



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.715 of 2020
and
W.M.P. (MD)No.523 of 2020

The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Thanjavur.

... Petitioner

versus

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

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

3. K.Thavamani

... 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.63 of 2016 dated 15.12.2017 wherein dismissed the appeal and confirming the order of the 2nd respondent in P.G.No.17/2016 dated 04.08.2016 and quash the same.

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

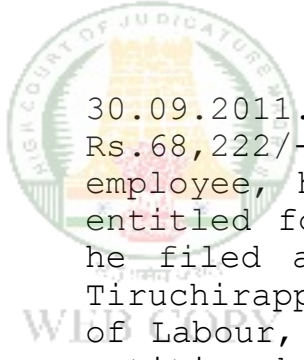
For R1 and R2 : Mr.V.Nirmal Kumar
Government Advocate

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.63 of 2016 dated 15.12.2017.

2. The third respondent K.Thavamani joined the service as Assistant on 22.10.1982 at the District Procurement Centre and <https://hcservices.ecourts.gov.in/hcservices/> 29 years of service, he retired from service on



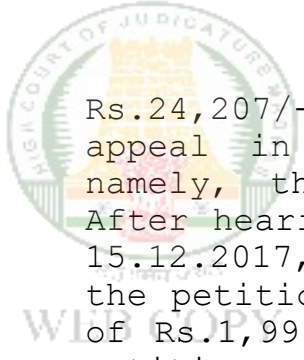
30.09.2011. After retirement, he was paid the gratuity amount of Rs.68,222/-. According to him, though he worked as a seasonal employee, he is deemed to be a permanent employee and hence, he is entitled for a sum of Rs.2,68,043/- towards gratuity. Therefore, he filed a petition before the Assistant Commissioner of Labour, Tiruchirappalli, in P.G.No.17 of 2016. The Assistant Commissioner of Labour, Tiruchirappalli, vide order dated 04.08.2016, allowed the petition by fixing the gratuity amount at Rs.92,429/- and directed the petitioner Corporation to pay the difference amount in gratuity of Rs.24,207/-. Being not satisfied with the same, he preferred an appeal in P.G.A.No.63 of 2016 before the Appellate Authority, namely, the Additional Commissioner of Labour, Tiruchirappalli. After hearing both sides, the Appellate Authority, vide order dated 15.12.2017, fixed the gratuity amount at Rs.2,68,044/- and directed the petitioner Corporation to pay the difference amount in gratuity of Rs.1,99,822/- with 10% interest. Aggrieved over the same, the petitioner Corporation has filed the present writ petition.

3. The learned counsel for the petitioner 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 gratuity amount as claimed in the appeal petition. 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 in the service on 22.10.1982 and after rendering 29 years of continuous service, he retired from service on 30.09.2011. Since he was in continuous service, the third respondent is entitled for the gratuity amount as claimed by him in the appeal petition.

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

6. The third respondent joined as Assistant on 22.10.1982 at the District Procurement Centre and after rendering 29 years of service, he retired from service on 30.09.2011. After retirement, he was paid the gratuity amount of Rs.68,222/-. 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.2,68,043/- towards gratuity. Therefore, he filed a petition before the Assistant Commissioner of Labour, Tiruchirappalli, in P.G.No.17 of 2016. The Assistant Commissioner of Labour, Tiruchirappalli, vide order dated 04.08.2016, allowed the petition by fixing the gratuity amount at Rs.92,429/- and directed the petitioner Corporation to pay the difference amount in gratuity of



Rs.24,207/- . Being not satisfied with the same, he preferred an appeal in P.G.A.No.63 of 2016 before the Appellate Authority, namely, the Additional Commissioner of Labour, Tiruchirappalli. After hearing both sides, the Appellate Authority, vide order dated 15.12.2017, fixed the gratuity amount at Rs.2,68,044/- and directed the petitioner Corporation to pay the difference amount in gratuity of Rs.1,99,822/- with 10% interest. Aggrieved over the same, the petitioner Corporation filed the present writ petition on the ground that District 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 gratuity amount as claimed by him in the appeal petition. It is also the case of the petitioner Corporation that 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 gratuity amount as claimed by him in the appeal 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 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 in the petitioner Corporation from 22.10.1982 to 30.09.2011. 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 gratuity amount as claimed by him in the appeal petition. 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 1982 to 2011. 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/Additional
Commissioner of Labour,
Tiruchirappalli.

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

+1 CC to M/s.SPL GP (SR-205[F] dated 04/01/2022)

+1 CC to M/s.P.SEETHARAMAN, Advocate (SR-271[F] dated 05/01/2022

W.P(MD)No.715 of 2020

03.01.2022

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