

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

DATED: 03.04.2019

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE**W.P. (MD) No. 3490 of 2019****and****W.M.P. (MD) No. 2746 AND 2747 of 2019**

WEB COPY

The Management,
Tamil Nadu Civil Supplies Corporation,
Through its Regional Manager,
Regional Office, Sipcot Campus,
Thoothukudi Post and 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,
Office of the Deputy Commissioner of Labour,
Thirumal Nagar,
Tirunelveli Post and District.

3. V. Aalagar ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records from the respondents impugned order made in P.G.No.68 of 2016, dated 09.11.2017 and order made in P.G.Appeal No.37/2018, dated 14.10.2018 passed by the respondents 1 and 2 and quash the same.

For Petitioner : Mr.R.Saravanan

For R-1 and R-2 : Mr.M.Jeyakumar
Additional Government Pleader

For R-3 : Mr.D.Saravanan

ORDER

This writ petition has been filed challenging the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972, wherein the Appellate Authority has dismissed the appeal filed by the petitioner under Section 7(7) of the Payment of Gratuity Act, 1972.



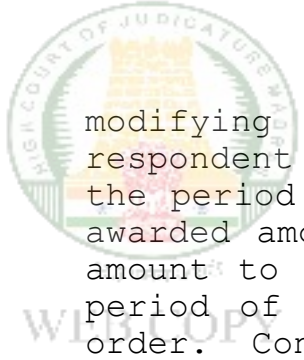
and second respondents and Mr.D.Saravanan, learned Counsel for the third respondent.

3.This Court has perused and examined the orders of the Authorities below. Admittedly, the third respondent was working as a Pattiyaal Clerk with the petitioner from 27.11.1983 onwards. But, it is the case of the petitioner that he was confirmed only on 06.11.1990. No employee can be a trainee for such a long period of time that too when admittedly, in the instant case, he was confirmed on 06.11.1990. An employee will not get confirmed by the employer unless and until he had an unblemished track record as a trainee. It is hard to believe that the third respondent was only a trainee from 27.11.1983 to 06.11.1990 for a very long period of more than seven years. The subject matter of challenge in this writ petition is the Award of gratuity to the third respondent for the period from 27.11.1983 to 06.11.1990. It is the contention of the petitioner that the second respondent has erroneously condoned the long delay in filing the application for payment of gratuity to the third respondent. But the ordering of the condone delay application has not been challenged by the petitioner and the said order has also attained finality. The second respondent has passed a well considered order considering the oral and documentary evidence placed on record and only thereafter has come to the conclusion that the third respondent is entitled for the gratuity amount claimed by him. Before the second respondent, the petitioner and the third respondent had filed three documents each which were marked as exhibits. No oral evidence was let in by the petitioner whereas the third respondent examined himself as a witness. This Court after examining the order passed by the second respondent is of the considered view that the Authorities below have rightly awarded the gratuity claim to the third respondent as he falls within the definition of an employee under Section 2(e) of the Payment of the Gratuity Act, 1972. However, considering the fact that the third respondent has not produced any documentary proof to show that he was made a permanent employee on 27.11.1983, he is not entitled for gratuity from 27.11.1983 itself. Any employee will be on probation basis before being made permanent.

4.This Court is of the considered view that for the facts and circumstances of the instant case, a period of two years from 27.11.1983 i.e. upto 26.11.1985 will have to be treated as an apprentice period for which, the third respondent is not entitled for any gratuity amount in terms of Section 2(e) of the Payment of Gratuity Act, 1972. Accordingly, the proportionate gratuity amount for the apprentice period from 27.11.1983 to 26.11.1985 will have to be reduced from and out of the gratuity amount awarded by the second respondent in its order dated 09.11.2017 in P.G.No.68/2016. Insofar as, the other findings of the Authorities below are concerned, this Court does not find any infirmity in the same and are hereby confirmed.

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5.In the result, the writ petition is partly allowed by



modifying the order dated 09.11.2017, passed by the second respondent in P.G.No.68/2016, by deducting the gratuity amount for the period from 27.11.1983 to 26.11.1985, from and out of the total awarded amount and the petitioner is directed to pay the remaining amount to the third respondent after the said deduction, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Appellate Authority under the
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2.The Authority of the Payment of Gratuity Act,
Office of the Deputy Commissioner of Labour,
Thirumal Nagar,
Tirunelveli Post and District.

+1 cc Mr.C.G.PETHANARAJ ,Advocate, SR.No.58638
+1 CC to M/s.D.SARAVANAN, Advocate (SR-58706[F] dated 03/04/2019)
+1 CC to M/s.SPL GP (SR-59142[F] dated 04/04/2019), (SR-59243[F]
dated 05/04/2019)

W.P. (MD) .No.3490 of 2019

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KK/SAR/13.08.2019/3P-6C/