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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

Writ Petition No.24835 of 2005

Kovai Maavatta Jeeva Municipal Thozhilalar
Sangam, rep. by its General Secretary
Mr.G.Krishnan, No.255, 7th Street Extension,
Gandhipuram, Coimbatore-641 012. ... Petitioner

Vs

1. The Government of Tamil Nadu
rep. by its Secretary to Government,
Labour & Employment Department,
Fort St. George, Chennai-600 009.

2. The Coimbatore City Municipal Corporation
rep. by its Commissioner, Coimbatore. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent relating to the impugned G.O.Ms.No.113, Labour and Employment (M1) Department dated 15.7.2005 and to quash the same.

For Petitioner :Mr.K.Surendranath

For Respondents:Mr.M.Dig Vijayapandian,
Additional Government Pleader for R1

Mr.R.Sivakumar,
Standing Counsel for R2

O R D E R

The petitioner Sangam represented by its General Secretary Mr.G.Krishnan has filed this Writ Petition, challenging the impugned G.O.Ms.No.113, Labour and Employment (M1) Department dated 15.7.2005, granting exemption under Section 5 of the Payment of Gratuity Act, 1972, with retrospective effect from 01.10.1973 and to quash the same.

2. Learned Counsel appearing for the petitioner would submit that firstly, when there was a similar request made by the petitioner Sangam seeking exemption under Section 5 of the Payment of Gratuity Act to the 2nd respondent herein,

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by Letters dated 18.08.1990 and 14.11.1990, the then authorities, after considering the request and the objection raised by the Trade Unions refused to grant exemption vide Letter (Routine) No.430 L&E Department dated 11.5.1993. When the request for exemption was already rejected by the 1st respondent, granting exemption again under Section 5 of the Payment of Gratuity Act to the employees, namely, the sweepers, who are kept only on consolidated pay not even on temporary service, without giving any good reason is liable to be rejected.

3.Continuing his arguments, the learned Counsel for the petitioner would submit that when the same 1st respondent on receipt of the request for grant of exemption from the 2nd respondent, called for objection from the petitioner, the petitioner filed its detailed objections dated 28.10.2002 and 7.2.2005 specifically meeting the case that grant of exemption would prejudice the interest of the employees and moreover, the receipt of the Death-cum-Retirement Gratuity (DCRG) and the pensionary benefits are less favourable than the benefits conferred under the Payment of Gratuity Act, On this score, the petitioner Sangam sought for rejecting the request for grant of exemption. In addition thereto, when the root of the gratuity is different from the other benefits and each one is salutary benefaction guaranteed independently of each other, the pensionary benefits and the DCRG are given only from the fund constituted out of the Management contribution payable towards the General Provident Fund and in the earlier objection, it was brought to the notice of the 1st respondent that the Management 2nd respondent was not contributing its share of the contribution payable to the General Provident Fund and the Corporation 2nd respondent was utilising the said amount to pay the pensionary benefits and the DCRG payable to the employees. Accordingly, it was properly explained that the benefits granted by the 2nd respondent is less favourable than the benefits granted under the Payment of Gratuity Act. Without considering these vital aspects, the 1st respondent has simply granted exemption under Section 5 of the Payment of Gratuity Act with retrospective effect from 01.10.1973 and no reasons have been assigned as to why they are taking a different stand than the one already passed while rejecting the similar request by order dated 20.01.1997.

4.Concluding his arguments, the learned Counsel for the petitioner would submit that the members of the petitioner's Sangam are all sweepers, and majority of the sweepers were not given the benefit of regularisation and only few of them were granted regularisation. Therefore, when most of them are kept only on consolidated pay, the DCRG and pensionary benefits are less favourable than the benefits conferred under the Payment of Gratuity Act. Therefore, the 1st respondent, on an earlier occasion, has rightly rejected by

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order dated 20.01.1997. But, without reconsidering the same and also without giving any reason on what basis, the receipts of the DCRG and pensionary benefits received by the poor sweepers are more favourable than the benefits conferred under the Payment of Gratuity Act erroneously passed the impugned G.O.Ms.No.113, Labour and Employment (M1) Department dated 15.7.2005. Therefore, the same is liable to go.

5.A detailed counter affidavit has been filed by the 2nd respondent.

6.Learned Standing Counsel for the 2nd respondent would submit that the employees of the 2nd respondent Corporation are paid pension and various other retirement benefits on par with the employees of the Government of Tamilnadu which are (1) Pension (including family pension), (2) Death-cum-Retirement Gratuity (DCRG), (3) Commutation of Pension, (4) Leave Salary, (5) Provident Fund (Pf) and (6) Special Provident Fund (SPF). Therefore, the interest of the employees of the 2nd respondent Corporation is well protected, it is pleaded. Moreover the petitioner Union is having considerable members among the workers employed in various category of the 2nd respondent Corporation. While so, all other Local Bodies in the Coimbatore District are denied. On an earlier occasion, the request for exemption was refused due to objections raised by the petitioner Union is untenable because the earlier rejection does not in any way preclude the 1st respondent from taking further consideration. Moreover, the Commissioner of Labour. Chennai has made an elaborate enquiry with the 2nd respondent Corporation and the various trade unions and respective views were considered. Only thereafter, the 1st respondent has exercised its power under Section 5 of the Payment of Gratuity Act, 1972 for the simple reason that DCRG and pensionary benefits which are being paid to the employees are not less favourable than the benefits conferred under the Payment of Gratuity Act. Therefore, the argument advanced by the petitioner that the DCRG and the pensionary benefits are less favourable than the benefits conferred under the Payment of Gratuity Act is baseless.

