



W.P.Nos.42213 of 2016 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.Nos.42213 to 42220 of 2016 and
W.P.Nos.30062, 14836 and 15265 of 2017
and**

**W.M.P.Nos.36117 to 36131 of 2016 and
W.M.P.Nos.16083, 16564 and 32646 of 2017**

W.P.No.42213 of 2016:

The Managing Director,
Dharmapuri Co-operative Sugar Mills Limited,
Jerthalav Post,
Dharmapuri District.

... Petitioner

Vs.

1. The Joint Commissioner of Labour,
(Appellate Authority
under the Payment of Gratuity Act, 1972),
Coimbatore - 18.

2. The Assistant Commissioner of Labour,
(Controlling Authority
under the Payment of Gratuity Act, 1972),
Salem.

3. K.Radha

... Respondents



W.P.Nos.42213 of 2016 etc., batch

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records culminating in the impugned communication dated 10.11.2016 made in A.Thi.Nu.No.5256-5263/2016 and quash the same and consequently, direct the first respondent to receive the statutory appeal preferred by the petitioner Management against P.G.Case No.4 of 2015 along with the Certificate of Deposit furnished by the second respondent on 21.11.2016 and dispose the same on merits.

For Petitioner : Mrs.G.Thilagavathi, Senior Counsel
(in all W.Ps.) for Mr.R.Gopinath

For Respondents : Mr.M.S.Premkumar,
(in all W.Ps.) Government Advocate for R1 & R2

Ms.D.Geetha for R3
(in W.P.Nos.42213 to 42220 of
2016 & W.P.No.30062 of 2017)

(R3 to R5 - No appearance in
W.P.No.14836 of 2017)

(R3 & R4 - No appearance in
W.P.No.15265 of 2017)



W.P.Nos.42213 of 2016 etc., batch

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COMMON ORDER

Since the issue raised in all these Writ Petitions is one and the same, with the consent of the learned counsel appearing for both sides, all these Writ Petitions are heard together and are disposed of by this common order.

2. The case of the petitioner is that the petitioner Sugar Mill is the Society registered under the Tamil Nadu Co-operative Societies Act, 1983 and it is a seasonal industry involved in the business of producing sugar by crushing the sugarcane and it takes place only during the season as and when the sugarcane is available for crushing. The said crushing activity would depend upon the monsoon and the cultivation of sugarcane in the area and the supply of sugarcane from the agriculturists. The respondents / workmen in all the Writ Petitions were initially engaged as N.M.R. on daily wage workers in the petitioner / Mill only during season period on need basis. Subsequently, they got retired from service on attaining the age of



W.P.Nos.42213 of 2016 etc., batch

superannuation and as per the last drawn pay of the workmen per month and their eligibility period of service for gratuity is calculated and gratuity amount was paid to them on the date of superannuation at the rate of 7 days wages for each season. Thereafter, after a lapse of several years, the workmen have filed applications under Section 4(1) of the Payment of Gratuity Act, 1972, (in short 'the Act') before the second respondent for claiming gratuity amount and the second respondent / Controlling Authority allowed the said applications and directed the petitioner / Mill to pay the gratuity amount for a period of 15 days wages for end of every completed year. Challenging the same, the petitioner / Mill preferred appeals under Section 7(7) of the Act before the first respondent, however, the same was rejected on the ground that the petitioner / Mill not deposited the gratuity amount already awarded by the Controlling Authority. Challenging the concurrent findings rendered by the Controlling Authority as well as the Appellate Authority, the above Writ Petitions have been filed before this Court.



W.P.Nos.42213 of 2016 etc., batch

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3. The learned Senior Counsel appearing for the petitioner submitted that the petitioner / Mill is registered under Tamil Nadu Co-operative Societies Act and not being an establishment to which the payment of Gratuity Act, 1972 applies and the employees of the Mill are entitled to claim gratuity only under the provisions of the By-laws of the Society. Accordingly, the gratuity amount was paid to the workmen by calculating 7 days wages for each season at the time of superannuation based on the scheme. If at all the workmen have any grievance, they have to file an appeal before the Adjudicating Authority under Section 1(2) of the Tamil Nadu Co-operative Societies Act, however, they have filed applications before the Controlling Authority under the Payment of Gratuity Act, which is not sustainable. He further submits that the authority under the Payment of Gratuity Act have no power to decide the issue in respect of the employees employed under the Tamil Nadu Co-operative Society Act in the petitioner / Mill. Since there is a separate scheme provided for payment of gratuity claiming gratuity amount, filing application before the second



W.P.Nos.42213 of 2016 etc., batch

respondent is not sustainable. Accordingly, he prays for allowing the above Writ Petitions.

