



WEB COPY



W.A. No. 1687 of 2021 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2023

CORAM

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. Nos.1687, 1693, 1720, 1733, 1738, 1752, 1815, 1823 to 1825 of
2021 and W.P. Nos.19117, 19122, 19144, 19156, 19160, 19168, 24351,
24463, 24614, 24935, 25033, 25037, 28498 & 28499 of 2021, 35157,
35158 & 35212 of 2022, 250, 252, 253, 256, 257, 459, 464, 534, 536,
688, 694, 697, 704, 887, 897, 899, 975, 980, 3441, 3442, 3446, 3448,
3450, 3875, 3881, 3884, 5113, 5117, 5121, 5125, 6950, 6964, 6966,
6968, 7108, 7115, 7119, 7343, 7612, 7620, 7629, 7631, 7633, 8539, 8544,
8548, 8556, 8561, 9116, 9121, 9576, 10144, 11609, 11615, 11618, 11622
& 13031 of 2023.

&

Connected miscellaneous petitions



W.A. No. 1687 of 2021 etc. batch

W.A. No. 1687 of 2021

Union of India,
rep. by Administrative Officer III
Heavy Water Plant,
Department of Atomic Energy
Government of India,
Tuticorin.

..Appellant

Vs.

1. The Regional Labour Commissioner
(Central) cum Appellate Authority
under the Payment of Gratuity Act,
1972,
O/o. Regional Labour Commissioner,
No.26, Haddows Road,
Shastri Bhavan,
Chennai 600 006.
2. The Assistant Labour Commissioner
(Central) cum Controlling Authority
under the Payment of Gratuity Act,
1972,
Ministry of Labour and Employment,
Government of India,
New No.5, Old No.1-A(II Floor),
Lady Doak College Road,
Chinna Chokkikulam,
Madurai 625 002.

3. K. Muthusamy

..Respondents



W.A. No. 1687 of 2021 etc. batch

WEB COPY

Prayer: Writ Appeal as against the order dated 31.03.2016 passed in
W.P. No. 23128 of 2015.

For Appellant :: Mr.Venkatasamy Babu
For Respondents :: Mr. P.Ganesan
,
Govt. Advocate for R1 & R2
Mr.S.T.Varadarajulu for R3

COMMON JUDGMENT

(Delivered by S. VAIDYANATHAN,J.)

The writ appeals, namely, W.A. Nos.1687, 1720, 1733, 1738, 1752, 1815, 1823 to 1825 of 2021 have been filed by the Union of India represented by its Administrative Officer III, Heavy Water Plant, Department of Atomic Energy, Government of India, Tuticorin, challenging the order dated 31.03.2016 passed in W.P. Nos.23127 to 23129, 25088 to 25091, 25707 & 25732 of 2015 while W.A. No. 1693 of 2021 has been filed challenging the order dated 29.01.2016 passed in W.P. No. 23578 of 2015 whereby the writ petitions filed by the Union of India questioning the orders passed by the 1st respondent (Appellate Authority under the Payment

3\20



W.A. No. 1687 of 2021 etc. batch

of Gratuity Act, 1972) and the 2nd respondent (Controlling Authority under the Payment of Gratuity Act, 1972) and seeking refund of the amounts deposited by the appellant came to be dismissed following the earlier order passed by this Court in connected matters.

2. As far as writ petitions are concerned, the same have been filed by the Administrative Officer III, Heavy Water Plant, Department of Atomic Energy, Government of India, Tuticorin, challenging the common order dated 31.03.2021 passed by the Appellate Authority therein under the Payment of Gratuity Act, 1972 dismissing the appeals filed by the Management thereby confirming the order of the Controlling Authority therein under the Payment of Gratuity Act, 1972 granting the difference of gratuity payable to the employees concerned under the Payment of Gratuity Act, 1972.

3. Since the core issue involved in the writ appeals and the writ petitions is one and the same, both the writ appeals and the writ petitions are taken up together for final disposal.



