



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2022

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P (MD) No.565 of 2020

and

W.M.P. (MD) No.427 of 2020

The Deputy Regional Manager,
Tamilnadu Civil Supply Corporation,
Perambalur,
Perambalur District.

... Petitioner

versus

1. The Appellate Authority/Additional
Commissioner of Labour,
Tiruchirappalli.

2. The Controlling Authority/Assistant
Commissioner of Labour,
Tiruchirappalli.

3. V.Krishnan ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records relating to the impugned order of the first respondent in P.G.Appeal No.29 of 2019 dated 21.10.2019 wherein dismissed the appeal and confirming the order of the 2nd respondent in P.G.No.47/2018 dated 15.10.2018 and to quash the same.

For Petitioner: Mr.R.Saravanan
for Mr.P.Seetharaman

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

For R3 : Mr.S.Arunachalam

ORDER

This writ petition is filed as against the order of the Appellate authority/Additional Commissioner of Labour, Tiruchirappalli, passed in P.G.A.No.29 of 2019 dated 21.10.2019.

<https://hcservices.ecourts.gov.in/hcservices/>



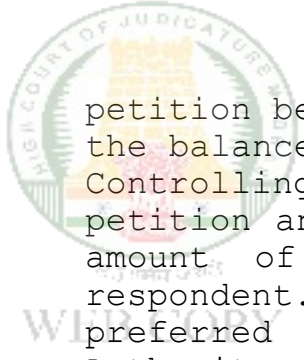
2. The third respondent V.Krishnan joined as Junior Assistant in the Paddy Procurement Centre on 06.10.1979 and after rendering 33 years of service, he retired from service as Bill Clerk on 31.07.2012. After retirement, he was paid the gratuity amount of Rs.6,36,473/-. According to him, though he worked as a seasonal employee, he is deemed to be a permanent employee and hence, he is entitled for a sum of Rs.7,00,120/- towards gratuity. Therefore, he filed a petition before the Controlling authority, namely, the Assistant Commissioner of Labour, Tiruchirappalli, in P.G.No.47 of 2018, claiming the balance gratuity amount of Rs.63,647/-. The Controlling authority, by order dated 15.10.2018, allowed the petition and directed the petitioner Corporation to pay the balance gratuity amount of Rs.63,647/- along with 10% interest to the third respondent. Aggrieved over the same, the petitioner Corporation preferred an appeal in P.G.A.No.29 of 2019 before the Appellate Authority, namely, the Additional Commissioner of Labour, Tiruchirappalli. After hearing both sides, the Appellate Authority, by order dated 21.10.2019, dismissed the appeal by confirming the order dated 15.10.2018 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 balance gratuity amount of Rs.63,647/- as claimed by him. 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 joined as Junior Assistant on 06.10.1979 and after rendering 33 years of continuous service, he retired from service as Bill Clerk on 31.07.2012. Since he was in continuous service, the third respondent is entitled for the balance gratuity amount along with interest.

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

6. The third respondent joined as Junior Assistant in the Paddy Procurement Centre on 06.10.1979 and after rendering 33 years of service, he retired from service as Bill Clerk on 31.07.2012. After the retirement, he was given the gratuity amount of Rs.6,36,473/-. 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.7,00,120/- towards gratuity. Therefore, he filed a



petition before the second respondent in P.G.No.47 of 2018, claiming the balance gratuity amount of Rs.63,647/- along with interest. The Controlling authority, by order dated 15.10.2018, allowed the petition and directed the petitioner Corporation to pay the balance amount of Rs.63,647/- along with 10% interest to the third respondent. Aggrieved over the same, the petitioner Corporation preferred an appeal in P.G.A.No.29 of 2019 before the Appellate Authority, namely, the Additional Commissioner of Labour, Tiruchirappalli. After hearing both sides, the Appellate Authority, by order dated 21.10.2019, dismissed the appeal by confirming the order dated 15.10.2018 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 balance gratuity amount as claimed in the gratuity petition. 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 balance gratuity amount as claimed in the gratuity petition.

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



- 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 06.10.1979 to 31.07.2012. 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 balance gratuity amount of Rs.63,647/-. 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 1979 to 2012. 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



To

1. The Appellate Authority/
Additional Commissioner of Labour,
Thiruchirapalli.

2. The Controlling Authority/
Assistant Commissioner of Labour,
Thiruchirapalli.

+1 CC to M/s.SPL.GP (SR-155[F] dated 04/01/2022)

+1 CC to M/s.P.SEETHARAMAN, Advocate (SR-261[F] dated 05/01/2022)

W.P (MD) No. 565 of 2020
03.01.2022
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