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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2021

CORAM

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

W.P. No. 26454 of 2016 and
W.M.P. Nos. 22676 and 22677 of 2016

The Management,
Represented by its Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore) Limited,
37, Mettupalayam Road,
Coimbatore - 641 043.

... Petitioner

-vs-

1.K.Durai

2.The Joint Commissioner of Labour /
(Appellate Authority as under Payment of Gratuity Act, 1972),
Coimbatore.

3.The Assistant Commissioner of Labour /
(Controlling Authority as under Payment of Gratuity Act, 1972),
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 of the order of the second respondent, the Appellate Authority, (Under the Payment of Gratuity Act, 1972), The Joint Commissioner of Labour, Coimbatore made in A.G.A. No. 18 of 2015 dated 31.08.2015 and the order passed by the third respondent, The Controlling Authority, (Under the Payment of Gratuity Act, 1972), The Assistant Commissioner of Labour, Coimbatore in P.G.A. No. 89 of 2014 dated 18.03.2015 and to quash the same as illegal.

For Petitioner : Mr.A.Sundaravadanam

For Respondents : Ms.A.Deivasigamani for R1
Mr.L.S.M.Hasan Fizal
Government Advocate for R2 and R3



O R D E R

The present Writ Petition has been filed by the Management challenging the order of the Appellate Authority in ordering payment of gratuity to the employee.

2. The Controlling Authority has determined a sum of Rs.92,726/- as gratuity taking into account the employee's service, from the date of entry till his dismissal from service. However, the restoration period has not been taken into account. Admittedly, the employee joined the services of the petitioner / Transport Corporation on 10.02.1976 and was dismissed from service on 16.04.2001.

3. On 31.08.2015, the Labour Court has passed an Award setting aside the order of dismissal of the employee, relevant portion of which reads thus:

"18. In the result a Final Award is passed as follows:

(1) that the dismissal order issued by the respondent dated 16.04.2001 is hereby set aside;

(2) that the respondent is directed to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) to the petitioner as compensation in lieu of reinstatement and backwages, within one month from the date of coming into force of the award, failing which the said amount shall carry interest at the rate of 6% per annum till the date of payment; and

(iii) that the parties are directed to bear their own costs."

4. It is an admitted fact that, the employee had attained the age of superannuation on 29.02.2012 and that, he could not be reinstated in service. A lump sum compensation was awarded as backwages. It does not mean that the entire service of the employee has been deprived by the Labour Court in its Award. The question of reinstatement, after attaining the age of superannuation, does not arise. Payment of gratuity is not a gratis or bounty and it is payable for the service rendered by the employee. Hence, the Appellate Authority interfered with the order of the Controlling Authority and enhanced the compensation payable to the employee from a sum of Rs.92,726/- to Rs.1,33,525/-.



5. I find that there is no error in the order of the Authority concerned. The Authority has found that the employee has rendered 36 years of service and he has been drawing a sum of Rs.6,429/- as salary per month. The Authority has rejected the contention of the Management that the employee would be entitled to get the benefits as Section 4(6) of the Payment of Gratuity Act, 1972 is not applicable to this case. Hence, I am of the view that the order of the Appellate Authority is perfectly justifiable and does not warrant interference from this Court.

6. The amount lying to the credit of the Controlling Authority altogether with accrued interest can be withdrawn by the employee and on production of a copy of this order, the amount shall be released by the Controlling Authority forthwith. The difference in gratuity amount, i.e., [Rs.1,33,525/- (-) Rs.92,726/- = Rs.40,799/-] shall be paid by the employer to the employee within a period of two months from the date of receipt of a copy of this order, failing which, it will carry interest at the rate of 10% for the period of delay in payment.

7. With the above observations, this Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vji

To

- 1.The Joint Commissioner of Labour /
(Appellate Authority as under Payment of Gratuity Act, 1972),
Coimbatore.
- 2.The Assistant Commissioner of Labour /
(Controlling Authority as under Payment of Gratuity Act, 1972),
Coimbatore.
- 3.The Managing Director,
The Management,
Tamil Nadu State Transport Corporation (Coimbatore) Limited,
37, Mettupalayam Road,
Coimbatore - 641 043.



+1cc to Mr.B.Rajagopal, Advocate Sr No.37182
+1cc to the Government Pleader Sr No.40428

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SS (CO)
PR (26/10/2021)