



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.32532 of 2017
and
W.M.P.No.35859 of 2017

The Superintending Engineer,
Mettur Electricity Distribution Circle,
TANGEDCO,
Mettur Dam - 636 401,
Salem District.

... Petitioner

Vs.

1.The Assistant Commissioner of Labour,
No.414 & 415, 4th Floor,
Collectorate, Salem - 636 001.

2.K.Manickam

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent P.G.No.92 of 2014 dated 11.05.2015 and quash the same.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.

For Respondents : Mr.K.V.Shanmuganatham for R2
R1 - Not ready, No appearance

O R D E R

The Order passed by the first respondent in P.G.No.92 of 2014 dated 11.05.2015 under the Payment of Gratuity Act 1972, is under challenge in this writ petition.

2. The second respondent was working as a Contract Labour in the Board from the year 1980 and thereafter, he promoted as permanent employee as helper on 27.01.1995 and he retired from his service on 30.06.2013. Since the second respondent submitted a bogus certificate at the time of joining in the service, he was removed from the service on 10.04.1997. Thereafter, he had filed I.D.No.162 of 1997, before the Labour Court, Salem, to challenge his removal from the service and by an order dated 01.11.2003, the Labour Court had reinstated him in the service, however, denied backwages from the date of removal of service till the date of award and



for the same, the second respondent has filed C.P.No.105 of 2011 on the file of the Labour Court, Salem and the same was allowed. Thereafter, second respondent filed a P.G.No.92 of 2014 under the payment of Gratuity Act 1972 before the first respondent for claiming gratuity for the period he worked as Contract Labour and for the period of removal from the service and on 11.05.2015 the same was allowed by the first respondent. The first respondent has failed to consider the contentions issued by the Government in G.O.Ms.No.699 dated 16.03.1983. Aggrieved over the same, the petitioner is before this Court.

3. According to the Petitioner / Management, they are exempted under Section 5 of the Payment of Gratuity Act, 1972, for which the Government Order came to be passed in G.O.Ms.No.699 dated 16.03.1983. The second respondent has availed the benefits of the Pension Scheme as well as Death-Cum-Retirement-Gratuity under the Payment of Gratuity Act. Since the petitioner / Management is specifically exempted from the purview of the Payment of Gratuity Act, the employee can get only Death-Cum-Retirement-Gratuity and he is not entitled to any other benefits under the Act. Therefore, the order passed by the Appellate Authority directing the petitioner to make difference of gratuity is not sustainable in law.

4. Accordingly, the order passed by the first respondent dated 11.05.2015 is set aside and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

Pns

To

The Assistant Commissioner of Labour,
No.414 & 415, 4th Floor,
Collectorate, Salem - 636 001.

+1cc to Mr.K.V.Shanmuganathan, Advocate, S.R.No. 21158
+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No. 20617

W.P.No.32532 of 2017

RK(CO)

GN(15/07/2021)

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