



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2022

CORAM:

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.558 of 2020
and
W.M.P.(MD)No.420 of 2020

M/s.Tamil Nadu Civil Supplies
Corporation,
Through its Regional Manager,
Regional Office,
Sipcot Campus,
Thoothukudi Post and District.

... Petitioner

versus

1. The Appellate Authority under the
Payment of Gratuity Act,
(Additional Commissioner of Labour)
Housing Board Office Building,
Ellis Nagar, Madurai - 625 016.

2. The Assistant Commissioner of Labour,
O/o. Assistant Commissioner of Labour,
Race Course Road,
Madurai.

3. Annadurai

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the first respondent made in P.G.Appeal No.61/2019 dated 17.09.2019 by confirming the order passed by the second respondent made in P.G.No.1/2018 dated 31.01.2019 and quash the same and direct the 2nd respondent to refund the deposit amount of Rs.2,30,575/- made in P.G.No.1/2018 dated 31.01.2019 to the petitioner.

For Petitioner: Mr.R.Saravanan

For R1 and R2 : Mr.V.Nirmal Kumar
Government Avocate

For R3 : Mr.S.Arunachalam

**ORDER**

This writ petition is filed as against the order of the Appellate authority/Additional Commissioner of Labour, Madurai, passed in P.G.A.No.61 of 2019 dated 17.09.2019.

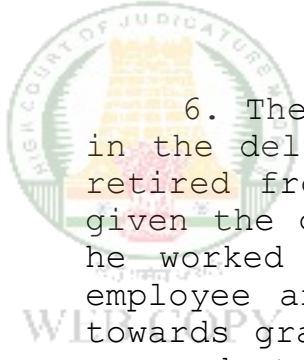
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2. The third respondent Annadurai was appointed as Watchman on 03.08.1990 in the delta region and on attaining the age of superannuation, he retired from service on 31.12.2016. After retirement, he was paid the gratuity amount of Rs.58,440/-. According to the third respondent, though he worked as a seasonal employee, he is deemed to be a permanent employee and hence, he is entitled for a sum of Rs.2,40,135/- towards gratuity. Therefore, he filed a petition before the Assistant Commissioner of Labour, Madurai, in P.G.No.1 of 2018, claiming the difference amount in gratuity of Rs.1,72,459/-. The Controlling authority, by order dated 31.01.2019, allowed the petition by holding that the third respondent is entitled for a sum of Rs.2,30,899/- towards gratuity and also directed the petitioner Corporation to pay the difference amount in gratuity of Rs.1,72,459/- along with 10% interest to the third respondent. Aggrieved over the same, the petitioner Corporation preferred an appeal in P.G.A.No.61 of 2019 before the Appellate Authority, namely, the Additional Commissioner of Labour, Madurai. After hearing both sides, the Appellate Authority, by order dated 17.09.2019, dismissed the appeal by confirming the order dated 31.01.2019 passed by the Controlling Authority. Aggrieved over the same, the petitioner Corporation has filed the present writ petition.

3. The learned counsel for the petitioner Corporation submits that as per Section 2A(3) of the Payment of Gratuity Act, it is necessary that the employee should work for not less than 75 percent of the number of days on which the establishment was in operation during such period. But, the third respondent had not worked continuously for more than 75 percent of number of working days in every season and therefore, he is not entitled for the difference amount in gratuity of Rs.1,72,459/-. He has also relied upon the Circular No.77 of 2007 dated 26.11.2007 issued by the Tamil Nadu Civil Supplies Corporation Limited, Chennai.

4. Per contra, the learned counsel appearing for the third respondent submits that the third respondent was appointed as Watchman on 03.08.1990 in the delta region and on attaining the age of superannuation, he retired from service on 31.12.2016. Since he was in continuous service, the third respondent is entitled for difference amount in gratuity along with interest.

