



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.23585 of 2019

and

W.M.P (MD) .No.20216 of 2019

The Special Officer
Jayamangalam Village Panchayat
Periyakulam Union
Theni District

... Petitioner

-Vs-

1.The Deputy Commissioner of Labour
Tribunal Under the Panchayat of Gratuity Act
Dindigul

2.P.Kaliammal (Retired)
Sanitary Worker
Jayamangalam Village Panchayat
Periyakulam Union
Theni District

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned order passed by the first respondent dated 12.10.2018 in P.G.No.19 of 2018 and quash the same as illegal.

For Petitioner : Mr.S.Sukumar

For R1

:Mr.C.Ramar

Additional Government Pleader

ORDER

The petitioner is challenging the order of the first respondent, dated 12.10.2018.

2.The first respondent is the Authority under Payment of Gratuity Act. The learned counsel for the petitioner contended that



the first respondent without giving any opportunity, has ordered the application filed by the second respondent. The first respondent failed to see that the provisions of the Act is not applicable to the petitioner and there is no employer and employee relationship between the petitioner and the second respondent. The second respondent is not entitled to any gratuity, but she is entitled only Special Pension or lump sum amount as per G.O.Ms.No.348 Finance (Pay Cell) Department dated 28.11.2017 and prayed for allowing the Writ petition.

3.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the first respondent.

4.From the materials on record, it is seen that the petitioner has come out with the present writ petition without exhausting statutory appeal remedy provided under Section 7(7) of the Payment of Gratuity Act, 1972. As per the said provision, any person aggrieved by an order of the Authority under Payment of Gratuity Act, can file an appeal within 60 days from the date of receipt of the order to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf. The appropriate Government or the Appellate Authority, as the case may be, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days. If the appeal is filed beyond 60 days, the Appellate Authority has power to condone the delay upto 60 days. The petitioner is not entitled to challenge the order of the first respondent on merits in the Writ petition without exhausting the Statutory Appeal remedy. The grounds raised by the petitioner whether the second respondent is employed or not and whether the provisions of Payment of Gratuity Act is applicable to the employee of the petitioner are question of facts, which cannot be decided in the writ proceedings as this Court is not the Appellate Authority. Further, the contention of the learned counsel for the petitioner that the first respondent was not given opportunity to put forth his case, is contrary to the facts. From the impugned order, it is seen that the petitioner has examined witnesses, but has not marked any documents.

5.For the above reasons, this Writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //



To

The Deputy Commissioner of Labour
Tribunal Under the Panchayat of Gratuity Act
Dindigul.

+1 CC to M/s.Special Govt. Pleader (SR-97245[F] dated 11/11/2019)

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and

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msa

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