4. The learned counsel appearing for the workmen in all the respective Writ Petitions submits that, the issue arises in the present Writ Petitions is no longer *res-integra* and submitted that this Court had already dealt with similar issues, one of which has been decided by this Court in W.P.No.28325 of 2008 dated 07.12.2012 in the case of ***Madurantakkam Co-operative Sugar Mills Ltd., Vs. Joint Commissioner of Labour & Other***, in which, as per their scheme, they have paid 7 days wages for every completed years of service, however, they are entitled for 15 days and the said issue was elaborately considered by this Court and held that the authority under the Payment of Gratuity Act are well with the power to decide the issue and they are entitled for 15 days wages for every completed years. Further, the very same issue was raised before this Court in the batch of Writ Appeals in W.A.Nos.9599 of 2021, etc., batch of cases, in which, this Court held that, the casual employees are entitled for 15 days wages for



W.P.Nos.42213 of 2016 etc., batch

every completed years. Accordingly, he prays for dismissal of the above Writ Petitions.

5. Heard the learned counsel appearing for the parties and perused the materials available on record.

6. Admittedly, the contesting respondents in the respective Writ Petitions were employed with the petitioner / Mill and they got retired subsequently, after rendering long years of service. Thereafter, the workmen claimed gratuity in terms of the calculation made under Section 4 of the Act. In their claim applications, they claimed that they put in long years of service and by calculating the same, they claimed the total amount of gratuity. The Controlling Authority allowed the applications filed by the workmen, against which, the petitioner / Mill preferred appeals and the appeals were rejected for non-deposit of the gratuity amount awarded by the first respondent and the said fact was not in dispute. This Court perused the order passed in W.P.No.28325 of 2008 dated 07.02.2012 and the relevant



portion of the order is as follows:-

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"2. The writ petition was admitted on 27.11.2008. Pending the writ petition, interim stay was granted by this Court after observing that the entire amount has been lying in deposit with the Controlling Authority. Thereafter, the contesting respondent filed M.P.No.1 of 2009 seeking for permission to withdraw the amount. That petition came to be disposed of by order dated 08.07.2009 permitting him to withdraw 50% of the amount lying in deposit. The Controlling Authority was directed to deposit the balance amount in any one of the nationalised banks for two years and the workman was permitted to withdraw the interest every six months.

3. It is seen from the records that the contesting third respondent was employed in the petitioner mill and got retired from service on 30.12.2003. The workman claimed that he was in employment from 27.12.1977 and after getting retired from service, he claimed gratuity in terms of calculation made under Section 4 of the Payment of Gratuity Act, 1972. In his claim application, he claims that he had put in 25 years 11 months and 3 days of service and his last drawn salary was Rs.169.80 per day and the total amount of gratuity claimed by him was Rs.66,092/-. Since there was a delay in filing the application, he has also filed I.A.No.11 of 2004 to condone the delay. This application was resisted by the petitioner mill. Notwithstanding the same, the Controlling Authority condoned the delay and took up the gratuity case on his file as P.G.No.130 of 2004. The Controlling Authority, by his order dated 25.10.2006, held that the total length of service of the workman was only 10 years and he will be



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W.P.Nos.42213 of 2016 etc., batch

eligible for gratuity at the rate of 15 days for every completed year of service and computed the gratuity at Rs.29,337/-. Before the authority, heavy reliance was placed upon the circular issued by the Commissioner of Sugars dated 25.07.1990. In the circular, the authority directed all the sugar mills as follows:

"It is hereby ordered that the employees of the co-operative and public refer sugar mills, who retire as seasonal employee will be paid gratuity at the wages per year of service provided they have put in the minimum period of twenty years of service in the mills. For the purpose of computing twenty years service, the service as NMR/Casual will not be counted. In respect of missed employees, gratuity will be paid in accordance with the provisions of the Payment of Gratuity Act, 1972."

