



W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018

and

W.M.P.Nos.37667, 37669, 38054, 38059,
38353, 38494, 38498, 38687,
39299, 40339 & 40340 of 2018

The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Nagapattinam Region

... Petitioner in all W.Ps.

Vs.

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

2. The Assistant Commissioner of Labour,
Trichy,
(Controlling Authority as under the
Payment of the Gratuity Act, 1972) ... R1 and R2 in all W.Ps.



W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018

T.Sundaramoorthy	... R3 in W.P.No.32467 of 2018
M.Umakartha	... R3 in W.P.No.32847 of 2018
M.Sivanandham	... R3 in W.P.No.33079 of 2018
S.Mahalingam	... R3 in W.P.No.33172 of 2018
M.Vaithiyanathan	... R3 in W.P.No.33334 of 2018
S.Rajaganapathy	... R3 in W.P.No.33825 of 2018
A.Krishnamoorthy	... R3 in W.P.No.34782 of 2018

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, for issuing a Writ of Certiorari, to call for the records of the order passed by the 2nd respondent, the Assistant Commissioner of Labour, Trichy, (Controlling Authority under the Payment of the Gratuity Act, 1972 in P.G.No.361/2016, dated 02.01.2017, P.G.No.15/2016, dated 02.01.2017, P.G.No.02/2014, dated 23.11.2016, P.G.No.31/2012, dated 04.07.2016, P.G.No.486/2016, dated 02.01.2017, P.G.No.128/2016, dated 23.11.2016, P.G.No.75/2013, dated 04.07.2016 and the order of the 1st respondent, the Joint Commissioner of Labour, Trichy, the Appellate Authority under the Payment of the Gratuity Act, 1972 in P.G.A.No.129/2017, dated 12.03.2018, P.G.A.No.103/2017, dated 02.01.2018, P.G.A.No.47/2017, dated 02.01.2018, P.G.A.No.96/2017, dated 12.03.2018, P.G.A.No.124/2017, dated 19.02.2018, P.G.A.No.43/2017, dated 02.01.2018, P.G.A.No.98/2017, dated 02.04.2018 and to quash the same.



W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018

In all W.Ps.
For Petitioner : Mr.C.Selvaraj, Panel Advocate for
Mr.S.P.Paramasiva Doss

For Respondents : Ms.C.Meera Arumugam
For R1 and R2 Additional Government Pleader

For R3 : Mr.V.Ajoy Khose

COMMON ORDER

Challenging the orders in P.G.A.No.129/2017, dated 12.03.2018, P.G.A.No.103/2017, dated 02.01.2018, P.G.A.No.47/2017, dated 02.01.2018, P.G.A.No.96/2017, dated 12.03.2018, P.G.A.No.124/2017, dated 19.02.2018, P.G.A.No.43/2017, dated 02.01.2018, P.G.A.No.98/2017, dated 02.04.2018 passed by the 1st respondent / the Joint Commissioner of Labour, Trichy (Appellate Authority under the Payment of the Gratuity Act, 1972, the Writ Petitions are filed by the Tamil Nadu Civil Supplies Corporation, Nagapattinam Region.

2. The 3rd respondents in all the Writ Petitions were employed



W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018

WEB COPY

in the Writ Petitioner Corporation. Since they were not paid gratuity amount, they filed separate petitions before the 2nd respondent / Assistant Commissioner of Labour, Trichy (Controlling Authority under the Payment of the Gratuity Act, 1972). The 2nd respondent vide his orders, directed the Writ Petitioner to pay the gratuity amount to the employees. He also quantified the amount to be paid by the Writ Petitioner Corporation, as against which, the Corporation filed an appeal before the 1st respondent / the Joint Commissioner of Labour, Trichy (Appellate Authority under the Payment of the Gratuity Act, 1972). The 1st respondent/Appellate Authority confirmed the orders passed by the 2nd respondent / Assistant Commissioner of Labour, Trichy. Aggrieved over the same, the present Writ Petitions are filed.

