



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2022

CORAM

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

W.P.NO.1253 OF 2017

AND

W.M.P.NO.1179 OF 2017

The Zonal Officer,  
Zone - I,  
Corporation of Chennai,  
(Formerly) Commissioner,  
Thiruvottiyur Municipality,  
Thiruvottiyur,  
Chennai - 600 019.

... Petitioner

-vs-

1. The Joint Commissioner of Labour,  
Appellate Authority under the Payment of Gratuity Act,  
Teynampet,  
Chennai - 600 006.

2. Mr.Vijaykumar

... Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records on the file of the First Respondent in P.G.A. No. 4 of 2015 and quash the impugned order dated 05.10.2015 passed by the First Respondent herein as highly illegal.

For Petitioner : Mrs.Karthikaa Ashok,  
Standing Counsel

For Respondents : Mrs.C.Sangamithirai,  
Special Government Pleader (for R1)

Mr.R.Karthikeyan (for R2)



## O R D E R

Heard Mrs. Karthikaa Ashok, Learned Standing Counsel appearing for the Petitioner, Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First Respondent 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 Second Respondent had retired on 31.08.2006 from the services of Thiruvottiyur Municipality, which is a local authority established under the Tamil Nadu District Municipalities Act, 1920, and had extended the benefit of Death cum Retirement Gratuity (hereinafter referred to as 'DCRG' for short) and pension under the Tamil Nadu Pension Rules, 1978, as applicable to the employees of the Government of Tamil Nadu, which put together would be higher than the amount of gratuity payable under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the PG Act' for short). Subsequently, Tiruvottiyur Municipality has been merged with the Corporation of Greater Chennai, which is the Petitioner in this Writ Petition. The Second Respondent had made an application in P.G. No. 20 of 2014 under Section 7(4) of the PG Act against the Petitioner before the Assistant Commissioner of Labour, Chennai, who is the Controlling Authority under the PG Act, claiming that the entire amount of gratuity calculated in terms of the provisions of the PG Act has to be paid with interest, apart from the amount received by him as DCRG earlier. The Controlling Authority by order dated 22.12.2014 accepted that the Second Respondent was entitled to receive gratuity in terms of the PG Act, but the amount of DCRG received would have to be deducted therefrom and directed the differential amount of gratuity to be paid with interest. The appeal in P.G.A. No. 4 of 2015 under Section 7(7) of the PG Act before the First Respondent, who is the Appellate Authority under the PG Act, preferred by the Second Respondent against the said order was dismissed by order dated 05.10.2015 confirming the said order, which is challenged in this Writ Petition.

3. The primordial contention of Learned Counsel for the Petitioner is that the amount of DCRG along with pension paid under the Tamil Nadu Pension Rules, 1978, is higher than the amount payable under the provisions of the PG Act and as such, the Second Respondent is not entitled to the differential amount of gratuity that has been erroneously granted in the impugned order.

4. It must, at once, be recapitulated here that Section 14 of the PG Act mandates 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 Second Respondents is receiving pension, it would not absolve the liability of the Petitioner to pay gratuity in accordance with the provisions of the PG Act unless that establishment is exempted under Section 5 of the PG Act on being satisfied that the employees are in receipt of gratuity and pensionary benefits not less favourable than the benefits conferred under the PG Act. It is not in dispute that the Thiruvottiyur Municipality had not obtained such exemption at the time when the Second Respondent has retired from its service. As such, the amount of gratuity that the Second Respondent is entitled would have to be computed only in accordance with the provisions of the PG Act and after deducting the amount already paid towards DCRG under the Tamil Nadu Pension Rules, the Petitioner is liable to pay the differential amount of gratuity with interest to the Second Respondent as rightly held in the impugned order, which does not suffer from any infirmity in that regard. This view taken is fortified by the binding decision of the Hon'ble Supreme Court of India in Municipal Corporation of Delhi -vs- Dharam Prakash Sharma [(1998) 7 SCC 221].

5. Another plea raised by the Petitioner in the Writ Petition is that there has been inordinate delay in making the claim by the Second Respondent under the PG Act. In this context, reference may be made to the decision of this Court in Sri Muthukumaran Institute of Technology -vs- J.Rajalakshmi (Order dated 01.10.2020 in W.P. No. 3222 of 2019) in which it has been explained that there is no limitation prescribed for making an application claiming gratuity under the PG Act, particularly after amendments have been made to the PG Act by Act 25 of 1984 with effect from 01.07.1984 and Act 22 of 1987 with effect from 01.10.1987 and this would obviously mean that a claim for gratuity cannot be denied if the application is belatedly made in that regard.

6. It is lastly submitted that the Petitioner is not responsible for the delay in the Second Respondent making the claim for gratuity under the PG Act and the interest awarded at the rate of 10% per annum is exorbitant and would have to be reduced. In this context, it would be relevant to point out here that the Hon'ble Supreme Court of India in H.Gangahanume Gowda -vs- Karnataka Agro Industries Corporation Ltd., [(2003) 3 SCC 40] and Y.K.Singla -vs- Punjab National Bank [(2013) 3 SCC 472] have reiterated the legal position from Section 7(3A) of the Payment of Gratuity Act, 1972, that if the amount of gratuity



payable to an employee within 30 days from the date of cessation of his employment is not paid, there is no discretion to the employer to deny interest which would have to be paid at such rate not exceeding the rate notified by the Central Government from time to time, and the only exception for the same would be:-

- (i) when the delay in the payment of gratuity is due to the fault of the employee; and
- (ii) the employer has obtained permission in writing from the Controlling Authority under the Payment of Gratuity Act, 1972, for the delayed payment on this ground.

In the absence of having obtained any such permission from the Controlling Authority under the PG Act for the delayed payment of gratuity, the Second Respondent is entitled to the differential amount of gratuity with interest at the rate of 10% per annum that has been notified by the Central Government from the Petitioner for the same.

In fine, the Writ Petition, which lacks merits, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-  
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Joint Commissioner of Labour,  
Appellate Authority under the Payment of Gratuity Act,  
Teynampet, Chennai - 600 006.
2. The Zonal Officer,  
Zone - I, Corporation of Chennai,  
(Formerly) Commissioner,  
Thiruvottiyur Municipality,  
Thiruvottiyur, Chennai - 600 019.

+2ccs to Mr.R.Karthikeyan, Advocate, S.R.No.10185  
+1cc to the Government Pleader, S.R.No.10275

W.P.No.1253 of 2017

MG(CO)  
RLP(13/06/2022)