



W.P.(MD)Nos.4044 of 2013 & 12311 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.4044 of 2013 & 12311 of 2017

and

W.M.P(MD)No.9481 of 2017

W.P.(MD)No.4044 of 2013

A.Kalyanasundaram

... Petitioner

Vs.

1.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Tirunelveli - 11.

2.The Regional Manager,
Tamil Nadu Civil Supplies Cooperation,
Sipcot Complex,
Thoothukudi.

3.The Presiding Officer,
Labour Court,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the



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order passed by the Labour Court, Tirunelveli, in C.P.No.30 of 2008 dated 30.07.2012 and quash the same as illegal and consequently directing the second respondent to pay entire monetary benefits to the petitioner for the period from 05.04.1977 to 07.12.2007.

For Petitioner : Mr.S.M.Mohan Gandhi
For Respondents : Mr.G.Mohankumar - for R1 & R2
Labour Court - for R3

W.P.(MD)No.12311 of 2017

A.Kalyanasundaram

... Petitioner

Vs.

- 1.The Chairman Cum Managing Director,
Tamil Nadu Civil Supplies Corporation,
Chennai.
- 2.The Senior Regional Manager
Tamil Nadu Civil Supplies Corporation,
High Ground,
Palayamkottai,
Tirunelveli - 11.
- 3.The Appellate Authority Under the Payment of Gratuity Act /
Joint Commissioner of Labour,
Madurai.



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4.The Controlling Authority Under the Payment of Gratuity Act /
Assistant Commissioner of Labour,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified mandamus calling for the records pertaining to the order passed by the fourth respondent in P.G.No.24/2010 dated 07.05.2012 and confirming order passed by the third respondent in P.G.Appeal No.16 of 2012 dated 02.11.2015 and quash the same consequently directing the respondents 1 and 2 to pay gratuity to petitioner by calculating the service period of the petitioner from 14.03.1975 to 07.12.2007.

For Petitioner : Mr.S.M.Mohan Gandhi

For Respondents : Mr.G.Mohankumar - for R1 & R2

COMMON ORDER

Since the issue involved in these Writ Petitions are similar hence both the writ petitions are taken up together and disposed of by this common order.

2. The writ petitioner A.Kalyanasundaram had filed **W.P.(MD)No. 4044 of 2013** inter alia praying for Writ of Certiorarified Mandamus calling for the records relating to the order passed by the Labour Court, Tirunelveli, in



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C.P.No.30 of 2008 dated 30.07.2012 and quash the same as illegal and consequently directing the second respondent to pay entire monetary benefits to the petitioner for the period from 05.04.1977 to 07.12.2007. The petitioner further filed ***W.P.(MD)No.12311 of 2017*** for Writ of Certiorarified Mandamus to quash the impugned order, dated 07.05.2012 passed by the Payment of Gratuity Authority in P.G.No.24/2010, dated 07.05.2012 confirmed by the Appellate authority in P.G. Appeal No.16 of 2012, dated 02.11.2015 with a consequential direction to the respondents 1 & 2 to pay gratuity to the petitioner by calculating the service period from 14.03.1975 to 07.12.2007.

3. Heard the parties appearing on either side. Perused the material documents placed before this Court.

4. The petitioner joined service on 14.03.1975 in the 2nd respondent Civil Supply Corporation and was working as Bill Clerk. On 12.10.1975, the Senior Regional Authority has inspected the shop and found some irregularities. Thereafter, he was placed under suspension and charge memo was also issued. The petitioner was terminated from service on 05.04.1977. Against the



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termination order, dated 05.04.1977, the Petitioner has preferred an appeal under Section 41(2) of Tamil Nadu Shops and Establishment Act, 1947. The authority has set aside the termination order and allowed the appeal, vide order, dated 31.03.1984. Against the said appeal, the management has preferred a writ petition in W.P.(MD)No.8015 of 1985 and the same was dismissed on 01.11.1995. The petitioner has submitted a request letter, dated 09.02.1996 and 10.04.1996, seeking reinstatement with backwages.

