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W.P.No.36964 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.36964 of 2003 and
WPMP.No.44892 of 2003

The Commissioner,
Tiruppur Municipality,
Coimbatore District

... Petitioner

Vs.

1.Pappal
2.Muthan
3.Ramal
4.Kuppal
5.Veeral
6.Chella
7.Pappal
8.Varadhal
9.Velal
10.The Controlling Authority,
(Under payment of Gratuity Act),
Assistant Commissioner of Labour,
O/o.Deputy Commissioner of Labour,
Coimbatore-18

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the records on the file of the 10th respondent in connection with the common order passed in GA.Nos.273/2001, 274/2001, 275/2001, 276/2001, 277/2001, 278/2001,



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279/2001, 280/2001 and 281/2001 dated 13.10.2003.

Petitioner : Mr.Abishek Murthy

For Respondents

R1,3 to 9 : Mr.K.Surendranath

R10 : Mr.V.Veluchamy,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the common order passed by the tenth respondent dated 13.10.2003 thereby ordered to pay gratuity with interest at the rate of 10% per annum.

2. Respondents 1 to 9 were employed as Sanitary Workers in the petitioner municipality and retired from service. Thereafter, they filed claim petition before the tenth respondent claiming gratuity under Section 4 of Payment of Gratuity Act, 1972. The petitioner had taken specific stand they were employed as Sanitary Workers appointed under Contingency Services and thereby they are not eligible to pensionary benefits. The petitioner had also taken specific stand that respondents 1 to 9 claimed benefits under the Payment of Gratuity Act belatedly. Their



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services were regularised from 01.10.1973 as per the Government Memorandum No.115706/M-Spl/73-4 RD dated 15.12.1993. Accordingly, they were disbursed with death-cum-retirement gratuity for the period of services rendered by them from the date of their regularisation i.e. 01.10.1973. Further, by the GO.Ms.No.437 Finance (Pension) Department dated 23.06.1988, half of the services paid from the contingency will be limited to the period after 01.01.1961 which has to be allowed to count towards pension. However, without considering the same, the tenth respondent allowed the claim petition taking into consideration of their entire service inclusive of contingency services with interest at the rate of 10% per annum.

3. Now the petitioner Municipality is converted into Corporation. The tenth respondent held that the Payment of Gratuity Act, 1972 is applicable for respondents 1 to 9 herein since they are employees of the Municipality. Therefore, their entire services will have to be taken in to consideration for payment of gratuity. Further held that the Payment of Gratuity Act, 1972 would prevail over other Acts and as such, unless



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exemption is granted under Section 5 of the Payment of Gratuity Act, 1972, even if DCRG amount is paid and undertaking is given by the employees, the Municipalities are liable to pay the gratuity. It is seen that Payment of Gratuity Act, 1972 would be applicable to the Municipalities / Corporations. Therefore, they are liable to pay to its employees the gratuity amount even if they were paid DCRG amount.

4. In this regard, the learned counsel for respondents 1 & 3 to 9 relied upon the judgment in the case of *Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another* reported in (1998) 7 SCC 221, wherein the issue arose for consideration as 'whether an employee of the municipality would be entitled to payment of gratuity under the Payment of Gratuity Act when the municipality itself has adopted the provisions of CCS (Pension) Rules, 1972, whereunder there is a provision both for payment of pension as well as of gratuity, for which the Hon'ble Supreme Court of India held that the Payment of Gratuity Act being a special provision for payment of gratuity, unless there is any provision therein which excludes its applicability to an employee who is otherwise



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governed by the provisions of the Pension Rules, it is not possible to hold that the employees are not entitled to the gratuity under the Payment of Gratuity Act. The only provision which has pointed out is the definition of 'employee' in Section 2(e) which excludes the employees of the Central Government and State Governments receiving pension and gratuity under the Pension Rules but not an employee of the municipality. Therefore, the employees of the municipality would be entitled to the payment of gratuity under the Payment of Gratuity Act. The mere fact that the gratuity is provided for under the Pension Rules will not disentitle them to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, 1972, the provision for gratuity under the Pension Rules will have no effect. Therefore, the employees of the municipality would be entitled to the payment of gratuity under the Payment of Gratuity Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension.

5. Further, the Hon'ble Supreme Court of India held in the case



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of ***Allahabd Bank and another Vs. India Allahabad Bank Retired Employees Association*** reported in ***(2010) 2 SCC 44***, that the appellant being an establishment is under the statutory obligation to pay gratuity as provided for under Section 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment, or in any instrument or contract having effect by virtue of any enactment other than this Act. The provisions of the Act prevail over all other enactments or instruments or contracts so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract. The learned counsel for respondents 1 & 3 to 9 also relied upon the judgment of the Full Bench of this Court in the case of ***E.Gopal Vs. Arulmigu Dhandayuthapaniswamy Temple, Palani*** reported in ***2013 (3) CTC 689***, wherein it is held as follows:

3.1. The Payment of Gratuity Act, 1972 (39 of 1972) came into force on 16th September, 1972. In order to ensure uniform pattern of Payment of Gratuity to the employees throughout the country and to avoid



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different treatment to the employees of establishments, the Legislature thought it fit to enact a Central Law on the subject and that is how the Payment of Gratuity Act, 1972 came into existence.

3.2. The Statement of Objects and Reasons for enacting the Act was to provide for a Scheme for the Payment of Gratuity to employees engaged in factories, mines, oilfields, plantations, ports. Railway Companies, shops or other establishments and for matters connected therewith or incidental thereto. The Payment of Gratuity is a kind of retiral benefit like pension, provident fund, etc., and it is a gift, especially for services rendered or return for favours received. One should not forget that for the wage-earning population, when the worker becomes old or infirm, as security of income, the Payment of Gratuity assumes great importance. It is a gratuitous payment given to an employee on discharge, superannuation or death.

3.3. As per Section 1(3)(a), the Act shall apply to every factory, mine, oilfield, plantation, port and Railway Company. According to Section 1(3) (b), the Act shall apply to every shop or establishment within the meaning of any law for the time being in force in



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relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.

3.4. Section 2(e) defines "employee" means any person (other than an apprentice), who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual of otherwise, in or in connection with the work of a factory, mine oilfield, plantation, port, Railway, Company, shop or other establishment, to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any Rules providing for Payment of Gratuity.

6. The above judgments are squarely applicable to the case on hand and the tenth respondent rightly held that the Payment of Gratuity Act, 1972 is applicable to the municipality employees i.e. respondents 1 to 9 herein. Respondents 1 to 9 had worked as Sanitary workers and they are the employees as defined under Section 2(e) of the Payment of Gratuity Act, 1972. Therefore, they are entitled for payment of gratuity under Payment of Gratuity Act, 1972. Further, they were granted time



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scale of pay by GO.Ms.No.2469 Health and Family Planning Department dated 10.10.1973. Therefore, their entire services from induction till their retirement should be counted for payment of gratuity since they were not contingent employees or Government employees.

7. In view of the above, this Court finds no infirmity or illegality in the order passed by the tenth respondent and this writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed. Respondents 1 to 9 or their legal representatives can make their claim within a period of one week from the date of receipt of copy of this Order. On receipt of their respective claims, the petitioner shall disburse the payment as ordered by the tenth respondent within a period of two weeks thereafter. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Controlling Authority,
(Under payment of Gratuity Act),
Assistant Commissioner of Labour,
O/o.Deputy Commissioner of Labour,
Coimbatore-18
- 2.The Government Advocate,
High Court, Madras.

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