



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

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W.A. [MD]No.1061 of 2021

and

C.M.P. [MD]No.4745 of 2021

The Management,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Bye Pass Road,
Dindigul Region,
Dindigul - 624 004.

: Appellant/Petitioner

Vs.

1.The Controlling Authority Under
The Payment of Gratuity Act, 1972,
(The Assistant Commissioner of Labour),
Office of Deputy Commissioner of Labour,
Dindigul.

2.R.Paulraj
Respondents/Petitioner

:

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent,
praying to set aside the order dated 27.11.2018, in W.P.[MD]No.3047
of 2018.

Prayer in WP(MD). 3047/ 2018 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a Writ of
Certiorari calling for the records on the files of the 1st
Respondent pertaining to the proceedings in P.G.I.A 36 of 2014 &
P.G.165/2015 dated 26.05.2017 in so far as the calculation of
gratuity payable to the 2nd respondent and quash the same as
illegal.

For Appellant : Mr.J.Senthil Kumaraiah
For Respondent No.1 : No appearance
For Respondent No.2 : Mr.S.Arunachalam

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

With the consent on either side, this Writ Appeal is taken up
for final disposal.



2.This appeal by the Management of the Tamil Nadu State Transport Corporation is directed against the order dated 27.11.2018, in W.P.[MD]No.3047 of 2018.

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3.The said writ petition was filed by the appellant management, challenging the order passed by the first respondent, who is the controlling authority under the provisions of the Payment of Gratuity Act, 1972, in a computation petition filed by the respondent workman before the first respondent, which was taken on file as P.G.I.A. No.36 of 2014.

4.The learned Single Bench, after taking into consideration the fact situation as recorded by the first respondent / authority, dismissed the writ petition. Aggrieved by the same, the appellant Corporation is before us by way of this appeal.

5.The appeal filed by the appellant Corporation is liable to be dismissed on two grounds:

(i)Firstly, as against the order passed by the first respondent, the writ petition is not maintainable, as an appeal is provided under the provisions of the Payment of Gratuity Act, 1972. The appeal can be filed only after the entire gratuity amount as computed by the controlling authority is deposited in full. Therefore, the appellant Corporation could not have by-passed the appeal remedy, which is a labour welfare legislation. Therefore, the writ petition is liable to be dismissed as not maintainable.

(ii) The second ground is on facts.

6.Learned Counsel for the appellant would urge that the period of service for computation of the gratuity has been done incorrectly for the period from 21.03.2000 to 20.03.2021, there was break in service and therefore, the first respondent committed an error in including the said period for computation of length of service for the purpose of gratuity. This issue was considered as Issue No.2, by the first respondent and by an elaborate and reasoned order, the contention has been rejected.

7.We find that the order passed by the first respondent is fully justified, since during the period of unauthorised absence, no disciplinary action was initiated against the respondent workman and there is no order passed treating the period as break in service. In fact, the first respondent has referred to the cross examination of M.W.1, who has candidly admitted that no action was taken. Thus, on both the grounds, we find that the appellant is not entitled for any relief.



8. Accordingly, the appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR/RR

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1 The Controlling Authority Under
The Payment of Gratuity Act, 1972,
(The Assistant Commissioner of Labour),
Office of Deputy Commissioner of Labour,
Dindigul.
- 2 The Management,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Bye Pass Road,
Dindigul Region,
Dindigul - 624 004.

JUDGMENT MADE IN
W.A. [MD]No.1061 of 2021

03.06.2021

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