5. The contention of the petitioner is that, though the termination order was set aside on 01.11.1995, the respondents did not reinstate the petitioner. Hence, the petitioner again has filed W.P(MD)No.2812 of 1997 to implement the order passed by the authorities. This Court, vide order, dated 05.08.2004, allowed the writ petition, directing the respondents to comply with the order passed in TNSE.No.18 of 1978, dated 31.03.1994.

6. As against the order dated 01.11.1995 passed in W.P(MD)No.8015 of 1985, the management has preferred a writ appeal in W.A.(MD)No.1321 of 2001 and the same was dismissed on 15.02.2008.



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7. In the meanwhile, the petitioner has attained superannuation on 31.07.2007. After dismissal of the writ appeal the petitioner has requested the management to pay entire backwages based on the order of the Assistant Commissioner of Labour, Tirunelveli, dated 31.03.2014. Since the same was not granted, the petitioner had raised industrial dispute before the Labour Court, Tirunelveli in C.P.No.30 of 2008 claiming salary for a period from 1997 to 2007 with other benefits. The said petition was dismissed, vide order, dated 30.07.2012, and aggrieved over the same, the petitioner had preferred a writ petition in ***W.P.(MD)No.4044 of 2013***.

8. In the meanwhile, the petitioner had filed a petition under Section 7(4) of Payment of Gratuity Act, with interest. The 4th respondent without considering the order passed by the Appellate authority, dated 31.03.1984, dismissed the Gratuity case on 07.05.2012. The petitioner has preferred an appeal in P.G.No.16 of 2012, the same was partly allowed, by granting Rs.3,692/- with interest as gratuity amount from 1975 to 2007. Aggrieved over the said meagre amount, the petitioner has filed ***W.P.(MD)No.12311 of 2017***.



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9. Both *W.P.(MD)No.12311 of 2017* and *W.P.(MD)No.4044 of 2013*

were taken up for hearing. Admittedly the termination order was set aside by the appropriate authority. Had the respondents reinstated the petitioner, the petitioner would have received salary for the period he had worked. In spite of several requests, the respondents did not reinstate the petitioner, thereby the petitioner's valuable right to his service was destroyed by the respondents. In fact the petitioner has preferred writ petition to implement the order passed by the appropriate forum, then also the respondent had not implemented the order. But in the meanwhile, the petitioner had attained superannuation, hence this Court is of the considered opinion that the petitioner ought to be adequately compensated. The petitioner sought backwages by way of filing C.P.No.30 of 2008, under Section 33(2) before the Industrial Tribunal. The Tribunal has failed to consider the petitioner's case, especially failed to consider the fact that the termination order was set aside. The contention of the respondents is that the petitioner being a temporary employee he cannot claim salary applicable to regular employee and he cannot be conferred time scale and higher grade. Even if the contention of the respondents are accepted then also the petitioner is entitled to the salary that was paid to the temporary employee.



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10. In view of the reasons as stated supra, this Court is of the considered opinion that when the termination order was set aside as early as 31.03.1984, the petitioner ought to have been reinstated. But the respondents have failed to do so. Hence the petitioner ought to be compensated.

11. Therefore, this Court is inclined to grant Gratuity to the tune of Rs.1 Lakh and salary of Rs.25,000/-, totally Rs.1,25,000/-. Already the respondents have paid gratuity of Rs.68,900/- and the respondents are directed to pay the balance amount along with interest calculating from the date of appointment till his date of superannuation with 7% interest. As far as the salary of Rs.25,000/- is concerned the respondents shall pay the amount with 6% per annum interest from 31.03.1984 to 31.07.2007.

12. With the above directions, these writ petitions are disposed of.
No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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27.06.2023



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To

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Tamil Nadu Civil Supplies Corporation,
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- 2.The Regional Manager,
Tamil Nadu Civil Supplies Cooperation,
Sipcot Complex,
Thoothukudi.
- 3.The Presiding Officer,
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- 4.The Chairman Cum Managing Director,
Tamil Nadu Civil Supplies Corporation,
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Joint Commissioner of Labour,
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- 6.The Controlling Authority Under the Payment of Gratuity Act /
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S.SRIMATHY, J

ksa

**Common Order made in
W.P.(MD)Nos.4044 of 2013
& 12311 of 2017**

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