IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.Nos.17795, 17779, 18330
27317 & 2199 of 2022

D.Elansekaran	... Petitioner in W.P.No.17795 of 2022
S.R.Mani	... Petitioner in W.P.No.17779 of 2022
M.Natarajan	... Petitioner in W.P.No.18330 of 2022
E.Munisamy	... Petitioner in W.P.No.27317 of 2022
T.Mahadevan	... Petitioner in W.P.No.2199 of 2022

Vs.

1. The Managing Director,
Tirupattur Cooperative Sugar Mills Ltd.,
Kethandapatti,
Tirupattur District - 635 815. ... 1st Respondent in
W.P.Nos.17795, 17779, 18330
& 27317 of 2022

1. The Managing Director,
Tiruthani Cooperative Sugar Mills Ltd.,
Thiruvalankadu - 631 210
Thiruvallur District. ... 1st Respondent in
W.P.No.2199 of 2022

2. The Commissioner of Sugar Corporation,
No.690, Anna Salai,
Nandanam, Chennai - 600 035. ... 2nd Respondent in all W.Ps.

Prayer in W.P.Nos.17795, 17779, 18330, 27317 of 2022: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondents to pay 8 days gratuity amount with interest to the petitioners.

Prayer in W.P.Nos.2199 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondents to pay 15 days gratuity amount with interest to the petitioner.

For Petitioner in all W.Ps.	: Mr.S.Ezhil Raj
For Respondents in all W.Ps.	: Mr.R.Neethi Perumal (for R1) : Mr.M.Shahjahan, Special Government Pleader (for R2)

COMMON ORDER

The Writ Petitioners were employed as NMR/seasonal employees in the 1st respondent / Cooperative Sugar Mills Ltd., and completed more than 27 years of service and their gratuity amounts were collected as per Section 4 of the Payment of Gratuity Act, 1972.

2. According to the Writ Petitioners, the employer has to pay gratuity for 15 days per year as per the circular issued by the 2nd respondent/the Commissioner of Sugar Corporation, Chennai in Circular No.22452/C3/90, dated 25.07.1990 to all the employees who were employed under NMR/seasonal employment throughout the year. However, the 1st respondent had paid only 7 days Gratuity amount and did not settle the balance amount of Gratuity for 8 days and in W.P.No.2199 of 2022, the petitioner has not paid total 15 days Gratuity amount. Therefore, the petitioners filed the present Writ Petitions.

3. Mr.S.Ezhil Raj, learned counsel for the petitioners relied on two circulars issued by the 2nd respondent/ the Commissioner of Sugar Mills in Circular No.22452/C3/90, dated 25.07.1990 and RCN.24545/SL2/2009, dated 04.12.2009 and contended that since the present Writ Petitioners had put in more than 27 years of service, they are entitled to get Gratuity for 15 days per year. The learned counsel for the petitioners also relied on the decision of this Court in ***W.P.No.18079 of 2016 and 30926 of 2017, dated 11.03.2021*** in ***the Special Officer,***

(presently Managing Director), Tiruttani Cooperative Sugar Mills Limited and anr. Vrs the Joint Commission of Labour and ors. and contended that similarly placed employees who had put in 20 years of service both in regular and seasonal establishment, were granted gratuity for 15 days per year. The relevant paragraphs of the said decision of the Single Judge is extracted hereunder:

> *"5. In fact, similar cases were taken on appeal before this Court by way of Writ Petition Nos.8928 of 2008, 28325 of 2008, 30116 to 30120 of 2013 etc. In all those cases, this Court had an opportunity to deal with Circular dated 25.07.1990 and 31.07.1991 and all those workmen who had put-in more than 20 years of service were directed to be paid gratuity at the rate of 15 days wages per year. In W.P.No.30116 of 2013, the writ petitioner has produced the circular dated 20.08.1997 and contended that the worker of a seasonal establishment is entitled to 7 days wages as gratuity and not more than that. However, this Court has refused to accept the contention in view of the judgment of the Division Bench of this Court in W.P.No.254 of 2013 wherein relief was granted in favour of workmen.*

6. M/s.M.Sreela, learned counsel appearing for the third respondent would draw the attention of this Court that the circular dated 25.07.1990 issued by the Commissioner of sugar has been challenged before this Court in W.P.No.23808 of 2015 and it was stayed. The stay is still pending.

7. Be that as it may, the order passed in W.P.No.30116 of 2013 dated 21.01.2016 was taken on appeal before the Division Bench and Division Bench in Writ Appeal Nos.950 to 954 of 2016 dated 05.08.2016 has confirmed the order of the learned Single Judge. The workmen involved in all these writ petitions are also similarly placed and the judgment of Hon'ble Division Bench is squarely applicable to these cases also. In any event, any circular which is issued by the Government will not deprive the benefits given to the similarly placed persons.

