IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.06.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.17625 of 2020 &
W.M.P.No.21854 of 2020

The Management
Head Office,
Tamilnadu State Transport Corporation,
(Villupuram) Ltd.,
No.3/137, Saalamedu,
Villupuram – 605 602 ... Petitioner

Vs.

T.Kaliyaperumal ...Respondent

Writ Petition is filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari to call for the records and quash the order dated 01.10.2018 passed in P.G.No.69 of 2015 on the file of the learned Presiding Officer, Payment of Gratuity Authority, Chennai.

For Petitioner : Mr.M.Aswin
Standing Counsel

For Respondent : Mr.L.G.Sahadevan

ORDER

The present Writ Petition has been filed to call for the records and quash the order dated 01.10.2018 passed in P.G.No.69 of 2015 by the learned Presiding Officer, Payment of Gratuity Authority, Chennai on the ground that the authority has wrongly considered the period of apprenticeship as a period of employment, while granting the benefits of gratuity.

2. The brief facts of the case, as averred by the petitioner, are as follows:-

The petitioner had appointed the respondent as an unpaid apprentice for the post of Junior Assistant in Cholan Roadways Corporation on 02.08.1973 and absorbed in the employment on 16.01.1975. The respondent had worked as a daily wage worker for a period of 243 days between 16.01.1975 to 01.10.1975 and his cadre was promoted to 'monthly cadre' and received the benefits such as yearly increment from that date onwards. The respondent had retired from service on 31.05.2012 and the petitioner paid Rs.8,09,105/- as gratuity by calculating the service of the respondent from the date of appointment as a daily wage worker.

The respondent had raised a dispute alleging that the petitioner had failed to consider his apprenticeship period from 24.08.1973 to 15.01.1975 while computing his total service period and claimed his service period as 39 years in the petitioner/Corporation. The respondent had filed P.G.No.69 of 2015 before the Payment of Gratuity Authority, Chennai and the said application was allowed on 01.10.2018, as against the same, the present Writ petition is filed.

3. The learned counsel for the petitioner would submit that the learned authority, while passing the impugned order has made a grave error in its adjudication by granting gratuity benefits for the apprenticeship period. Section 2(e) of the payment of Gratuity Act, 1972 itself excludes inclusion of apprenticeship period from the Class of employee for the purpose of payment of gratuity.

4. The learned counsel for the petitioner also contends that the learned authority failed to appreciate the evidence in regards to the apprenticeship and wrongly considered the period of apprenticeship as a period of employment. Further, the learned authority had erroneously passed the said order without giving due regards to the evidence and

ordered the petitioner to pay an amount of Rs.81,535/-, which is contrary to the settled law on the subject. Therefore, pleaded to set aside the order passed in P.G.No.69 of 2015 by the Payment of Gratuity Authority, Chennai.

5. Per contra, the learned counsel for the respondent contends that the Writ Petition is not maintainable either on facts or on law. As against the impugned order, there is an appeal remedy provided under Section 7(7) of the Payment of Gratuity Act, 1972. Further, the petitioner / Management has not chosen to file the appeal, as per the above Section, wherein twin condition has to be satisfied in respect of filing the appeal within 60 + 60 days along with the deposit of the awarded amount. In view of the decision rendered by the Hon'ble Division Bench of this Court in W.A.(MD) No.1061 of 2021 [The Management, Tamilnadu State Transport Corporation (Madurai) Ltd., Dindigul Vs. The Controlling Authority & R.Paulraj dated 03.06.2021 in W.A.(MD) No.1061 of 2021, the Writ Petition has to be dismissed.

6. That apart, the learned counsel for the respondent also contends that the initial appointment order dated 02.08.1973 states that it is an

unpaid apprentice junior assistant in Cholan Roadways Corporation Ltd., Cuddalore Branch and the same is not under Apprentice Act, 1961. Further, the respondent had been paid with wages @ Rs.6/- per day, as evident from some of the pay slip copies for the months of Oct, Nov, Dec, 1973 and Jan, Feb, Mar, Apr, May, 1974 for the actual working days and the documents have been marked before the Authority as Exhibits. Further, the respondent has been transferred to Thanthai Periyar Transport Corporation Ltd., Villupuram, the newly formed corporation along with assets and liabilities. The authority has taken into account all the materials and the documents placed before him and passed an order granting Rs.81,535/- with interest at the rate of 10% from 31.05.2012 till the date of payment. When the recovery proceedings have been initiated under the Revenue Recovery by the Tahsildar, the petitioner filed the present Writ Petition by taking the pleas that the respondent is not entitled for the gratuity for the period from 24.08.1973 to 15.01.1975, which is contrary to the records, thereby pleaded to dismiss the present writ Petition.

7. Heard the learned counsel on either side and perused the documents placed on record.

8. It is relevant to note that as against the impugned order, there is an appeal remedy provided under Section 7 (7) of the Payment of Gratuity Act, 1972, which is rightly averred by the learned counsel for the respondent in the counter affidavit. Further, the appeal can be filed only after the entire gratuity amount, as computed by the controlling authority, is deposited in full, therefore, the petitioner / Corporation ought not have bypassed the appeal remedy, which is a labour welfare legislation.

9. The contention putforth by the learned counsel for the petitioner is that the period of service for computation of the gratuity from 24.08.1973 to 15.01.1975 cannot be done, as it was apprenticeship period, and therefore, the learned authority committed an error in including the said period for computation for the purpose of gratuity. The said issue was considered in the order passed by the learned authority and by an elaborate and reasoned order, the contention has been rejected.

10. In fact, the learned Authority, has referred to the cross examination of M.W.1, who has admitted that the respondent was appointed as Apprentice Junior Assistant on 24.08.1973 at Chozan Transport Corporation and after initiation of Thanthai Periyar Transport

Corporation on 16.01.1975, he was appointed in the said Corporation. Further, the learned Authority, on a perusal of the xerox copy of the attendance register also revealed that the respondent was appointed on 16.01.1975 and granted the gratuity benefits, which does not warrant any interference.

11. Considering the above said facts and circumstances of the case and relying upon the order passed by the Hon'ble Division Bench of this Court in W.A.(MD) No.16 of 2021 dated 03.06.2021 [The Management, Tamilnadu State Transport Corporation (Madurai) Ltd., Dindigul Vs. The Controlling Authority, Dindigul], which is squarely applicable to the present case on hand and taking note of the fact that appeal remedy is available under the provisions of the Payment of Gratuity Act, the present Writ petition is liable to be dismissed.

In view of the above, the Writ Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

07.06.2023

Index : Yes/No
Internet : Yes/No
Speaking order / non speaking order
ssd

V.BHAVANI SUBBAROYAN, J.,

ssd

To

The Presiding Officer,
Payment of Gratuity Authority,
Chennai.

W.P.No.17625 of 2020 &
W.M.P.No.21854 of 2020

15.06.2023