



W.P.(MD)No.5050 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.5050 of 2020
and
W.M.P.(MD).No.4379 of 2020

Mahasemam Trust

... Petitioner

Vs.

1.The Additional Commissioner of Labour/
Appellate Controlling Authority in
Payment of Gratuity Act, Madurai.

2.The Asst.Commissioner of Labour/
Controlling Authority in Payment of
Gratuity Act, Madurai.

3.G.Panneerselvam

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of impugned order of the 1st respondent's proceedings in PA.KO.MAYE.MU.Case No.37/2019 dated 16.12.2019 and quash the same and consequently, direct the 2nd respondent not to disburse the amount deposited by the petitioner to the 3rd respondent and return the amount to the petitioner.



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For Petitioner	:	Mr.S.Alagarsamy
For R1 & R2	:	Mr.S.P.Maharajan Special Government Pleader
For R3	:	Mr.D.Malaichamy

ORDER

This writ petition has been filed challenging the impugned order passed by the first respondent, dated 16.12.2019 and to quash the same and consequently, direct the second respondent not to disburse the amount deposited by the petitioner to the 3rd respondent and return the amount to the petitioner.

2. The case of the petitioner is that the petitioner is a Public Charitable Trust. The third respondent joined in the organisation on 13.04.2004 as Project Director and worked with them till 26.07.2007. The third respondent was relieved from duties under relieving letter dated 26.07.2007. From 27.07.2007 onwards the third respondent was a consultant to the petitioner for a period of 20 months. A consultant is not an



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employee of an institution within the meaning of Section 2(e) of Payment of Gratuity Act. The third respondent was not an employee of the institution as envisaged under Section 2(e) of the Act. The third respondent was not in service with the organisation for the period from 27.07.2007 to March 2009 and he has not been working continuously for five years or more at any point of time with the petitioner. Hence, the third respondent is not eligible for gratuity under the Payment of Gratuity Act. However, the third respondent approached the second respondent for payment of gratuity. The second respondent has passed an order in favour of the third respondent in P.G.No.346 of 2016 and directed the petitioner to pay a sum of Rs. 4,10,192/- towards payment of gratuity and interest. As against the order passed by the second respondent, the petitioner has filed an appeal before the first respondent and the first respondent vide P.G.(A).No.37 of 2019, modified the payment of gratuity from Rs.4,10,1924/- to Rs.2,05,096/-. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the third respondent is not an employee of the institution as envisaged



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under Section 2(e) of Payment of Gratuity Act. Further, he has not been rendered more than five years and hence, he is not eligible for gratuity in terms of Section 4 of the Payment of Gratuity Act. Hence, he prayed for allowing the writ petition.

4. The learned Special Government Pleader appearing for the respondents would submit that by considering the employment certificate issued by the petitioner, which were marked as Exs.P4 and P5, both the fact finding authority arrived at a conclusion that the third respondent is not an employee of the petitioner institution as envisaged under Section 2(e) of the Payment of Gratuity Act. The third respondent has rendered nine years and four months and based on the material, the impugned order has been passed, which cannot be interfered with. Hence, he prayed for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent.



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6. The facts in the present case are not in dispute. Admittedly, the third respondent has made a claim before the second respondent under the Payment of Gratuity Act, on the ground that he has rendered more than nine years of service. However, the gratuity amount was not disbursed by the petitioner. The second respondent, after hearing the petitioner as well as the third respondent, passed an order in favour of the third respondent, directing the petitioner to pay a sum of Rs.4,10,192/-. However, on appeal, the first respondent has reduced the amount to Rs.2,05,096/-. The learned counsel for the petitioner vehemently contended that as per Section 2(e) of the Payment of Gratuity Act, the third respondent is not an employee of the petitioner. However, the original authority as well as the appellate authority arrived at a conclusion based on Ex.P5 produced by the third respondent, which was issued by the petitioner and the third respondent has rendered nine years four months and twenty seven days. When the fact finding authority arrived at a fair conclusion in respect of payment of gratuity in favour of the third respondent, unless the same is contrarily proved before



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this Court, this Court cannot interfere with the same. Hence, this Writ
Petition is dismissed. No costs. Consequently, the connected Miscellaneous
Petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

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M.DHANDAPANI,J.

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