



WP.No.29748 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

CORAM :

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

W.P.No.29748 of 2017  
& WMP.No.32091 of 2017

The Regional Manager,  
Tamil Nadu Civil Supplies  
Corporation, No.9,  
Contron Smith Road,  
Chennai-86.

...Petitioner

Vs

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

2.The Assistant Labour Commissioner,  
O/o the First Additional Deputy  
Commissioner, Chennai-6  
(Controlling Authority under the  
Payment of Gratuity Act, 1972).

3.V.Selvarasu

...Respondents



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PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the first respondent - the Joint Commissioner of Labour, Chennai - Appellate Authority under the Payment of Gratuity Act, 1972 in PG.A.No.2/2016 dated 27.2.2017 in confirming the order of the second respondent - the Assistant Labour Commissioner, O/o the First Additional Deputy Commissioner, Chennai-6 - Controlling Authority under the Payment of Gratuity Act, 1972 - in PG.No.230/2013 dated 20.10.2015 and to quash the same.

For Petitioner : Mr.Sankareswaran for  
Mr.P.Paramasiva Doss

For R1 & R2 : Mr.S.John J.Raja Singh, AGP

For R3 : Mr.S.S.Swaminathan

### ORDER

This is a petition filed by the petitioner seeking to quash the order dated 27.2.2017 passed by the first respondent in confirming the order dated 20.10.2015 passed by the second respondent.

2. The facts leading to filing of this case are as follows :

(i) The third respondent was initially engaged in the petitioner corporation as a clerk on seasonal basis from 04.10.1979. He continued as



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such till May 1993 at regular intervals. There was no continuity of service either for 240 days or for 480 days. Subsequently, pursuant to a settlement arrived between the management and the union, the services of the third respondent were regularized on 31.5.1993 as a Bill Clerk and later, he was promoted to the post of Quality Inspector. Thereafter, he attained the age of superannuation on 31.8.2012 and was paid a sum of Rs.3,37,857/- towards gratuity.

(ii) After receiving the said sum, the third respondent filed an application before the second respondent seeking a further sum of Rs.2,25,072/- towards differential gratuity on the ground that the petitioner's discerning of the qualifying service was not proper and that the first fold of qualifying service from October 1979 to May 1993 taken as seasonal employment was bad in the eye of law. Further, the second respondent, by order dated 20.10.2015, directed payment of Rs.2,48,946/- towards differential gratuity together with interest at 10% from the date of superannuation till realization on the sole ground that the third respondent was not paid the retainer batta.



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(iii) Aggrieved by the said order of the second respondent 20.10.2015, the petitioner preferred an appeal to the first respondent. However, by order dated 27.2.2017, the first respondent dismissed the appeal filed by the petitioner thereby confirming the order dated 20.10.2015. Challenging the same, the petitioner is before this Court.

3. At the time of admission on 06.4.2018, in WMP.No.32091 of 2017, this Court granted an order of interim stay for four weeks.

4. Learned counsel for the petitioner corporation would submit that admittedly the 3<sup>rd</sup> respondent entered into the services of the petitioner corporation as casual employee on seasonal basis in the year 1979 and as per 12(3) settlement, he was absorbed in the year 1993. However, he was not under continuous employment either for 240 days or for 480 days. He further submitted that the petitioner corporation is a seasonal establishment and the services of the 3<sup>rd</sup> respondent were utilized only during the seasonal period from which it is very clear that the 3<sup>rd</sup> respondent was only



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a seasonal employee, however, without advertng to the said fact, the 2<sup>nd</sup> respondent/original authority had mechanically held in favour of the 3<sup>rd</sup> respondent by granting arrears of gratuity amount which has also been confirmed by the appellate authority/1<sup>st</sup> respondent which is not sustainable. Accordingly, he prays for allowing the Writ Petition.

5. Per Contra, learned Additional Government Pleader appearing for respondents 1 & 2 would submit that though the petitioner claims the petitioner corporation to be a seasonal establishment, however, no proof has been placed by the petitioner in order to substantiate their claim. In the absence of any material to prove the order of the controlling authority to be unsustainable and the orders put to challenge having been passed after elaborately discussing the above facts and relevant materials adduced by the petitioner as well as the workmen, the orders under challenge cannot be found fault with. Accordingly, he prays for dismissal of the Writ Petition.



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6. On the above contention, this Court heard the learned counsel appearing for the 3<sup>rd</sup> respondent and perused the materials available on record.

7. Admittedly, the 3<sup>rd</sup> respondent/workman engaged with the petitioner corporation as casual labourer in the 1979. After attaining superannuation, he was settled with gratuity amount as per the 12(3) settlement arrived between the petitioner corporation and the workmen. Subsequently, he approached the authority under the Gratuity Act claiming arrears of gratuity which was granted by the original authority. Against which, appeal was preferred by the petitioner which was dismissed.

8. It is the claim of the petitioner that the petitioner corporation is only a seasonal establishment and therefore the workman is entitled for gratuity amount only for the seasonal period during which he was engaged with the petitioner corporation. However, it is seen from the materials available on record as also the impugned order of the 2<sup>nd</sup> respondent/fact finding authority, that the petitioner has not placed any materials to show



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that the petitioner corporation is a seasonal establishment. In the absence of any material to show that the establishment is a seasonal establishment, no finding could be rendered and the authority has passed a well reasoned order and in the absence of any perversity in the finding rendered by the fact finding authority, this Court under Article 226, cannot interfere with the impugned order of the appellate authority confirming the order of the fact finding authority. Hence, the relief sought for in this Writ Petition cannot be acceded to.

9. For the reasons aforestated, the Writ Petition is devoid on merits and is dismissed accordingly. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed. The amount which has been ordered by the Authority towards the gratuity payable shall be disbursed in favour of the workman.

**21.08.2023**

Index : Yes (or) No

Neutral Citation : Yes (or) No

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M.DHANDAPANI,J

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To

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