



W.P.(MD)No.13799 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2022

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.13799 of 2014

and

M.P.(MD)Nos.1 & 2 of 201

The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Kuruvikkaram Salai,
Madurai,

... Petitioner

Vs.

1. The Joint Commissioner of Labour,
Madurai.
2. The Assistant Commissioner of Labour,
Office of the Assistant Commissioner
of Labour,
Madurai.
3. M.Chinnapidari
4. The Management,
Tamil Nadu Civil Supplies Corporation Ltd.,
12, Thambusami Salai,
Kilpauk, Chennai – 10.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order passed by the first respondent in PGA No.2 of 2013 dated 30.10.2013 conforming the order passed by the second respondent in PG No. 33 of 2010, dated 29.05.2012 and quash the same.

For Petitioner : Mr.G.Mohan Kumar
For R1 & R2 : Mr.C.Baskaran
Government Advocate
For R3 : Mr.S.Satheesh Kumar
For R4 : No appearance

ORDER

This writ petition is filed challenging the impugned order, dated 30.10.2013 confirming the order, dated 29.05.2012 passed in PG.No.33 of 2010.

2. The third respondent's husband was employed as Load Man with effect from 30.04.1999 and died on 11.06.2009. The third



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respondent claims that the deceased workman had completed 33 years 8 months 10 days of continues service, but the same is denied by the petitioner. If such claim is accepted then the deceased workman ought to have worked from 1975, which is false. Moreover. there is no proper appointment order. According to the petitioner, the deceased employee has served in the petitioner's Corporation from 1989 onwards. After serving for more than 10 years, the deceased employee has come within the zone of consideration to appoint him in a regular vacancy. After considering the workman his 10 years of service, he was regularized in the regular vacancy from 30.04.1999 through an appointment order. Thereafter, the deceased employee attained superannuation and retired on 11.06.2009. The petitioner Corporation has considered the service of the deceased employee from 30.04.1999 to 11.06.2009 and paid the eligible gratuity. Since the petitioner Corporation themselves accepted that the deceased employee has put in service for 10 years and he has been regularized in the permanent vacancy from 1999 onwards, he is entitled from 1989 onwards. Since the Payment of Gratuity Act says any person if is engaged for more than five years he is entitled to gratuity and there



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is no definition as permanent employee, temporary employee or NMR.

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3. Therefore, this Court is of the considered opinion that the deceased employee is entitled to gratuity payment from 30.04.1989 to 11.06.2009. The same issued was raised in another batch of writ petitions and this Court has taken the similar view in W.P.(MD)No.5706 of 2014 batch, vide order, dated 05.02.2018 and the relevant portion is extracted hereunder:

“9.This Court is of the view that this contention is not correct. As rightly pointed by the learned counsel for the workmen, the definition of term “employee” as set out in Section 2(f)(3) would definitely include the service even when the load men working under a Maestri. As per the said definition, even the person or authority who has the ultimate control will have to be termed as the employer. Thus, even when the load men were working under the Maestri, it is the petitioner Corporation which certainly had the ultimate control. It is also evident from a reading of the orders of regularisation or appointment that only if the load men had put in atleast 10 years of service under the Maestri, they can become the contract employees of the Corporation. That is why the authority in some of the cases took the view that 10 years of service prior to the date of contract appointment will also have to be included as qualifying years of service for computing the gratuity amount. The said approach of the authority cannot be faulted. On the other hand, it is eminently justified. Therefore, this Court has to necessarily dismiss W.P.(MD) Nos.5004 to 5006 of 2017. Accordingly, they stand dismissed.”



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4. Therefore, this Court is of the considered opinion that the deceased employee is entitled to Gratuity payment from 30.04.1989 to 11.06.2009. The petitioner Corporation has already deposited the award amount before the authority. The authority shall disburse the gratuity amount for the period from 30.04.1989 to 11.06.2009 only. The balance amount shall be return to the petitioner Corporation.

5. With the above said direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes / No
jbr



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Madurai.
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S.SRIMATHY, J

jbr

Order made in
W.P.(MD)No.13799 of 2014

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