W.A. No. 1687 of 2021 etc. batch

WEB COPY

4. The private respondents, who are ex-employees of the appellant/writ petitioner Management, made applications for a direction to the Management to pay the balance amount of Gratuity as per the Payment of Gratuity Act, 1972. The claim made by the private respondents in the writ appeals was allowed by the Controlling Authority and the same was also confirmed by the Appellate Authority under the said Act. The writ petitions filed by the Management questioning the orders passed by the authorities allowing the claim of private respondents concerned therein came to be dismissed resulting in filing of the present writ appeals. As far as the writ petitions, which have been taken up along with the writ appeals are concerned, the challenge made therein is to the dismissal of the appeals filed by the Management as against the orders passed by the Controlling Authority therein allowing the claim of private respondents concerned in those writ petitions.

5. The primordial contention raised by the Management before the authorities as well as before this Court is that it is a Central Government



W.A. No. 1687 of 2021 etc. batch

Department under Heavy Water Board, Department of Atomic Energy, Government of India and the private respondents were holding the posts under the Central Government and CCS Pension Rules, 1972 alone would be applicable in respect of retiral benefits including Gratuity. Further, they are excluded from the purview of definition of “employee” under Section 2(e) of Payment of Gratuity Act, 1972 and having received Gratuity under the CCS (Pension) Rules, 1972, they are estopped from receiving the benefits under the Payment of Gratuity Act, 1972 as two different statutes cannot be made applicable for a single purpose.

6. The contention of the employees before the authorities and before this Court is that they are governed by the first part of the definition of Section 2(e) and excluding them in the light of second part of Section 2(e) may not be correct as the provisions of Payment of Gratuity Act, 1972 are applicable to the appellant/writ petitioner Management, which is an establishment in terms of the Payment of Gratuity Act, 1972 and that unless there is an exemption under Section 5 of the said Act, the appellant/writ petitioner Management cannot deprive its employees of gratuity under the



W.A. No. 1687 of 2021 etc. batch

WEB COPY said Act. Taking note of these submissions on behalf of the employees and in the light of the overriding provision contained under Section 14 of Payment of Gratuity Act, 1972, under Section 14, the Controlling Authority rightly held that the employees would be eligible to receive the difference of amount of gratuity in accordance with the Payment of Gratuity Act, 1972, passed orders in favour of the employees that they would be entitled to gratuity, which was confirmed by the Appellate Authority and also upheld by the learned Single Judge of this Court. When the employees have got successive orders in their favour, the finding of fact rendered by the authorities need not be interfered with.

7. Learned counsel for the employees would submit that merely because they are getting pension, in terms of CCS (Pension) Rules, 1972 they cannot be deprived of the benefits under the Payment of Gratuity Act, 1972, which are more beneficial to them. The Hon'ble Apex Court, in the judgment reported in 1998 (7) SCC 221 (*Municipal Corporation of Delhi V. Dharam Prakash Sharma & Another*) has also categorically held that Gratuity that is provided for under the CCS (Pension) Rules will not



W.A. No. 1687 of 2021 etc. batch

disentitle the employees from getting the payment of gratuity under the Payment of Gratuity Act, 1972, more so, in the light of the overriding provision contained under Section 14 of Payment of Gratuity Act, 1972. He further contended that even though the employees of Municipal Corporation of Delhi had been extended the benefit of CCS (Pension) Rules, 1972, the contention of the Management counsel in that case that the employees will have to be excluded in the light of Section 2(e) was not accepted. The Apex Court in the aforecited case held that Section 5 of Payment of Gratuity Act, 1972 has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. The relevant portion at paragraph No.2 of the said judgment is extracted below:

“...The mere fact that the gratuity is provided for under the Pension rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in S.14 of Payment of Gratuity Act, the provision for gratuity under the Pension



WEB COPY



W.A. No. 1687 of 2021 etc. batch

Rule will have no effect. Possibly for this reason, S.5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Admittedly MCD has not taken any steps to invoke the power of the Central Government under S.5 of the Payment of Gratuity Act. In the aforesaid premises, we are of the considered opinion that the employees of the MCD would be entitled to the payment of gratuity under the Payment of Gratuity Act, notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension. Needless to mention that the employees cannot claim gratuity available under the Pension Rules.”