5. Heard the learned counsel appearing on either side and also perused the materials available on record.



6. The third respondent was appointed as Watchman on 03.08.1990 in the delta region and on attaining the age of superannuation, he retired from service on 31.12.2016. After the retirement, he was given the gratuity amount of Rs.58,440/-. According to him, though he worked as seasonal employee, he is deemed to be a permanent employee and therefore, he is entitled for a sum of Rs.2,40,135/- towards gratuity. Therefore, he filed a petition before the second respondent in P.G.No.1 of 2018, claiming the difference amount in gratuity along with interest. The Controlling authority, by order dated 31.01.2019, allowed the petition by holding that the third respondent is entitled for a sum of Rs.2,30,899/- towards gratuity and also directed the petitioner Corporation to pay the difference amount in gratuity of Rs.1,72,459/- along with 10% interest to the third respondent. Aggrieved over the same, the petitioner Corporation preferred an appeal in P.G.A.No.61 of 2019 before the Appellate Authority, namely, the Additional Commissioner of Labour, Madurai. After hearing both sides, the Appellate Authority, by order dated 17.09.2019, dismissed the appeal by confirming the order dated 31.01.2019 passed by the Controlling Authority. Aggrieved over the same, the petitioner Corporation filed the present writ petition on the ground that Direct Purchase Centre is in operation only at the time of harvesting season and the services of the third respondent were availed only for a limited period and therefore, the third respondent is not entitled for the difference amount in gratuity of Rs.1,72,459/- along with interest. It is also the case of the petitioner Corporation that the third respondent had not worked for more than 75% of number of working days during the seasonal employment and therefore, the third respondent is not entitled for the difference amount in gratuity of Rs.1,72,459/- along with interest.

7. Section 2-A of the Payment of Gratuity Act defines "continuous service", which reads as follows:

"2A. Continuous service.-

(1)

(2)

(3) where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent of the number of days on which the establishment was in operation during such period."

8. Based on the above said provisions, the Tamil Nadu Civil Supplies Corporation Limited, Head Office, Chennai, issued a circular in No.77/2007 dated 26.11.2007 that the seasonal employees, namely, the Bill Clerks, Helpers and Watchmen, who are employed in the procurement centres, are eligible for gratuity under the Payment of Gratuity Act, 1972.



9. In the said circular, the eligibility of gratuity for seasonal employees is given, which reads as follows:

"II. Seasonal Employees:

a) Eligibility: Gratuity shall be payable to a seasonable employee on the termination of his employment after he has rendered continuous service for not less than 5 years -

- 1) on his superannuation, or
- 2) on his retirement or resignation or
- 3) on his death or disablement due to accident or decease

Provided that the completion of continuous service of 5 years shall not be necessary, where the termination of the employment of any seasonal employee is due to death or disablement. The seasonal employee is eligible to get gratuity at the rate of 7 days wages for each season. [Section 4(2) of Payment of Gratuity Act 1972] subject to a ceiling of Rs.3,50,000/- (Section 4(3) of Payment of Gratuity Act, 1972)."

10. As per clause (b) in the column of Seasonal Employees (given in the said circular), a seasonal employees shall be deemed to be in continuous service in TNCSC, for such period if he has actually worked for not less than 75% of the number of days on which the seasonal establishment was in operation during such period.

11. Admittedly, the third respondent rendered service from 03.08.1990 to 31.12.2015. According to the petitioner Corporation, the third respondent had not served for more than 75% of number of working days during the seasonal employment and therefore, the third respondent is not entitled for the difference amount in gratuity of Rs.1,72,459/-. In order to substantiate the same, the petitioner Corporation has not placed any material before this Court.

12. The fact remains that the services of the third respondent have been utilized continuously from the year 1990 to 2015. In the absence of any material that in certain years, the third respondent had not attended work for 75% of number of working days in every season, this Court is not inclined to entertain this writ petition.

13. Accordingly, the writ petition is dismissed. No costs. Consequently, consequently, connected miscellaneous petition is closed.

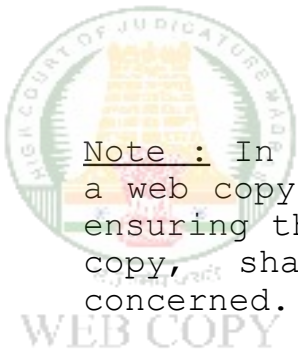
Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar



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 Appellate Authority under the
Payment of Gratuity Act,
(Additional Commissioner of Labour)
Housing Board Office Building,
Ellis Nagar, Madurai - 625 016.
2. The Assistant Commissioner of Labour,
O/o. Assistant Commissioner of Labour,
Race Course Road,
Madurai.

+1 CC to M/s.SPL GP (SR-209[F] dated 04/01/2022)

+1 CC to M/s.R.SARAVANAN, Advocate (SR-264[F] dated 05/01/2022)

W.P(MD)No.558 of 2020
03.01.2022
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