

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 9387 of 2019
and
W.M.P. No. 9970 of 2019

The Management of Namakkal Taluk Lorry Owners Association,
87, Salem Road,
Namakkal - 637 001,
Represented by its President. ... Petitioner

-vs-

1. The Assistant Commissioner of Labour,
Controlling Authority under the Payment of Gratuity Act, 1972,
Salem.
2. The Joint Commissioner of Labour,
Appellate Authority under the Payment of Gratuity Act, 1972,
Coimbatore.
3. R. Muthusamy
4. V. Chidambaram
5. K. Kumarasamy
6. K. Palanisamy ... Respondents

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records of the Second Respondent in AGA No. 24
to 27 of 2018 and quash its order dated 30.11.2018 confirming
the order of the First Respondent dated in P.G. No. 256, 257,
259 and 260 of 2016.

For Petitioner : Mr. S. Haroon AL Rasheed
for M/s. T.S. Gopalan & Co.

For Respondents: Dr. Sathyaraj,
Special Government Pleader (for R1 & R2)
Mr. K.V. Shanmuganathan (for R3 to R6)

O R D E R
(through video conference)

Heard Mr. S.Haroon AL Rasheed, Learned Counsel for the Petitioner, Mr. D.Sathyaraj, Learned Special Government Pleader appearing for the First and Second Respondents and Mr. K.V.Shanmuganathan, Learned Counsel for the Third to Sixth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third to Sixth Respondents made claims in P.G. Nos. 256, 257, 259 and 260 of 2016 before the First Respondent under Section 7(4) of the Payment of Gratuity Act, 1972, (hereinafter referred to as the 'Act' for short) for the payment of gratuity against the Petitioner, which was granted by common order dated 04.09.2017. The Second Respondent by common order dated 30.11.2018 in the appeals under Section 7(7) of the Act bearing A.G.A. Nos. 24 to 27 of 2018 preferred by the Petitioner against that order had confirmed the same. Aggrieved thereby, the Petitioner has filed this Writ Petition assailing the said order.

3. It is borne out from the materials placed on record that in October 2015, the Petitioner had transferred the Third to Sixth Respondents from one of its units to another, but they had made a request to be retained in the same place in which no decision was communicated. In that backdrop, the Third to Sixth Respondents claimed to have resigned from the employment in the organization of the Petitioner with effect from 31.10.2015 and they had made claims for payment of gratuity due to them. The Petitioner resisted the claim for gratuity by contending that though the Third to Sixth Respondents assert that they have resigned from employment, their resignation had not been accepted and that they have to be treated as still continuing in service, and as such, there was no question of making any payment of gratuity to them. The First and Second Respondents in the impugned orders, after considering the divergent versions of the parties, had drawn the inference that since the Petitioner had not called upon the Third to Sixth Respondents to report for duty and had not initiated any disciplinary proceedings against them in that regard, it was deemed that the Third to Sixth Respondents ceased to be in employment with effect from 31.10.2015 on their resignation, as claimed by them.

4. Though the Petitioner seeks to re-agitate the said issue again in this Writ Petition, there does not appear to be any acceptable reason to take a different view from what has been concluded by the First and Second Respondent in the impugned orders. There is no dispute regarding the period of employment of the Third to Sixth Respondents as well their amount of last drawn salary, based on which the amount of gratuity has been

calculated. In that view of the matter, there does not appear to be any infirmity requiring interference in the impugned orders, which have to be upheld. The Third to Sixth Respondents are at liberty to make necessary application for the withdrawal of the amount of gratuity that has been deposited by the Petitioner before the concerned authority.

5. The Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner of Labour,
Controlling Authority under the Payment of Gratuity Act, 1972,
Salem.
2. The Joint Commissioner of Labour,
Appellate Authority under the Payment of Gratuity Act, 1972,
Coimbatore.

+1cc to Mr.Shanmuganathan, Advocate in Sr no.26312

W.P. No. 9387 of 2019

MG (CO)
RV (02/09/2020)

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