8. However, Mr.AR.L. Sundaresan, learned Additional Solicitor General appearing for the Management in some of the cases contended that unless the employees satisfy the conditions governing the provisions of the Payment of Gratuity Act, 1972, they cannot insist that the same would be



W.A. No. 1687 of 2021 etc. batch

applicable to them. It may be correct that the appellant/writ petitioner

Management is an establishment in terms of Section (1)(3)(b) of the Act, but unless both the employer and the employee satisfy the conditions specified, the employees cannot demand that eventhough there is an exclusion clause, they should be deemed to be included in terms of first part of the definition of Section 2(e) of the said Act. He would submit that the Municipal Corporation of Delhi had adopted the provisions of CCS (Pension) Rules, 1972. Since the employees of Municipal Corporation of Delhi were already covered by the Payment of Gratuity Act, 1972 and by virtue of adoption of the provisions of CCS (Pension) Rules, 1972, the benefits of pension were extended to them. Only for the purpose of extending the pensionary benefits, CCS (Pension) Rules were adopted and not otherwise. Those employees were not excluded in terms of definition of Section 2(e) of Payment of Gratuity Act, 1972 and therefore, the said decision cannot be made applicable to the employees in the present case.

9. Heard both sides.

10\20



W.A. No. 1687 of 2021 etc. batch

WEB COPY

10. The entire issue in this case revolves around the definition of Section 2(e) of Payment of Gratuity Act, 1972. For useful reference, the definition of “employee” under Section 2(e), as it existed originally as on 21.08.1972, prior to the amendment and the amended Section 2(e) with effect from 03.04.1997 by Act 47 of 2009 are extracted hereunder:

Section 2 (e), as it stood, prior to amendment:

“employee” means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

Section 2(e), after amendment with effect from 03.04.1997:

“Employee” means any person (other than an apprentice) who is employed for wages, whether the terms of



WEB COPY



W.A. No. 1687 of 2021 etc. batch

such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

Section 5 of Payment of Gratuity Act, 1972, which deals with the “power to exempt” and Section 14 of the said Act, which deals with the “overriding provision” and which have been referred to, are also reproduced hereunder:

Section 5: Power to exempt:

(1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, the employees in such establishment factory, mine, oilfield, plantation, port, railway company or shop are in



WEB COPY



W.A. No. 1687 of 2021 etc. batch

receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

Section 14: *The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.*

11. In the present case, the employees, who were holding the posts under the Central Government, are governed by CCS (Pension) Rules, 1972, in particular, Rule 50 of the said Rules for payment of Retirement/Death Gratuity and Rule 49 of the said Rules for payment of pension. A reading of the judgment of the Hon'ble Apex Court and a careful consideration of the contentions of parties would make it very clear that the employees must satisfy the requisite conditions to be governed by the provisions of Payment of Gratuity Act, 1972. The Appellate Authority concerned in the writ appeals and writ petitions had taken extensive steps to grant the relief to the employees by confirming the order of the Controlling Authority concerned in the writ appeals and writ petitions. Certainly that exercise has got to be



W.A. No. 1687 of 2021 etc. batch

appreciated, but only the first limb of the definition of “employee” under Section 2(e) of the Act will be applicable to the employees herein and not the exclusion clause. In the present case, as rightly pointed out by the learned Additional Solicitor General, the Municipal Corporation of Delhi had decided to adopt the CCS (Pension) Rules, 1972 to extend the benefit of pension to its employees. The employees of Municipal Corporation of Delhi were already covered by the Payment of Gratuity Act, 1972. When the Act is not applicable to a person, who holds a post under the Central Government or State Government and is governed by any other Act or any other Rules providing for Gratuity, the employees concerned cannot demand any benefit under the Payment of Gratuity Act, 1972. Though we are in entire agreement with the contention of the learned counsel for the employees that Section 14 of Payment of Gratuity Act, 1972 provides the power to override other Acts, and that no benefits that flow under the Payment of Gratuity Act, 1972 can be taken away by way of settlement or agreement, Section 14 will be applicable provided the employees fall within the inclusive definition of “employee” and not otherwise.



