



W.P.(MD)No.13826 of 2015

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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.13826 of 2015

and

M.P.(MD)Nos.1 & 2 of 2015

The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Tirunelveli Region,
9-F, St.Thomas Road,
High Ground,
Tirunelveli.

... Petitioner

Vs.

1. The Joint Commissioner of Labour,
Madurai.
2. The Assistant Commissioner of Labour,
Office of the Assistant Commissioner
of Labour,
Tirunelveli.

3. K.Pattan

... Respondents



W.P.(MD)No.13826 of 2015

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the Impugned Order passed by the first respondent in I.A.No.9 of 2013 dated 22.09.2014 conforming the order passed by the second respondent in P.G.No. 21 of 2011, dated 02.04.2012 and quash the same.

For Petitioner : Mr.G.Mohan Kumar

For R1 & R2 : Mr.C.Baskaran
Government Advocate

For R3 : Mr.S.Satheesh Kumar

ORDER

This writ petition is filed challenging the impugned order, dated 22.09.2014, confirming the order, dated 02.04.2012 passed in PG.No.21 of 2011.

2. The third respondent was employed as Load man with effect from 30.05.2000. The third respondent claims that he had completed 20 years of continues service. However, the Tamil Nadu Civil Supplies Corporation submitted before the authority that he was working right



W.P.(MD)No.13826 of 2015

from 1990 is denied, since there is no proper appointment order.

According to the petitioner, the employee has served in the petitioner's Corporation from 1990 onwards. After serving for more than 10 years, the third respondent has come with the zone of consideration to appoint him in a regular vacancy. After considering the employee's 10 years service, he was regularized in the regular vacancy from 30.05.2000 through appointment order. Thereafter, the respondent retired on 20.07.2009. The petitioner Corporation has considered the service employee from 30.05.2000 to 20.07.2009 is eligible for gratuity payment. Since the petitioner Corporation themselves accepted that the employee has put in service for 10 years and he has been regularized in the permanent vacancy from 2000 onwards, he is entitled from 1990 onwards. Since Gratuity Payment says any person if he has engaged for more than five years is entitled to gratuity and there is no definition as permanent employee, temporary employee or NMR.

3. Therefore, this Court is of the considered opinion that the third respondent is entitled to gratuity payment from 30.05.1990 to



W.P.(MD)No.13826 of 2015

20.07.2009. The same issue 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.”

4. Therefore, the is Court is of the considered opinion that the third respondent is entitled to Gratuity payment from 30.05.1990 to 20.07.2009. The petitioner Corporation has already deposited the award amount before the authority. The authority shall disburse the gratuity amount for the period from 30.05.1990 to 20.07.2009 only. The balance



W.P.(MD)No.13826 of 2015

amount shall be return to the petitioner Corporation.

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

14.11.2022

Index : Yes / No
Internet : Yes / No
jbr

To

1. The Joint Commissioner of Labour,
Madurai.
2. The Assistant Commissioner of Labour,
Office of the Assistant Commissioner
of Labour,
Tirunelveli.

5/6



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W.P.(MD)No.13826 of 2015

S.SRIMATHY, J

jbr

Order made in
W.P.(MD)No.13826 of 2015

14.11.2022