, dismissing the appeal filed against the order passed by the 2nd respondent dated 09.03.2017 made in P.G.No.33/2012.

2. It is the case of the petitioner that the third respondent's husband was appointed as a 'loadman' on 03.04.2000 and he attained the age of superannuation on 31.12.2002 and after completion of 2 years of service, he received the enhanced salary of Rs.10,374/- without raising any objection regarding service and he also gave full satisfaction receipt to the petitioner.

3. According to the petitioner, after a lapse of 10 years, the third respondent's husband alleged that he was working as 'loadman' from 01.06.1980. He claimed difference in the amount of gratuity with delay condonation petition and he filed the case before the second respondent in P.G.I.A.No.12 of 2012. The delay condonation petition filed by the third respondent was allowed by the second respondent. The main case was numbered as P.G.Appeal No.33 of 2012. The second respondent passed an order dated 07.11.2017 in favour of the third respondent, directing the petitioner to pay a sum of Rs.68,933/- as difference in gratuity amount and also directed the petitioner to pay interest on the said sum totalling a sum of Rs.1,02,224/-.

4. Aggrieved by the order of the second respondent, the petitioner preferred an appeal before the first respondent under the Payment of Gratuity Act. The first respondent dismissed the appeal filed by the petitioner by passing an order dated 22.01.2019 on the ground that it was filed after 121 days.

5. According to the petitioner, the third respondent was never permanently appointed in the petitioner's corporation on 01.06.1980, as he was working only as a 'load-man' under the control of the Group Leader (Contractor) from 01.06.1980 to 02.04.2000. According to the petitioner, the third respondent's husband was never in the continuous service of the petitioner and despite not producing the records to establish his continuous service, the authorities below have held the petitioner liable to pay the gratuity for the period during which the third respondent's husband was not in the service of the petitioner.



Aggrieved by the dismissal of the appeal, filed against the order passed in P.G.No.33 of 2012, the instant writ petition has been filed.

6. Heard Mr.C.G.Pethanaraj, learned counsel appearing on behalf of the petitioner.

7. This Court has perused and examined the order dated 09.03.2017 passed by the second respondent and the order passed by the first respondent dismissing the appeal on the ground of delay. The second respondent has held that the petitioner is liable to pay gratuity amount to the third respondent for the period from 01.06.1980 to 30.12.2002 only after considering the documentary and oral evidence placed on record before him. Admittedly, the third respondent's husband was employed by the petitioner ever since 01.06.1980 but was regularised by the petitioner only on 03.04.2000. It is not the case of the petitioner that the third respondent's husband was working elsewhere from 01.06.1980 upto 03.04.2000. Only after being satisfied with the service on 03.04.2000, the petitioner has regularised the service of the third respondent's husband. The grounds raised by the petitioner in this petition were also raised before the second respondent and the second respondent has duly considered the objections in accordance with law. The first respondent dismissed the appeal since it was filed after the period of limitation. It is settled law that appeal filed beyond the prescribed period and the payment of gratuity Act is not maintainable.

8. This Court under Article 226 of the Constitution of India cannot re-appreciate the evidence when the findings of the Authority below is based on the materials placed on record and it is not a perverse finding.

9. In the result, this Court is of the considered view that there is no infirmity in the orders passed by the Authorities below. Accordingly, there is no merit in the instant writ petition. Hence, the **Writ Petition is dismissed**. No costs. Consequently connected W.M.P.(MD) No.8319 of 2018 is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)



To

1) The Appellate Authority under the
Payment of Gratuity Act,
(Additional Commissioner Labour),
Housing Board Office Building,
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2) The Authority of the
Payment of Gratuity Act,
O/o Deputy Commissioner of Labour,
Thirumagal Nagar,
Tirunelveli Post and District.

+1 CC to MR.C.G.PETHANARAJ, Advocate (SR-63758[F] dated
29/04/2019)

+1 CC to SPECIAL GOVERNMENT PLEADER (SR-64673[F] dated 30/04/2019
)

Order made in
W.P. (MD) .No.10860 of 2019
29.04.2019

sj
AE/ (13.05.2019) 5P 5C