W.A. No. 1687 of 2021 etc. batch

12. As discussed supra, we are of the view that in the present case, the employees do not come under the provisions of Payment of Gratuity Act, 1972 as they are Central Government Employees originally covered by the CCS (Pension) Rules, 1972 unlike employees of Municipal Corporation of Delhi wherein CCS (Pension) Rules, 1972 have been adopted for the purpose of providing pension. Even assuming for the sake of argument that the entire CCS (Pension) Rules, 1972 have been adopted by the Municipal Corporation of Delhi, the employees therein are governed not only by the provisions of Payment of Gratuity Act, 1972 but also under the CCS (Pension) Rules, 1972. In any event, better benefits will have to be extended to them and the Hon'ble Supreme Court, in that context, had granted the relief of payment of difference in gratuity to those employees, who had better benefits under the Payment of Gratuity Act, 1972 than the one under the Pension Rules. Hence, we are of the view that the employees concerned herein do not fall under the exclusive definition of “employee” and to be more precise, they are excluded from the definition of Section 2(e) of Payment of Gratuity Act, 1972. Once they are excluded, no provision under the Payment of Gratuity Act, 1972 could be made applicable and no



W.A. No. 1687 of 2021 etc. batch

relief can be granted.

WEB COPY

13. Section 2(f) of Payment of Gratuity Act, 1972, defines “employer” as hereunder:

“(f) “employer” means, in relation to any establishment, factory, mine, oil-field, plantation, port, railway company or shop -

(i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employoees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned.

(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.

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oil-field, plantatio, port, railway company or shop, and where the said affairs are entrusted to any other person whether called a manager, managing director or by any other name, such



W.A. No. 1687 of 2021 etc. batch

person;”

The Management may be an employer as per the definition under Section 2(f) of Payment of Gratuity Act, 1972. But, both the employee and employer shall be covered by Payment of Gratuity Act, 1972 unless there is an exception like *Municipal Corporation of Delhi* referred to supra.

14. Therefore, we are of the view that the order of the learned Single Judge confirming the order of the Appellate Authority, who has confirmed the order of the Controlling Authority is set aside and the writ appeals are allowed.

15. Insofar as writ petitions are concerned, the common order of the Appellate Authority dated 31.03.2021 confirming the order of the Controlling Authority is set aside and the writ petitions are allowed. No costs.

16. It is brought to the notice of this Court that pursuant to the orders of the Controlling Authority concerned in the writ appeals and writ petitions, the difference of gratuity amounts have been deposited before the

17/20



W.A. No. 1687 of 2021 etc. batch

respective authorities as it is a condition precedent before preferring appeals before the Appellate Authority concerned in the writ appeals and writ petitions. Some of the employees concerned in the writ appeals have already withdrawn their respective amounts and the employees concerned in the writ petitions are yet to withdraw. We make it very clear that the employees who had already withdrawn the amounts need not return the money and that the appellant/writ petitioner Management cannot demand for refund of the said amounts. The amounts, which are lying in deposit together with accrued interest shall be returned to the appellant/writ petitioner Management within a period of four months from the date of receipt of a copy of this order. Connected miscellaneous petitions are closed.

(S.V.N.J.) (K.R.S.J.)
21.06.2023

nv
To

The Regional Labour Commissioner
(Central) cum Appellate Authority
under the Payment of Gratuity Act,
1972,
O/o. Regional Labour Commissioner,
No.26, Haddows Road,
Shastri Bhavan, Chennai 600 006.

2. The Assistant Labour Commissioner

18\20



WEB COPY



W.A. No. 1687 of 2021 etc. batch

(Central) cum Controlling Authority
under the Payment of Gratuity Act,
1972,
Ministry of Labour and Employment,
Government of India,
New No.5, Old No.1-A(II Floor),
Lady Doak College Road,
Chinna Chokkikulam,
Madurai 625 002.

3. The Regional Labour Commissioner
(Central) Madurai,
Kanga Apartments,
Suit No.III, 1st Floor, 13-A,
Lady Doak College Road,
Chinna Chokkikulam,
Madurai – 625 002.
4. Dy. Chief Labour Commissioner
(Central), 5th Floor,
Shastri Bhavan,
Chennai – 600 006.

S. VAIDYANATHAN,J.

AND

19\20



WEB COPY



W.A. No. 1687 of 2021 etc. batch

K. RAJASEKAR,J.

nv

W.A. No. 1687 of 2021 etc. batch

21.06.2023

20\20