



W.P.No.24060 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.24060 of 2007

The Commissioner,
Udumalaipet Municipality,
Udumalaipet

... Petitioner

Vs

- 1.The Secretary to the Government,
of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St.Goerge, Chennai – 9.
- 2.The Commissioner of Labour,
Teynampet, Chennai – 6.
- 3.Asst. Commissioner of Labour
(Controlling Authority under
the payment of Gratuity Act)
Coimbatore -18.
- 4.Renuka Devi
- 5.Venkaatesh
- 6.Vijayalakshmi
- 7.Mariyappan

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- 8.Lakshmi
- 9.Meenakshi
- 10.Sahul Hameed
- 11.Palaniammal
- 12.Padmavathy
- 13.Ammasai
- 14.Nallammal
- 15.Chandran
- 16.Anandan
- 17.Ayyappan and
18. Nagalakshmi

... Respondents

PRAYER:-Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the Commissioner of Labour, the 2nd respondent herein to pass final order forthwith, exempting the provisions of the payment of Gratuity Act 1972 to all the employees of the Municipalities with effect from 01.10.1973 as per the application made by the Secretary to Government, Municipal Administration and Water supply Department, made in their letter No.16560/Na.Pa.3/99/5 dated 13.10.2000 the 2nd respondent herein and pass such other orders.

For Petitioner : Mr.B.Anand
for Mr.A.S.Thambuswamy

For RR1 to 3 : Mr.S.Ravichandran
Additional Government Pleader

For RR4 to 7
9,11, 13 to 18 : Served – No appearance

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For RR8 & 12 : Steps taken
For R10 : Not ready in notice

ORDER

This Writ Petition has been initiated by the Commissioner, Udumalaipet Municipality, calling upon the Government to dispose of the representation given by it seeking exemption under the Gratuity Act, 1972, to all the employees of the Municipalities with effect from 01.10.1973 and to pass any further orders.

2. Heard Mr.B.Anand, learned Counsel for Mr.A.S.Thambuswamy, learned counsel for the petitioner and Mr.S.Ravichandran, Additional Government Pleader for respondents 1 to 3.

3. The learned counsel for the petitioner would submit that the sanitary workers working in the Municipalities are trying to get double benefit on their superannuation by claiming Death Cum Retirement

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Gratuity, Family Pension and also on payment of Gratuity under the Act. To drive home his contentions he had relied upon the orders passed by the 3rd respondent herein in the cases of respondents 4 to 18, wherein an Award had been passed in G.A.No.275/2004 directing the payment of gratuity to them. He would submit that the employees of the Municipality cannot be allowed to unjustly enrich themselves and therefore, the petitioner had made a representation in the year 2007 seeking to exempt the petitioner from the provisions of Payment of Gratuity Act, 1972 with retrospective effect from 01.10.1973.

4. The same had been strongly countered by Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents 1 to 3 would contending that Payment of Gratuity Act, 1972 is more favourable for the employees and already the 2nd respondent herein had addressed a letter to the Director of Municipality Administration and Water Supply in this regard. It was clearly envisaged in that letter that the Municipalities could not be granted exemption from the provisions

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of the Payment of Gratuity Act, 1972 and the same has already been informed to the respective Municipalities and Corporations. He had also taken me to the paragraph 5 of the counter in that regard.

5. I have considered the rival submissions of the learned counsels appearing on either side and perused the materials available on record before this Court.

6. Firstly, it is the case of the petitioner that they had submitted a representation as early as in the year 2000 seeking exemption from the provisions of the Payment of Gratuity Act, 1972 with retrospective effect from 01.10.1973. As contended by the learned Additional Government Pleader, it could be seen that the 2nd respondent had already intimated that no exemption will be granted under the provisions of Payment of Gratuity Act, 1972 for the Municipality employees and that such a decision had been conveyed to the respective Municipalities and Corporations. When such a general

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decision has been taken up not to grant any exemption from the Provisions of the Gratuity Act, 1972, it is implied that the request of the petitioner is to be negatived. Further, there is no statutory duty cast upon the Government to grant an exemption from the provisions of the beneficial legislation. The petitioner/Municipality is seeking for an exemption of a statute which gives benefit to its employees. It is for the Municipality to decide and frame guidelines as to what terminal benefits its employees are entitled to be benefitted with. Passing of an order under the provisions of the Gratuity Act, 1972 by the Authority under the Act cannot be a ground to seek exemption under the Act. If its employees are trying to unjustly enrich themselves by approaching the adjudicating authority prescribed under the provisions of the Act, 1972, it is for the petitioner to defend itself and challenge in appeal if any adverse orders are passed. In the present case, even though orders have been passed by the adjudicating authority under the Gratuity Act as early as in the year 2007, I do not find any averment indicating any such challenge that has been made by the petitioner of the order passed

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by the authority.

7. As I have found that there is no legal right on the petitioner to seek the exemption from the provisions of the Gratuity Act, 1972, I am not inclined to issue the Writ of Mandamus as prayed for by the petitioner in this Writ Petition.

8. In view of the above, this Writ Petition is dismissed.
However, there shall be no order as to costs.

02.11.2023

gba

Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No

To

1.The Secretary to the Government
of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St.Goerge, Chennai – 9.

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- 2.The Commissioner of Labour,
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- 3.Asst. Commissioner of Labour
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K.KUMARESH BABU,J.

Gba

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