



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.04.2022

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.13750 of 2021

&

WMP (MD) No.10689 of 2021

The Superintending Engineer,
Tamil Nadu Generation & Distribution
Corporation (TANGEDCO),
Tuticorin Electricity Distribution Circle,
Tuticorin-628 008

... Petitioner

Vs.

1. The Assistant Commissioner of Labour,
(Controlling Authority under payment of
Gratuity Act, 1972),
Office of Joint Commissioner of Labour,
Thirunelveli.

2. P.Nambiraj

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 1st respondent in P.G.No. 16 of 2018 and quash its order dated 09.08.2018.

For Petitioner : Mr.T.S.Gopalan and CO.,

For R1 : Mr.S.Shanmugavel
Additional Government Pleader

For R2 : Mrs.D.Geetha

ORDER

The writ on hand is filed to quash the order dated 09.08.2018 passed in P.G.No.16 of 2018.

2.The writ petition is filed by the Superintending Engineer, mainly on the ground that the provisions of the Payment of Gratuity Act is not applicable for the employees of the Establishment.

3.It is contended that the first respondent had erroneously proceeded with the matter without deciding the preliminary issue

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regarding the maintainability of the petition under the provisions of the Gratuity Act. The applicability of the provisions of the Act was considered by this Court in W.P.No.32774 of 2018 dated 13.09.2019 and it is found that the writ petitioner Board was exempted in respect of the employees working in the Tamil Nadu Electricity Board. In view of the exemption already granted and further, the payment of gratuity regulated with reference to the rules in force in the Board, the first respondent has committed an error in entertaining the petition under the General Act. The relevant paragraph of the judgment is extracted hereunder:

"2.The petitioner claims that he joined as a Contract Labourer on 02.08.1989, in the post of Helper. He was directly employed under 4th respondent, Salem and pursuant to the report of Justice Khalid Committee, he was permanently absorbed in the Tamil Nadu Generation and Distribution Corporation Limited on 01.05.1999. Admittedly, the writ petitioner is now brought under the regular establishment under the Pensionable Services. Thus, the service conditions as applicable to the regular employees of the Board would be applicable to the writ petitioner also. The writ petitioner attained the age of superannuation and as per the Service Rules in force the terminal and pensionary benefits were settled in favour of the writ petitioner including the gratuity. Not satisfied with the payment of terminal and pensionary benefits, as per the Service Rules applicable to the Tamil Nadu Electricity Board, the petitioner filed a petition before the Controlling Authority under the Payment of Gratuity Act, 1972 claiming the balance gratuity amount. The Controlling Authority allowed the claim of the writ petitioner and directed the Electricity Board to pay balance gratuity amount by calculating under the Payment of Gratuity Act, 1972. The appeal was filed by the Electricity Board and the Appellate Authority reversed the order and rejected the petition filed by the writ petitioner under the Payment of Gratuity Act on the ground that the Act itself was exempted in respect of the employees working in the Tamil Nadu Electricity Board under the Pensionable Services and therefore, no petition can be entertained under the provisions of the Payment of Gratuity Act, 1972."

4. In view of the fact that the writ petitioner Electricity Board is exempted from the provisions of the Gratuity Act and the order impugned is perverse and untenable. Thus, the order of the first respondent dated dated 09.08.2018 passed in P.G.No. 16 of 2018 is quashed and the writ petition stands allowed. The amount deposited by the writ petitioner with the first respondent is returned within a period of four weeks from the date



of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (P&A)

/ /2022

Sub Assistant Registrar(CS)

To

The Assistant Commissioner of Labour,
(Controlling Authority under payment of
Gratuity Act, 1972),
Office of Joint Commissioner of Labour,
Thirunelveli.

+1 CC to M/s.D.GEETHA, Advocate (SR-17637[F] dated 08/04/2022)

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