

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.31878 of 2014

and

M.P.No.1 of 2014

Diwan Mohamed Memorial
Matriculation Higher Secondary School,
runs by Tirupattur Co-op. Sugar Mills Ltd.,
kethandapatti,
vellore District - 635 851
rep. by its Managing Director. Petitioner

vs

1. R.Sumathi
W/o Venkatesan
2. The Assistant Commissioner of Labour,
O/o Deputy Commissioner of Labour-I,
Chennai - 600 006. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records relating to the impugned order dated 29.07.2013 passed by the 2nd respondent in PG No.10/2013 and quash the same.

For Petitioner : Mr.K.Vasanthanayagan
for Mr.R.Bala Ramesh

For Respondents: Mr.S.T.Varadarajulu for R1
Mr.D.Suriyanarayanan, Addl.Govt.Pleader
for R2

ORDER

This Writ Petition is filed against the order of the 2nd respondent dated 29.07.2013, wherein and whereby, the petitioner was directed to pay a sum of Rs.82,051/- towards gratuity payable to the 1st respondent herein with 10% interest.

2. The case of the petitioner is that the petitioner School was established by Tirupattur Cooperative Sugar Mills Limited, Kethandapatti Vellore District, which is the Co-operative Society registered under the Tamil Nadu Cooperative Societies Act, 1983 and therefore, the employees of the Sugar Mill are not entitled for gratuity, though the 1st respondent was working as a teacher in the petitioner School from 04.10.1989 to 11.05.2010.

3. Since the petitioner did not pay the gratuity, the 1st respondent filed an application before the 2nd respondent for computation of gratuity and for payment of the same. The 2nd respondent, after considering the claim of the 1st respondent and that of the writ petitioner, passed the impugned order granting gratuity amount of Rs.82,051/- and also interest at the rate of 10% to the 1st respondent.

4. Learned counsel for the petitioner submitted that the petitioner School is established by the Co-operative Society/ 1st respondent and consequently, the teachers working in the petitioner School should also be treated as the employees of the said Society. Therefore, he contended that the 1st respondent is not entitled for gratuity, being the employee of the Society.

5. On the other hand, the learned counsel appearing for the 1st respondent submitted that the issue involved in this case is no more res integra in view of the recent decision of the Hon'ble Apex Court made in Civil Appeal No.2530/2012 dated 07.03.2019, wherein the Apex Court has categorically found that the employee defined under section 2(e) of the Payment of Gratuity (Amendment) Act, 2009, would include the teachers and therefore, the 1st respondent is entitled to the relief which was rightly granted by the 2nd respondent.

6. Heard both sides. Perused the materials placed before this Court.

7. The only objection raised by the petitioner for denying the gratuity to the 1st respondent is that she is the employee of the Co-operative Society, which established the petitioner School. I am unable to appreciate the above contention. First of all, it is not in dispute that the School is established by the Society where the 1st respondent was working as a teacher during the relevant period. Therefore, the question is whether the 1st respondent was a teacher working in the said School or an employee of the Co-operative Society which established the said School. In my considered view, for all practical purposes

and for applying the benefit of relevant legislature to the teachers, the 1st respondent has to be construed as a teacher worked in the said School, entitle to the benefits available to such of those teachers.

8. As rightly pointed out by the learned counsel for the respondent, the teacher, though was not included originally under the purview of "employee" as defined in Section 2(e) of the Payment of Gratuity (Amendment) Act, 2009, pursuant to an amendment made under Amending Act 47/2009 with retrospective effect from 03.04.1997, admittedly, the benefit of Payment of Gratuity (Amendment) Act, 2009, is extended to the teachers as well. The Apex Court has considered the said issue in the above said case wherein it is observed at paragraph Nos.28, 29 and 30 as follows:

28. In the light of the amendment made in the definition of the word "employee" as defined in Section 2(e) of the Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997, the benefit of the Payment of Gratuity Act was also extended to the teachers from 03.04.1997.