4. Aggrieved by the order passed by the Controlling Authority, the petitioner management filed an appeal under Section 7(7) of the Payment of Gratuity Act to the Appellate Authority. The said appeal was taken on file as P.G.A.No.9 of 2007. As a condition precedent for preferring an appeal, the amount was also deposited before the Controlling Authority. The contention raised by the management before the Appellate Authority was that the grant of gratuity at the rate of 15 days was contrary to second proviso to Section 4(2) as for seasonal establishment, only 7 days wages will be made available for every completed year of service and therefore, the Controlling Authority was erroneous. The Appellate Authority had entertained the appeal and issued notice to the third respondent. Thereafter, after hearing both sides, the Appellate Authority dismissed the



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W.P.Nos.42213 of 2016 etc., batch

appeal. The authority held that the circulars issued by the Commissioner of Sugars dated 25.07.1990 and 31.07.1991 inasmuch as provides full gratuity for even seasonal worker, who had put in 20 years of service, the said circulars will apply to the case of the third respondent and he also found that he had put in 23 years of service as seasonal worker and therefore, he is eligible to get the benefit of the said circular. In such circumstances, the authority held that the restriction placed under the second proviso to Section 4(2) will not apply to the case of the workman. The contention of the management that since the third respondent is only a NMR worker, the circular will not apply, was rejected by the Appellate Authority. In fact, it is open to an employer to provide better terms of gratuity and if any such better offer is given by the employer, the same is protected in terms of Section 4(5) of the Payment of Gratuity Act, wherein it is clearly stated that the provisions of the Act, more particularly, Section 4(1) will not affect the right of the employee to receive better terms of gratuity without any award or agreement or contract with the employer. It is not the case of the petitioner mill that these two circulars are not binding on them or that they are not accepting the circulars in respect of other workers other than NMR workers. If once it is stated that the circular holds the field, the authority was correct in holding that the circular will apply even to NMRs, who have rendered 20 years of service. Even that is accepted, then, calculation should be made on the basis of 15 days wages for every completed year of service. The authority held that the workman had put in 23 years of service and there is no dispute regarding the last drawn wages and therefore, calculated the amount as Rs.58,478/- It is challenging the same, the writ petition came to be filed.



5. *The contention raised by Ms.Thilakavathy, learned counsel appearing for the petitioner sugar mill was that there is no proof that the workman had worked continuously upto 20 years. According to the petitioner, the circular dated 25.07.1990 excludes the benefit to casual labours and therefore, the authority cannot read the circular in a piece meal manner. The invocation of Section 4(5) of the Payment of Gratuity Act is inappropriate in this case.*

6. *It must be noted that when the workman sent a notice in terms of Payment of Gratuity Act and also filed a claim petition before the Controlling Authority, in the counter statement, excepting a bald denial about his length of service, no other details were furnished. Though there is a claim that for one season i.e. during April, 2001, he was stopped from work, no materials were produced before the Controlling Authority. Therefore, the Controlling Authority did not have opportunity to go into the actual length of service. The workman did not file any cross appeal for enhancing the length of service. Yet, the Appellate Authority is entitled to correct the error committed by the Controlling Authority as ultimately the object of the Payment of Gratuity Act is to pay gratuity on any one of the contingencies set out under Section 4(1) of the Payment of Gratuity Act.*

7. *Considering the grave mistake made by the Controlling Authority by taking into account the length of service mentioned in the provident fund slips, which has no relevance to the length of service in terms of Section 2A of the Payment of Gratuity Act and considering the fact that the Payment of Gratuity Act do not make any distinction between the casual, temporary*



W.P.Nos.42213 of 2016 etc., batch

or NMR worker while calculating the length of service, this Court do not find any grave error committed by the Appellate Authority by passing the impugned order. Ultimately, the interest of justice must be upheld and inasmuch as the first respondent has not committed any grave error either in terms of law or in terms of fact, this Court is not inclined to entertain the writ petition. Accordingly, the writ petition shall stand dismissed. No costs.

8. In view of the dismissal of the writ petition, the third respondent is entitled to withdrawn the balance amount lying in deposit with the nationalised bank."

7. From the above, it is seen that, this Court, in categorical terms arrived a conclusion that, the Controlling Authority by taking into account of the length of service mentioned in the Provident Fund slips, which has no relevance to the length of service in terms of Section 2A of the Act and considering the fact that the Act do not make any distinction between the casual, temporary or NMR workers while calculating the length of service and dismissed the writ petition.



W.P.Nos.42213 of 2016 etc., batch

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8. In view of the above, this Court is inclined to extend the very same benefit to the workmen herein also and it is made clear that the workmen are entitled for the gratuity amount as awarded by the second respondent / Controlling Authority. Accordingly, the W.P.Nos.42213 to 42220 of 2016 are dismissed.

9. In view of the common order passed by this Court in W.P.Nos.42213 to 42220 of 2016, the other Writ Petitions in W.P.Nos.30062, 14836 and 15265 of 2017 are also dismissed as nothing survives in these petitions. No Costs. Consequently, connected Miscellaneous Petitions are closed.

02.08.2023

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

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W.P.Nos.42213 of 2016 etc., batch

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