

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

DATED: 03.04.2019

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**W.P. (MD) .No.4182 of 2019****and****W.M.P. (MD) No.3313 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,
Thirumal nagar,
Tirunelveli Post and District.

- 3) S.Rajakani

... 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 first and second respondents and impugned order passed by the second respondent made in P.G.No.61/2016 dated 09.11.2017, consequent order passed by the first respondent made in P.G.Appeal No.36/2018 dated 13.10.2018 and quash the same as illegal.

For Petitioner : Mr.R.Saravanan

For Respondents : Mr.M.Jeyakumar

No.1& 2 : Additional Government Pleader

No. 3 : Mr. D.Saravanan

**ORDER**

The instant writ petition has been filed challenging the order dated 09.11.2017 passed by the first respondent in P.G.Appeal No.36 of 2018, confirming the order dated 13.10.2018 passed in P.G.No.61 of 2016.

2. It is the case of the petitioner that the third respondent was appointed as a 'Pattiyal Clerk Trainee' on 01.06.1990 and he attained the age of superannuation on 31.07.2014 after completing 24 years of service. After attaining superannuation, he submitted an application claiming for gratuity. Thereafter, he received the gratuity amount of Rs.2,97,692/-, without raising any objection regarding the duration of his service.

3. According to the petitioner, after the lapse of 2 years, the third respondent has alleged that he was working as 'Pattiyal Clerk Trainee' from 22.02.1982 and confirmed on 01.06.1990 and retired from service on 31.07.2014. 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.1523/2016. 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.61/2016. 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.61/2016, the second respondent directed the petitioner to pay a sum of Rs.99,231/-, 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.36/2018. 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 22.02.1982. But, it is the case of the petitioner that upto 01.06.1990, 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 22.02.1982 to 01.06.1990.



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 20.11.2017 in P.G.No.67/2016 or in the order passed in P.G.Appeal No.32 of 2018 dated 17.10.2018.

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.61/2016 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 22.02.1982 to 31.01.1984 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

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+1 CC to M/s.C.G.PETHANARAJ, Advocate (SR-58636[F] dated 03/04/2019)

+1 CC to M/s.D.SARAVANAN, Advocate (SR-58715[F] dated 03/04/2019)

+1 CC to M/s.SPL GP (SR-59125[F] dated 04/04/2019)

W.P. (MD) .No.4182 of 2019

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ES/KK/23.04.2019/4P/6C