29. In other words, the teachers were brought within the purview of "employee" as defined in Section 2(e) of the Payment of Gratuity Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997.

30. The effect of the amendment made in the Payment of Gratuity Act vide Amending Act No.47 of 2009 on 31.12.2009 was two-fold. First, the law laid down by this Court in the case of Ahmadabad Pvt. Primary Teachers Association (supra) was no longer applicable against the teachers, as if not rendered, and Second, the teachers were held entitled to claim the amount of gratuity under the Payment of Gratuity Act from their employer with effect from 03.04.1997.

9. In view of the above stated facts and circumstances, the findings rendered herein by this Court regarding the status of the 1st respondent and the decision made by the Apex Court as extracted supra, the present writ petition, challenging the order of the 2nd respondent is totally misconceived. Accordingly, the writ petition fails and the same is dismissed. The writ petitioner is directed to disburse the amount, ordered by the 2nd respondent to the 1st respondent within a period of eight weeks from the date of receipt of a copy of this order. If any amount is deposited during the pendency of the proceedings by the petitioner, it is open to the 1st respondent to withdraw

the same and the petitioner shall pay the balance amount within the time as stipulated supra. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsi

To

The Assistant Commissioner of Labour,
O/o Deputy Commissioner of Labour-I,
Chennai - 600 006.

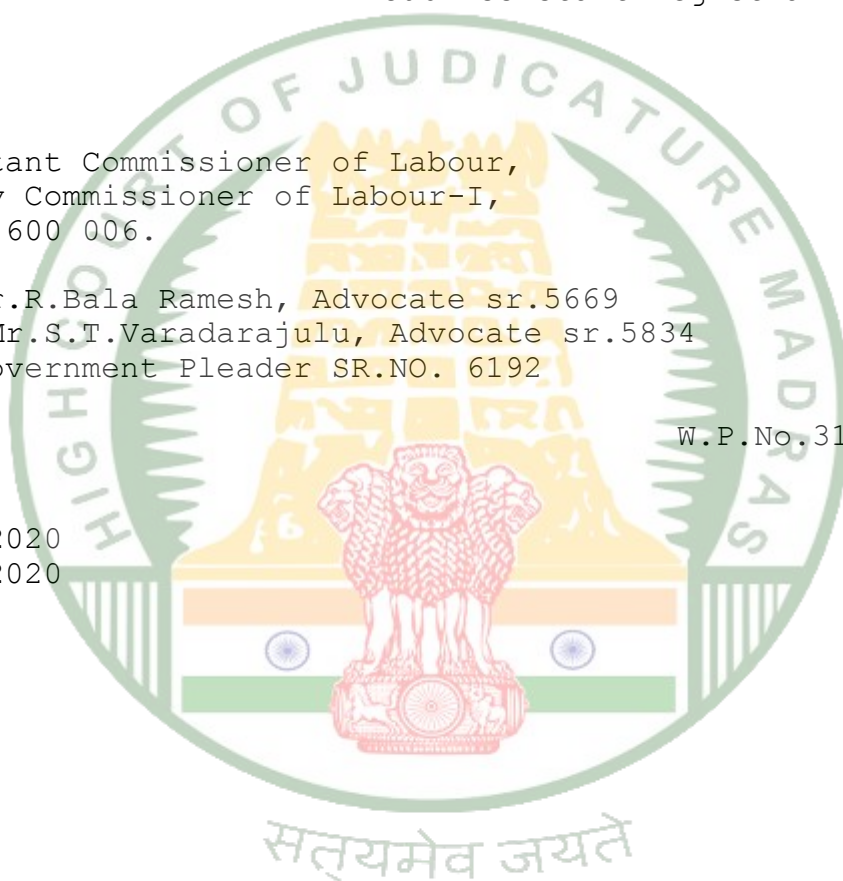
+1cc to Mr.R.Bala Ramesh, Advocate sr.5669

+1cc to Mr.S.T.Varadarajulu, Advocate sr.5834

+1cc to Government Pleader SR.NO. 6192

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