8. As contended by learned counsel appearing for the respondent, the circular was not produced before the Appellate Authority and the Appellate Authority did not have any chance to apply his mind to the application of Sections 2 (A) and 4 of the Payment of Gratuity Act. In view of the orders passed in Writ Petition No.254 of 2013 *and W.A.Nos.950 to 954 of 2016, I am inclined to accept the contentions of the petitioner. The order passed by the Appellate Authority has no valid ground to interfere with. Accordingly, all these writ petitions stands dismissed. No costs."*

4. Per contra, Mr.R.Neethi Perumal, learned counsel for the 1st respondent / Management contended that as per Section 4 of the Payment of Gratuity Act, 1972, the present petitioners are entitled to get Gratuity only for 7 days and the Government cannot issue a circular overriding the statute. He also relied on the subsequent circular issued by the Government of Tamil Nadu in Circular No.10313/C3/95, dated 20.08.1997 wherein it has been held thus:

"6) In view of the contradictions of para 3 and 4 of the letter 3rd cited, the lines as per the provision to Section 4 of the Payment of gratuity Act, 1972 in paragraph 3 and the entire paragraph stand deleted. The implication of the above deletions is that the employees who works as seasonal employee throughout their service and retire as seasonal employees are entitled to gratuity calculated at the rate of 7 days wages for each year of

completed service as provided under section 4 of the Act except for years where they worked for not less than 240 days in a year for which they have to be paid gratuity calculated at the rate of 15 days wages for each such year as per the provisions of the Act irrespective of his date of death retirement. To illustrate with an example, if a seasonal employee has worked in the mills for 15 years and out of which for 10 years he had worked for less than 240 days per year, the gratuity will be calculated at the rate of 7 days wages per year and if he had worked for more than 240 days the remaining 5 years, the gratuity will be calculated at the rate of 15 days wages per year. In effect he will be getting gratuity at the rate of 7 days wages per year for 10 years and 15 days wages per year to 5 years. As this is a statutory provision, gratuity should be calculated for all the cases of retirement, resignation, death or disablement due to accident etc., before and after the issue of the letter 3 cited. The relaxation given in the letter 3rd cited, the employees who have worked alternatively as seasonal and regular employees and retired as seasonal employees are however applicable only to cases of death, retirement or after 1.8.93.

7) The Chief Executive are requested to follow the above instructions while making gratuity payment to the employees."

5. Hence, according to the 1st respondent, since the Writ Petitioners had not continuously worked for 240 days in a calendar year, they are not entitled to claim 15 days of Gratuity for each year.

6. However, it is seen from the order, *dated 11.03.2021 in W.P.No.18079 of 2016 and 30926 of 2017* extracted supra that when similar cases were taken on appeal before this Court by way of Writ Petition Nos.8928 of 2008, 28325 of 2008, 30116 to 30120 of 2013 etc., this Court had an opportunity to deal with Circular dated 25.07.1990 and 31.07.1991 and all those workmen who had put-in more than 20 years of service were directed to be paid gratuity at the rate of 15 days wages per year. In W.P.No.30116 of 2013, the writ petitioner has produced the circular dated 20.08.1997 and contended that the worker of a seasonal establishment is entitled to 7 days wages as gratuity and not more than

that. However, this Court has refused to accept the contention in view of the judgment of the Division Bench of this Court in W.P.No.254 of 2013 wherein relief was granted in favour of workmen.

7. The order passed in ***W.P.No.30116 of 2013 in the Managing Director (Previously the Special Officer) the Maduranthagam Cooperative Sugar Mills Ltd., Padalam Vrs. The Joint Commission of Labour and ors. dated 21.01.2016*** was taken on appeal before the Division Bench and the Division Bench in ***Writ Appeal Nos.950 to 954 of 2016 dated 05.08.2016*** has confirmed the order of the learned Single Judge. The workmen involved in all these writ petitions are also similarly placed and the judgment of Hon'ble Division Bench is squarely applicable to these cases also. In any event, any circular which which is issued by the Government will not deprive the benefits given to the similarly placed persons.

8. In the instant case also, the petitioners are seasonal employees and they had completed more than 27 years of service. In the

circumstances, they are entitled to get 15 days of wages, out of which the Management had paid only 7 days of wages. Hence, the petitioners are entitled to get the remaining period of 8 days wages per year. The petitioner in W.P.No.2199 of 2022 is entitled to get full 15 days wages as gratuity since he has not been paid anything.

9. The 1st respondent further contended that he had challenged the circular issued by the Tamil Nadu State before this Court, dated 25.07.1990 by way of Writ Petition before this Court and the same is pending. The 1st respondent can work out his remedy only in the said Writ petition.

10. As matters stand at present, the 1st respondent is liable to pay 15 days Gratuity amount per year to the petitioners. Accordingly, the 1st respondent is directed to pay the balance amount of Gratuity for 8 days per year to the petitioners in W.P.Nos.17795, 17779, 18330 & 27317 of 2022 for their respective services and 15 days Gratuity to the petitioner in W.P.No.2199 of 2022, within a period of eight weeks from

the date of receipt of a copy of this order.

11. With the above observation, this Writ Petitions are disposed of. No costs.

06.11.2023

Index: Yes/No
Speaking/Non-Speaking order
vum

To

1. The Managing Director,
   Tirupattur Cooperative Sugar Mills Ltd.,
   Kethandapatti,
   Tirupattur District - 635 815.

2. The Managing Director,
   Tiruthani Cooperative Sugar Mills Ltd.,
   Thiruvalankadu - 631 210
   Thiruvallur District.

3. The Commissioner of Sugar Corporation,
   No.690, Anna Salai,
   Nandanam, Chennai - 600 035.

R. HEMALATHA, J.

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