3. The main contention of the Writ Petitioner is that the petitioner / Tamil Nadu Civil Supplies Corporation is not a seasonal employer and the employment of the 3rd respondents in the petitioner Corporation is not seasonal in nature. It is their further contention that there was a settlement under Section 12 (3) of the Industrial Disputes



W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018

WEB COPY

Act, 1947 between the employee and the employers, whereby the employees have agreed to get service benefits only from the date of their regular employment and that now they cannot claim the benefits like gratuity.

4. Mr.V.Ajoy Khose, learned counsel appearing for the 3rd respondents in all the Writ Petitions contended that in similar circumstance this Court has passed orders in favour of the employees in ***W.P.Nos.24455 of 2019 and 34413 of 2018*** in the ***Senior Regional Manager, Tamil nadu Civil Supplies Corporation, Chennai North Region Vrs. the Additional Commissioner of Labour, Chennai and ors.*** wherein this Court had held thus:

“12. Relying upon these two Division Bench Judgments, the learned Amicus Curiae submitted that, the issue as to whether the terms under 12(3) settlement under the Industrial Disputes Act, would prevail upon the statutory provisions of the Gratuity Act has been considered and answered by the Division Bench of this Court stating that, whatever be the terms under 12(3) settlement that would not



W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018

WEB COPY

stand in the way of the statutory provisions under the Gratuity Act, where it has been specifically explained under Section 2(e) that, what is the seasonal employment and who is the seasonal employer. Therefore, the view taken by the learned Single Judge in W.P. No. 4371 of 1998 as has been confirmed by the Division Bench in W.A. No. 1282 of 2008 dated 19.07.2010, having been accepted and affirmed or relied by subsequent Division Bench, that has been referred to in the order dated 12.03.2018 and 05.06.2018, therefore, the learned Amicus Curiae submitted that, the issue as to whether, the Tamil Nadu Civil Supplies Corporation is a seasonal employer or not, has already been concluded by more than one judgment and therefore that issue is no more res integra. The learned Amicus Curiae would further contend that, in view of the settled legal position with regard to the plea raised by the petitioner, the plea now raised by these employees to get the full gratuity amount for the entire service period from the date of the appointment till the date of superannuation, has to be accordingly calculated or computed and therefore, whatever be the remaining amount payable by the petitioner corporation to these employees for the period claimed to have been the seasonal employment from the point of view of the petitioner corporation, shall also be calculated and be paid to the employees. This has been rightly done by both the



W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018

WEB COPY

Original Authority as well as the Appellate Authority under the Gratuity Act, through the impugned orders, therefore, both the orders are sustainable, he contended.

14. As rightly pointed out by the learned Amicus Curiae, the issue as to whether, the Tamil Nadu Civil Supplies Corporation is a seasonal employer or not and the employees are seasonal employees or not and the employment would be the seasonal employment or not, has already been concluded in more than one judgment as quoted above.

15. In order to appreciate the said contentions, the relevant portion of the order of a Division Bench of this Court in W.A(MD) Nos. 353 to 357 of 2014 dated 12.03.2018, can be usefully referred to, where the Division Bench of this Court has passed the following order:

"2. These writ appeals are directed against the common order dated 30.09.2013, made in W.P (MD) Nos. 16007 to 16011 of 2013. The said writ petitions were filed challenging the orders passed by the Payment of Gratuity Authority, computing the gratuity payable to the workmen.

3. The legal issue involved in these writ



W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018

petitions is squarely covered by the decision of this Court in W.P. No. 4371 of 1998, dated 30.07.2008, which was confirmed by the Hon'ble Division Bench in W.A. No. 1282 of 2008, dated 19.07.2010. The operative portion of the order, dated 30.07.2008, passed in W.P. No. 4371 of 1998, reads as follows:

"15. But in the present case, all the workers covered by the impugned order were all Assistant Quality Inspectors, Watchmen, Packer, Helper, Bill Clerk, etc. The procurement, storage and distribution are all on going process and if they are really seasonal, there is no question of the workmen being covered by the settlement or the Award as referred to by the Management. On the contrary, in the present case, even as per the admission of the learned counsel for the Management, who has given a tabular statement showing that the number of the workmen taken against the regular vacancy was 70.

