



W.P.No.9450 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.9450 of 2017

and W.M.P.No.10401 of 2017

The General Manager,
Salem District, Central Co-operative Bank Limited.,
Cherry Road,
Salem-636 061.

. . . Petitioner

Vs.

1. The Joint Commissioner of Labour,
(Appellate Authority under
payment of Gratuity Act, 1972)
Coimbatore.
2. The Assistant Commissioner of Labour,
(Controlling Authority under
payment of Gratuity Act, 1972)
Salem.
3. V.P.Perumal Chetty.

. . . Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a writ under Article 226 of the Constitution of India in the nature of Writ of Certiorari or other appropriate writ or order or direction, call for the records in AGA 178 of 2016 on the file of the Joint Commissioner of Labour (Appellate Authority under the Payment of Gratuity Act, 1972) Coimbatore, the first respondent herein, quash the order



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dated 05.01.2017 confirming the order dated 04.02.2016 passed in P.G.125 of 2014 by the Assistant Commissioner of Labour (Controlling Authority under the Payment of Gratuity Act, 1972), Salem, the second respondent herein.

For petitioner : M/s.M.R.Raghavan
For Respondents : Mr.M.S.Prem Kumar,
Government Advocate for R1 & R2
: M.K.V.Shanmuganathan for R3

ORDER

Aggrieved by the order of the 1st respondent confirming the order of the 2nd respondent, the petitioner is before this Court.

2. It is the case of the petitioner that the 3rd respondent who was serving as the jewel appraiser in the petitioner bank, approached the Authority under Section 4 of the Tamilnadu Industrial Establishments (Conferment of Permanent Status to workmen) Act, 1981 and sought for orders for permanency, wherein the authority under the Act conferred the permanent status on the 3rd respondent. However, the said order was challenged before this Court in W.P.No.25109 of 2010, wherein, this Court had granted an order of interim stay in M.P.No.1 of 2010. Subsequently,



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the 3rd respondent filed an application before the 2nd respondent/controlling under the Payment of Gratuity Act for payment of gratuity for the period from 15.12.1986 to 31.05.2014 in which the 2nd respondent was under the employment of petitioner bank, pursuant to which, the petitioner was directed to pay a sum of Rs. 1,44,865/- towards payment of gratuity to the 3rd respondent vide order dated 04.02.2016, against which, the petitioner preferred an appeal before the 1st respondent/Appellate authority, wherein, the Appellate authority has confirmed the order of the 2nd respondent. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submits that though the 3rd respondent entered into the service of the petitioner management, he is not a permanent employee as his services were not regularized. As per clause 2S and 2E of the Act, the petitioner is not entitled for payment of gratuity. Hence, the order of the 2nd respondent confirmed by the 1st respondent is non-est in law. Accordingly, the said orders are liable to interfered with.



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4. Per Contra, learned counsel for the 3rd respondent submits that admittedly, the 3rd respondent entered into the service of the petitioner management as a jewel appraiser in the year 1997. The permanent status conferred on the 3rd respondent under the Tamilnadu Industrial Establishments (Conferment of Permanent Status to workmen) Act, 1981, was upheld even by the learned Single Judge of this Court in W.P.No.25109 of 2010 vide order dated 13.10.2017 by declaring the workmen therein including the 3rd respondent herein as permanent employee of the petitioner bank. Hence, the orders under challenge, needs no interference and this Writ Petition deserves to be dismissed.

5. Learned counsel for the petitioner submitted that the order passed by this Court in W.P.No. 25109 of 2010 confirming the permanent status conferred on the 3rd respondent, has been put in issue in W.A.No.1765, 1766 & 1768 to 1770 of 2019 before the Division Bench of this Court, which are pending consideration.



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6. On the above contention, this Court heard the learned Government Advocate appearing on behalf of the respondents 1 & 2 and perused the materials available on record.

7. It is evident from the materials available on record that the orders passed in W.P.No.25201 of 2010 in regard to the conferment of permanent status, stands in favour of the workmen. The petitioner claims that Writ Appeals have been preferred as against the above said orders, however, no interim stay has been granted in the Writ Appeals as against the said order in this Writ Petition and no steps have been taken by the petitioner to prosecute the Writ Appeals and considering that the Writ Petition is of the year 2017, this Court is of the view that the inaction on the part of the petitioner to prosecute the Appeal cannot be a ground to deny the benefit to the respondents, more especially the respondents have obtained a positive order in their favour as early as in the year 2017. Therefore, in the interest of justice, this petition deserves to be dismissed.



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8. For the reasons aforesaid, this Court feels that no interference is called for relating to the orders under challenge and accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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Index : Yes / No

Internet : Yes / No

NHS

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