7.The learned Standing Counsel for the 2nd respondent would further submit that when the expenditure for payment of pension and DCRG are made only from the Corporation Fund, the exemption was granted retrospectively w.e.f. 01.10.1973 because the erstwhile Coimbatore Municipality was upgraded as Coimbatore City Municipal Corporation w.e.f. 01.05.1981. The service rules framed under the Coimbatore City Municipal Corporation Act are also made applicable to those labour category employees. Under these circumstances, the exemption was rightly sought for and it was granted retrospectively w.e.f. 01.10.1973. Further, considering the financial burden, the application for exemption was made afresh on 23.12.1999

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and the impugned order was passed only after hearing the petitioner Union as well as the 2nd respondent Corporation and after considering all the relevant materials. Therefore, the petitioner Sangam cannot come to this Court challenging the same.

8.It is also submitted by the learned Standing Counsel for the 2nd respondent that minimum 10 years of qualifying service is required for the payment of pension and not for payment of DCRG inasmuch as all the employees of the 2nd respondent Corporation are eligible for DCRG irrespective of their length of service. Therefore, considering the financial condition faced by the 2nd respondent, the exemption has been granted retrospectively w.e.f. 20.01.1997 because presently there are 2073 sanitary workers employed and there are 1400 pensioners in the category of the sanitary workers. When 300 employees filed cases, approximately 180 cases were settled and the remaining 120 cases are yet to be settled. In these circumstances, the impugned order came to be passed.

9.Heard the submissions made on either side and I have also perused the materials available on record carefully.

10.But this Court is unable to find any merit in the impugned Government Order in G.O.Ms.No.113, Labour and Employment (M1) Department dated 15.7.2005. The reason being that firstly, it is not in dispute that on an earlier occasion, when the 2nd respondent, namely, Commissioner, Coimbatore, City Municipal Corporation sought an exemption under Section 5 of the Payment of Gratuity Act from the 1st respondent, on receipt of the request for exemption under Section 5 of the Payment of Gratuity Act, 1972, a communication was addressed to the members of the petitioner Sangam. On receipt of the same, detailed objections were given on 28.10.2002 and 07.02.2005 wherein the petitioner Sangam have raised their objections that the grant of exemption would prejudice the interest of the members and the receipt of the DCRG and the pensionary benefits are less favourable than the benefits conferred under the Payment of Gratuity Act, 1972. Therefore, the exemption should be refused. Once again, the petitioner also brought to the notice of the 1st respondent that the root of the gratuity is different from the other benefits, therefore, each one is independent of each other. Moreover, when the pensionary benefits and DCRG are given only from the fund constituted out of the Management Contribution payable towards the General Provident Fund and the Management has not contributed its share towards General Provident Fund and the Corporation is utilising the said amount to pay the pensionary benefits, it was rightly rejected by order dated 20.01.1997. Therefore, when once the 1st respondent has already refused the request made by the 2nd respondent to grant exemption under Section 5

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of the Payment of Gratuity Act, 1972, it is now known how the 1st respondent can entertain the similar request without even assigning any reason on what basis they have refused the earlier request which was not tenable.

11.Secondly, the DCRG is always payable to the employees irrespective of their length of service, but for getting the pensionary benefits, minimum 10 years of service in the time scale is required. Thirdly, the benefits granted by the 2nd respondent has not been sufficiently explained as to how the benefits granted by the 2nd respondent are less favourable than the benefits granted under the Payment of Gratuity Act, 1972. The counter affidavit filed by the 2nd respondent also mentions that the following six benefits, namely, (1) Pension (including family pension), (2) Death-cum-Retirement Gratuity (DCRG), (3) Commutation of Pension, (4) Leave Salary, (5) Provident Fund (PF) and (6) Special Provident Fund (SPF) are granted to the employees of the 2nd respondent Corporation, but it is not known whether these six benefits are also granted to the consolidated employees which was not properly explained. Therefore, for all these reasons, the impugned order in G.O.Ms.No.113, Labour and Employment (M1) Department dated 15.7.2005 is liable to be set aside.

12.In the result, the the impugned G.O.Ms.No.113, Labour and Employment (M1) Department dated 15.7.2005 of the 1st respondent is set aside and the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To
1.The Secretary to Government,
Government of Tamil Nadu,
Labour & Employment Department,
Fort St. George, Chennai-600 009.

2.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.

+1cc to Mr.R.Sivakumar, Advocate SR.21545
+1cc to Mr.K.Surendranath, Advocate SR.20575
+1cc to the Government Pleader SR.21193

W.P.No.24835 of 2005

RK(CO)
CB(09/07/2020)

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