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WP.Nos.23257, 23261 &
23263 of 2023

In the High Court of Judicature at Madras

Dated : 08.8.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition Nos.23257, 23261 & 23263 of 2023
& WMP.Nos.22794, 22799 & 22804 of 2023

The Commissioner, Udhagamandalam
Municipality, Udhagamandalam.
643001.

...Petitioner in
all the WPs

Vs

1.The Appellate Authority under
the Payment of Gratuity Act,
Additional Commissioner of
Labour, Coimbatore.

2.The Controlling Authority under
the Payment of Gratuity Act,
Deputy Commissioner of Labour,
Coimbatore-18.

...R1 & R2 in
all the WPs

3.T.R.Vasanthakumar

...R3 in WP.No.
23257 of 2023

4.B.Ravi

...R3 in WP.No.
23261 of 2023



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5.M.L.Devadas

...R3 in WP.No.
23263 of 2023

Prayer: These petitions are filed under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the second respondent relating to the orders in

(i) P.G.A.No.71/2018 dated 26.8.2021 as confirmed by the first respondent in P.G.Appeal No.49/ 2022 dated 23.3.2023 (WP.No.23257 of 2023);

(ii) P.G.A.No.52/2018 dated 26.8.2021 as confirmed by the first respondent in P.G.Appeal No.47/2022 dated 23.3.2023 (WP.No.23261 of 2023); and

(iii) P.G.A.No.70/2018 dated 26.8.2021 as confirmed by the first respondent in P.G.Appeal No.48/2022 dated 23.3.2023 (WP.No.23263 of 2023) and quash the same.

For Petitioner in
all the WPs : Mr.P.Srinivas

For R1 & R2 in
all the WPs : Mr.M.S.Prem Kumar, GA

COMMON ORDER

These petitions are filed by the petitioner seeking to quash the orders



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passed by the second respondent dated 26.8.2021 as confirmed by the first respondent vide orders dated 23.3.2023 in favour of the respective third respondent.

2. The facts leading to filing of these cases are as follows :

(i) The respective third respondent were working in the petitioner municipality as daily wage workers from 1985. However, their services were terminated on 15.9.1989. Challenging the same, the respective third respondent approached the Labour Court, Coimbatore by filing industrial disputes and they were allowed directing the petitioner municipality to reinstate them into service with continuity of service and 50% back wages. As against the same, the petitioner municipality filed writ petitions before this Court and this Court partly allowed the writ petitions by confirming the direction of the Labour Court to reinstate the respective third respondent and by setting aside the direction to pay 50% of the back wages.

(ii) Thereafter, the respective third respondent were given permanent appointment as Revenue Assistants in the year 2008. Further, the respective



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third respondent also retired from service. Since they were appointed after 01.4.2003, they were brought under the contributory pension scheme. After retirement, the petitioner also paid them their terminal benefits.

(iii) In the meantime, vide letter dated 23.3.2023, the Special Director of the Local Fund Audit Department directed the municipalities to adopt the guidelines issued by the Additional Secretary to Government, Municipal Administration and Water Supply Department dated 08.3.2023 in respect of sanction of pensionary benefits to those, who had been appointed after 30.4.1997 and before 01.4.2003, as per which, the respective third respondent were not eligible for pensionary benefits.

(iv) Pursuant to that, the respective third respondent filed individual applications before the second respondent seeking gratuity from the petitioner under the Payment of Gratuity Act, 1972. In that, the petitioner filed their counter. After contest, ultimately, the applications filed by the respective third respondent were allowed by the second respondent by separate orders dated 26.8.2021 and the petitioner was directed to pay gratuity to the respective third respondent together with 10% interest from



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the date on which it fell due till the date of payment.

(v) As against the orders dated 26.8.2021 passed by the second respondent, the petitioner filed appeals before the first respondent. However, the appeals were dismissed by the first respondent by separate orders dated 23.3.2023. Challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submits that initially the respective third respondent were employed as daily wagers, subsequently, they were reinstated in service pursuant to the order passed by the Labour Court, which in turn was confirmed by this Court. When the respective third respondent filed individual applications before the second respondent seeking gratuity from the petitioner under the Payment of Gratuity Act, 1972, the second respondent by separate orders dated 26.8.2021 allowed the claim of the respective third respondent. However, as per the provision u/s.2 (f) (ii) of the Payment of Gratuity Act, 1972 (in short 'the Act'), the



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petitioner establishment being a “local authority” does not come within the purview of the aforesaid provision. For better appreciation the relevant provision u/s. Section 2(f)(ii) of 'the Act' is extracted hereunder:

“Section 2 (f) in Payment of Gratuity Act, 1972:

”employer” means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop-

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,”

4. He further submits that though the respective third respondent are not entitled to gratuity under the rules framed by the State Government, the respondents 1 and 2 without any jurisdiction ordered for payment of gratuity which is *per se* unsustainable.

5. The learned Government Advocate appearing for the respondents 1 and 2 submit that when the respective third respondent filed applications



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seeking gratuity before the second respondent, the second respondent allowed the applications filed by the respective third respondent holding that the respective third respondent are entitled to the gratuity based on the last drawn wages, which subsequently was allowed by the first respondent as well. He further submits that there is no such provision under the Act that the same is only applicable to the permanent employee of an establishment. Rather from the definition of 2 (e) of the Act it is amply clear that, except apprentice, the definition of the employee covers all persons. Hence, the awards passed by the first and second respondents need not be interfered with. Accordingly he prayed to dismiss these writ petitions.

6. Heard the learned Standing Counsel appearing for the petitioner in all these writ petitions and the learned Government Advocate accepting notice for respondents 1 and 2 in all the writ petitions. In view of the order this Court proposes to pass, the writ petitions are taken up for joint disposal without ordering notice to the respective third respondent.



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7. Seeking non payment of gratuity amount, the respective third respondent filed applications before the second respondent. After contest, the second respondent arrived at a conclusion that the respective third respondent are entitled for gratuity amount in terms of Section 2 (e) of the Act. As per Section 2(e) of the Act an “employee” means any person who is employed for wages whether the terms of such employment are express or implied, in any kind of work, manual or otherwise or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which 2(e) of the Act applies, but does not include any such person who holds a post under the Central Government or State Government and is governed by any other Act or by any rules providing for payment of gratuity. Unless and until the petitioner municipality is exempted for payment of Gratuity by the appropriate Government, it cannot be said that the employees would not be entitled to payment of gratuity under Act. The said facts was elaborately considered by the the original authority and the appellate authority as well. Therefore, the challenge in the impugned proceedings by the petitioner management has to necessarily fail.



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8. With the above observation, these writ petitions are dismissed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

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W.M.P.Nos.22792, 22803 & 22798 of
2023

in

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Dispensed with for the present.

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