



+BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2019

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.3805 of 2019

and

W.M.P. (MD) No.2984 of 2018

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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) C.Muthupandian

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari calling for the records from the respondents impugned order made in P.G.No.63/2016 dated 09.11.2017 and order made in P.G.Appeal No.34/2018 dated 03.10.2018 passed by the respondents and quash the same.

For Petitioner : Mr.R.Saravanan

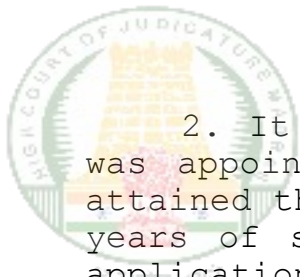
For Respondents: Mr.N.Shanmugaselvam

No.1& 2 : Additional Government Pleader

No.3 : Mr. D.Saravanan

O R D E R

The instant writ petition has been filed challenging the order dated 03.10.2018 passed by the first respondent in P.G.Appeal No.34 of 2018, confirming the order dated 09.11.2017 passed in P.G.No.63 of 2016.



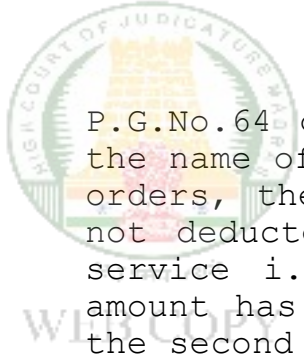
2. It is the case of the petitioner that the third respondent was appointed as a 'Pattiyal Clerk Trainee' on 02.06.1990 and he attained the age of superannuation on 28.02.2010 after completing 20 years of service. After attaining superannuation, he submitted an application claiming for gratuity. Thereafter, he received the gratuity amount of Rs.1,51,569/-, without raising any objection regarding the duration of his service.

3. According to the petitioner, after the lapse of 6 years, the third respondent has alleged that he was working as 'Pattiyal Clerk Trainee' from 04.03.1978 and confirmed on 02.06.1990 and retired from service on 28.02.2010. Hence, he claimed the difference in amount of gratuity with delay condonation petition before the second respondent and the same was numbered as P.G.I.A.No.352/2016. According to the petitioner, they disputed the service duration of the third respondent and also objected the condone delay petition. According to the petitioner, the condone delay petition filed by the third respondent was allowed without any valid reason and the main case was numbered as P.G.No.63/2016. According to the petitioner, in the main case, a counter was also filed and the petitioner categorically denied the length of service of the third respondent. By order dated 09.11.2017, in P.G.No.63/2016, the second respondent directed the petitioner to pay a sum of Rs.76,660/-, being the difference in the gratuity amount to the third respondent. Aggrieved by the order dated 09.11.2017, an appeal was filed before the first respondent by the petitioner in P.G. Appeal No.34/2018. The first respondent dismissed the appeal on 13.10.2018, and confirmed the order of the second respondent. Aggrieved by the impugned orders of the authorities below, the instant writ petition has been filed.

3. Heard Mr.R.Saravanan learned counsel appearing for the petitioner and Mr. M.Jeyakumar, learned Additional Government Pleader appearing for respondents 1 and 2 and Mr.D.Saravanan learned counsel appearing for the third respondent.

4. Admittedly the third respondent was employed by the petitioner right from 04.03.1978. But, it is the case of the petitioner that upto 02.06.1990, the third respondent was employed only on seasonal basis and was not their regular employee. The contention of the petitioner was duly considered by the first and second respondent under the impugned orders. They have concluded that the third respondent cannot be a trainee for a very long period of time i.e., from 04.03.1978 to 02.06.1990.

5. This Court is in agreement with the view taken by the authorities below that the third respondent cannot be treated as an apprentice for a very long period of time. It is also brought to the notice of this Court by the learned counsel appearing on either side that in similar matters where Pattiyal Clerk, were employed by the petitioner, they were treated as apprentice only for the first two years of their service in P.G.No.112 of 2017 which was confirmed in P.G.A.No.38 of 2018 and the name of the employee was K.Natarajan and



P.G.No.64 of 2016 which was confirmed in P.G.A.No.33 of 2018 and the name of the employee was B.Arumugam. However, under the impugned orders, the second respondent as well as the first respondent have not deducted any sum towards gratuity for the first two years of service i.e., from 01.08.1982 to 31.07.1984. Therefore, the said amount has to be deducted from and out of the amount determined by the second respondent under the impugned orders dated 09.11.2017 in P.G.No.63/2016 or in the order passed in P.G.Appeal No.34 of 2018 dated 03.10.2018.

6. Considering the fact that all are similarly placed employees, there cannot be any discrimination amongst them. This Court under Article 226 of the Constitution of India cannot interfere with the impugned orders of the authorities below as there is no arbitrariness or perversity in the same.

7. Accordingly the writ petition is partly allowed by modifying the impugned order dated 09.11.2017 passed by the second respondent in P.G.No.63/2016 by directing the petitioner to deduct the gratuity amount payable to the third respondent for a period of the first two years of his service from 04.03.1978 to 28.02.1980 as done in the case of Arumugam and Natarajan, who have also filed separate writ petitions before this Court in W.P(MD) Nos.3804 of 2019 and 3266 of 2019. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

- 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,
Thirumal nagar,
Tirunelveli Post and District.
- +1cc to Mr.D.SARAVANAN, Advocate, SR.No.58711
+1cc to Mr.C.G.PETHANARAJ, Advocate, SR.No.58634
+1cc to M/s.Special Government Pleader,SR.No.59394

W.P. (MD) .No.3805 of 2019

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