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W.P.Nos.16443 to 16445 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.Nos.16443 to 16445 of 2018 and
W.M.P.Nos.19601 to 19603 of 2018**

P.Dectrha Mascarnas	... Petitioner in W.P.No.16443 of 2018
M.Celstin	... Petitioner in W.P.No.16444 of 2018
C.Sebastian	... Petitioner in W.P.No.16445 of 2018

Vs.

1. The Appellate Authority,
Under the Payment of Gratuity Act, 1972 and
The Deputy Chief Labour Commissioner (Central),
Sasthri Bhavan,
Haddows Road, Chennai - 600 006.
 2. The Controlling Authority,
Under the Payment of Gratuity Act and the Regional
Labour Commissioner (Central),
Kanaga Apartments, Suite No.III, I Floor,
13-A, Lady Doak College Road,
Chinna Chokkikulam, Madurai - 625 002.
 3. The Chairman,
V.O.Chidambaranar Port Trust,
Tuticorin - 628 004.
- ... Respondents
in all W.Ps



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COMMON PRAYER : Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records from the first respondent in G.A.Nos.39/27/PGA/2017-B1, 39/28/PGA/2017-B1, G.A.No.39/29/PGA/2017-B1 and quash the impugned order dated 27.04.2018 and consequently, restore the order passed by the second respondent in Gratuity Application Nos.1 to 3 of 2014 dated 28.04.2017.

For Petitioners
in all W.Ps : Mr.K.M.Ramesh, Senior Counsel
for Mr.S.Apunu

For Respondents
in all W.Ps : No appearance for R1 and R2
Mr.G.Anand
for T.S.Gopalan & Co. for R3

COMMON ORDER

These Writ Petitions have been filed to call for the records from the first respondent in G.A.Nos.39/27/PGA/2017-B1, 39/28/PGA/2017-B1, G.A.No.39/29/PGA/2017-B1 dated 27.04.2018 and quash the same and consequently, restore the order passed by the second respondent in Gratuity Application Nos.1 to 3 of 2014 dated 28.04.2017.



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2. The petitioners were retired employees of the third respondent / Port Trust claiming that there is a difference in payment of gratuity, they preferred Gratuity Applications before the second respondent / Controlling Authority relying upon the order of the Ministry of Shipping dated 18.02.2011 wherein the maximum ceiling limit of gratuity for Port and Dock Workers have been enhanced to Rs.10,00,000/- with effect from 01.01.2007. The second respondent / Controlling Authority made a claim and directed the third respondent / Port Trust to pay difference amount with interest to the petitioners. The third respondent / Port Trust preferred appeals before the first respondent / Appellate Authority and the Appellate Authority has allowed the appeals and set aside the order of the second respondent / Controlling Authority. Challenging the order of the first respondent / Appellate Authority, the petitioners have filed these Writ Petitions with the aforesaid prayer.

3. The learned counsel appearing for the petitioners reiterated the submissions made in the counter affidavit filed in support of the Writ



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Petitions and submits that the first respondent has failed to consider the order issued by the Ministry of Shipping dated 18.02.2011 and there is no discussion of the order issued by the Ministry of Shipping in the impugned order. The first respondent has erroneously relied upon the notification issued by the Government dated 24.05.2010 enhancing the ceiling under the Payment of Gratuity Act, 1972 from Rs.3,50,000/- to Rs.10,00,000/-. Further, the learned counsel for the petitioners by relying upon the decision of this Court in the case of *Ct.Meyyappan vs. V.Venkataraman and others* reported in **2022 SCC Online Mad 1155** and submits that the fixing of gratuity ceiling at Rs.3,50,000/- in accordance with the pre-amended provision of Payment of Gratuity Act, cannot be sustained and accordingly, the order of the first respondent is perverse and has to be set aside.

4. The learned counsel appearing for the third respondent submits that the maximum ceiling limit of Gratuity payable under the Payment of Gratuity Act has been enhanced to Rs.10,00,000/- with effect from 24.05.2010 only as per the notification No.15 of 2010 published in Gazette



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of India. In the case on hand, the petitioners are retired from service in the year 2007 and 2010 respectively as the petitioners have retired before the date of effect, i.e., with effect from 24.05.2010 on which date the maximum limit of Gratuity of Rs.10,00,000/- comes into effect is, thus they are not entitled to receive the difference. According to the third respondent / Port Trust, the applicants in the Gratuity Applications since had been paid with all gratuity amount as per the Act and they are not entitled to claim for / or to receive any difference of gratuity in view of the reason that the Payment of Gratuity Act has been amended and came into force with effect from 24.05.2010. Accordingly, the learned counsel for the third respondent / Port Trust seeks for dismissal of these Writ Petitions.

5. I have considered the said submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.



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6. Admittedly, the petitioners retired from service on attaining the age of superannuation in 2007 and 2010 respectively and they are eligible for pension in terms of CCS (Pension) Rules and they are entitled to gratuity as per Rule 50 of the CCS (Pension) Rules. Accordingly, gratuity was calculated and paid to them. However, the Government of India, Ministry of Shipping issued a revision of pension and other pensionary benefits vide order dated 18.02.2011 dispensing with the linkage of full pension to 33 years of qualifying service and revised pension as 50% of average emoluments received during past ten months or the pay last drawn whichever is more beneficial. This will be effective prospectively. The jurisdiction of the Controlling Authority was confined only to claim for gratuity payable in terms of the Payment of Gratuity Act and that being so, it has no power or authority to countenance the claim which was the ceiling at the relevant time under the Act. Therefore, this Court is of the view that the Appellate Authority has rightly reversed the finding given by the Controlling Authority and set aside the same. A mere perusal of the Notification No.15 of 2010 clearly establishes that the maximum ceiling limit of gratuity came



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into force with effect from 24.05.2010 whereas the petitioners retired from service even before the notification. In such a case, the question of claiming difference of gratuity on the basis of the amendment by way of notification cannot be sustained.

7. In the result, the impugned orders dated 27.04.2018 passed by the first respondent is justified and there is no reason whatsoever is awarded to interfere with the said order. Accordingly, these Writ Petitions are dismissed in the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.09.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji



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