16. Further, in the letter dated 02.04.1991 sent by the Chairman cum Managing Director of the petitioner Management to the Joint Commissioner



WEB COPY



W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018

of Labour over which a reference was made in the impugned order. The Managing Director had written in page 3 as follows:-

"Regarding payment of retaining allowance to the D.P.C. staff, this cannot be compared to the seasonal industries like sugar industry. This is not a seasonal industry and the Government have not declared it so. We need not retain them when there is no procurement and as such no retaining allowance need be paid."

Even as per the provisions of Permanent Status Act, if the petitioner wants, they can move the Government to declare the DPC as seasonal and they have not done so.

17. The argument that the settlement and the Award is binding cannot be accepted because of the non-obstante clause found in Section 3(1) of the I.D. Act. Originally, it did not cover a Settlement or an Award. Therefore, if there was any settlement or Award between the employer and the workmen, then the provisions of Tamil Nadu Act 46 of 1981 will have no application. This was noticed by a Division Bench of this Court in its judgment in Metal Powder



WEB COPY



W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018

Co. Ltd., Thirumangalam and another v. The State of Tamil Nadu and another [1985 (2) L.L.J. 376] and after referring to the similar provisions in other Labour enactments in paragraph 27, it was observed as follows:-

Para 27: "... We are bound to take notice of the legislative practice that where the intention of the legislature is that a law is to have effect notwithstanding any award, agreement or contract of service, such an intention is expressed in clear and unambiguous words. Consequently, in the absence of reference to an award, an agreement or a contract of service in S.3(1) and restricting the operation of the non-obstante clause in S.3(1) only to "anything contained in any law for the time being in force", we must accept the contention of the learned counsel for the petitioner that S.3 will not supersede a settlement between the employer and the employees in so far as the subject matter of the settlement is conferment of permanent status to the workmen...."

Taking note of the above judgment, the State Legislature amended Section 3(1) of the Tamil Nadu



W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018

directed to modify the proceedings dated 24.02.1989 to confer the permanent status to individual workmen from the day on which they satisfy the condition namely completing the continuous service for period of 480 days in a period of 24 Calendar months in the respondent establishment. The respondent shall pass appropriate orders as directed above within 6 weeks from the date of receipt of a copy of this order."

20. In the light of the above, the contentions raised by the petitioner Management will have to be necessarily rejected. In fact, the petitioner Management themselves have regularized the workmen on a posterior date. In the light of the above judgments of this Court and the Supreme Court, such action cannot be countenanced by this Court. The impugned order of the first respondent will have to be necessarily upheld. Accordingly, the writ petition will stand dismissed. However, there will be no order as to costs."

4. In the light of the above, the issue is squarely covered by the above referred decisions



W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018

and therefore, the writ appeals fail and accordingly, the same are dismissed, confirming the common order, dated 30.09.2013, made in W.P(MD)Nos.16007 to 16011 of 2013. No costs. Consequently, connected Miscellaneous Petitions are dismissed."

5. In the instant case, it is not the case of the petitioner that the employees were disengaged or dismissed or terminated from service. On the contrary, they retired on superannuation. In the circumstances, the petitioner Corporation having paid only a part of the gratuity amount, are bound to pay the remaining amount as quantified by the Authorities concerned. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

15.11.2023

Index: Yes/No
Speaking/Non-Speaking order
vum



WEB COPY

To

1. The Joint Commissioner of Labour,
Trichy,
(Appellate Authority as under the
Payment of the Gratuity Act, 1972)
2. The Assistant Commissioner of Labour,
Trichy,
(Controlling Authority as under the
Payment of the Gratuity Act, 1972)

W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018



R. HEMALATHA, J.



WEB COPY



W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018

vum

W.P.Nos.32467, 32847, 33079, 33172,
33334, 33825 & 34782 of 2018
and
W.M.P.Nos.37667, 37669, 38054, 38059,
38353, 38494, 38498, 38687,
39299, 40339 & 40340 of 2018

15.11.2023