

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2020

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

W.P. No. 15809 of 2018

and

W.M.P. No. 18789 of 2018

The Zonal Officer,
Zone – XIII, Madhavaram,
Greater Chennai Corporation,
Formerly:-
The Commissioner,
Madhavaram Municipality,
Madhavaram,
Chennai – 600 060.

... Petitioner

-VS-

1. The Controlling Authority under Payment of Gratuity Act, 1972,
The Assistant Commissioner of Labour,
Office of the Joint Commissioner II – Labour,
Chennai – 600 006.

2. P. Rajeswari

... 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 First Respondent herein in P.G. No. 25 of 2017 and quash the impugned order dated 13.12.2017 and despatched on 14.02.2018 passed by the First Respondent herein as highly illegal and arbitrary.

For Petitioner : Mrs. Karthikaa Ashok, Standing Counsel
For Respondents : R1 - Labour Court
Mr. R.Karthikeyan (for R2)

ORDER
(through video conference)

Heard Mrs. Karthikaa Ashok, Learned Standing Counsel appearing for the Petitioner and Mr. R.Karthikeyan, Learned Counsel for the Second Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent by an order dated 13.12.2017 in P.G. No. 25 of 2017 had granted the claim for differential amount of gratuity under Section 7(4) of the Payment of Gratuity Act, 1942 (hereinafter referred to as 'the Act' for short) made by the Second Respondent against the Petitioner, who had received a copy of that order on 15.02.2018. The Petitioner was entitled to prefer appeal against that order within a period of 60 days from the date of its receipt under Section 7(7) of the Act before the Appellate Authority, who has been empowered to condone delay in filing such appeal for an extended period of 60 days, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioner did not prefer any such appeal before the Appellate Authority, but has instead filed this

Writ Petition on 21.06.2018 challenging the order passed by the First Respondent beyond the maximum limitation period of 120 days from the date of receipt of copy of that order.

3. The Hon'ble Supreme Court of India in *Assistant Commissioner (CT) LTU, Kakinada -vs- Glaxo Smith Kline Consumer Health Care Limited* (Order dated 06.05.2020 in Civil Appeal No. 2413 of 2020) has emphatically laid down that the High Court in the exercise of powers under Article 226 of the Constitution of India ought not to entertain Writ Petition assailing the order passed by a Statutory Authority which was not appealed against within the maximum period of limitation before the concerned Appellate Authority. In view of that legal position, it is not possible to entertain this Writ Petition.

4. Be that as it may, there does not appear to be any justification even on merits in the contentions raised by the Petitioner challenging the impugned order. According to the Petitioner, the benefit of Death cum Retirement Gratuity (hereinafter referred to as 'DCRG' for short) and pension as applicable to the servants of Government of Tamil Nadu, has been extended to its employees,

which put together would be more than the amount of gratuity payable under the Payment of Gratuity Act, 1972. The husband of the Second Respondent, viz., B. Punniyakoti, who was an employee of the Petitioner was paid DCRG and pension on his retirement from service. However, as the amount of DCRG was lesser than the amount of gratuity payable under the Act, the Second Respondent, on the death of the said B.Punniyakoti, as his legal heir, made a claim for the differential amount of gratuity before the First Respondent. The grievance sought to be ventilated by the Petitioner is that the First Respondent has erroneously granted the differential amount of gratuity claimed by the Petitioner, when her husband was also entitled to receive pension. In this context, reference must be made for Section 14 of the Act, which in no uncertain terms states that the provisions of that Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than that Act or in any instrument or contract, having effect by virtue of any enactment other than that Act. This would obviously mean that merely because the husband of the Second Respondent was also entitled to receive pension, it would not absolve the liability of the Petitioner to pay gratuity in accordance with the provisions of the Act, unless the establishment of the Petitioner has been exempted under Section 5 of

the Act, on being satisfied that the employees are in receipt of gratuity and pensionary benefits are not less favourable than the benefits conferred under that Act. It is not in dispute that the Petitioner has not obtained any such exemption. Hence, the amount of gratuity that the husband of the Second Respondent is entitled would have to be computed only in accordance with the provisions of the Act. This view is fortified by the binding decisions of the Hon'ble Supreme Court of India in *Municipal Corporation of Delhi -vs- Dharam Prakash Sharma* [(1998) 7 SCC 221] and *Allahabad Bank -vs- All India Allahabad Bank Retired Employees Association* [(2010) 2 SCC 44]. It would necessarily follow that the Petitioner is liable to pay the differential amount of gratuity due to the Second Respondent, after deducting the amount already paid under the DCRG scheme, as rightly held in the impugned order which does not suffer from any infirmity.

5. In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Maya

Index : Yes

Note: Issue order copy by 17.08.2020.

P.D. AUDIKESAVALU, J.

Maya

To

1. The Zonal Officer,
Zone – XIII,
Madhavaram,
Greater Chennai Corporation.
2. The Assistant Commissioner of Labour,
Controlling Authority under Payment of Gratuity Act, 1972,
Office of the Joint Commissioner II – Labour,
Chennai – 600 006.



W.P. No. 15809 of 2018

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Dated : 07.08.2020