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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)Nos.5134/2020, 859/2022, 17828/2021 and 21093 of 2021
and
W.M.P.(MD).Nos.4481 of 2020, 688 and 689 of 2022, 14696, 14697 and 14698 of 2021, 17688, 17690 and 17692 of 2021

W.P.(MD)No.5134 of 2020

1.The Superintending Engineer,
Karur Electricity Distribution Circle,
Tamil Nadu Electricity Board (TNEB),
(Tamil Nadu Generation and Distribution Corporation),
Karur 639 002.

2.The Chief Engineer /Distribution,
Tamil Nadu General and Distribution Corporation (TANGEDCO),
Trichy Region,
Thennur,
Trichy. ... Petitioners

Vs.

1.The Assistant Commissioner of Labour
(Controlling Authority under Payment of Gratuity Act, 1972),
Dindigul.

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2.Thiru.V.Vellaiappan

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in P.G.I.A.No.1 of 2018 and P.G.No.14 of 2018 and quash its order dated 09.05.2019 and direct the first respondent to consider the condonation of delay application and thereafter, take up the main application for gratuity for fresh consideration.

For Petitioners	:	Mr.T.S.Gopalan for M/s.T.S.Gopalan and Co
For R1	:	Mr.S.P.Maharajan Special Government Pleader
For R2	:	Mr.T.Aswin Rajasimman

W.P.(MD)No.859 of 2022

1.P.Ramakrishnan
2.S.Jeyapapaul Singh
3.P.Venugopalan
4.A.Subramanian
5.SU.Namachivayan
6.M.Selvaraj
7.G.Navamani
8.V.Sethuraman

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9.V.Chandran
10.R.Rajamani
11.D.Vellaiammal
12.Smt.P.Palammal
13.K.Ramu
14.K.Chelliah
15.M.lakshmi ... Petitioners

Vs.

1.State of Tamil Nadu
represented by its Secretary to the Government,
Labour and Employment Department,
Fort St. George,
Chennai -9.

2.The Commissioner of Labour,
Office of the Commissioner of Labour,
Chennai -6.

3.Tamil Nadu Generation and Distribution Corporation Limited
(TANGEDCO), formerly TNEB,
represented by its Chairman / Director,
144, Anna Salai,
Chennai 600 002.

4.Tamil Nadu Electricity Board (TNEB),
Presently known as Tamil Nadu Generation and
Distribution Corporation Limited (TANGEDCO),
represented by its Secretary,
144, Anna Salai,
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5.The Deputy Commissioner of Labour,
Authority under the Payment of Gratuity Act,
Combined Labour Court Complex,
Bharathi Ula Salai,
Race Course Salai,
Madurai 625 002.

6.The Additional Commissioner of Labour,
Appellate Authority under the Payment of Gratuity Act,
Ist Floor, Tamil Nadu Housing Board,
Ellis Nagar,
Madurai 625 001.

7.The Deputy Commissioner of Labour,
The Controlling Authority
under the Payment of Gratuity Act,
Office of Joint Commissioner of Labour,
Sengulam Colony,
Tiruchirapalli 620 020.

8.The Joint Commissioner of Labour,
The Appellate Authority
under the Payment of Gratuity Act,
Sengulam Colony,
Tiruchirapalli 620 020.

9.The Deputy Commissioner of Labour,
The Controlling Authority
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Dindigul Collector Office,
Chettinaickenpatti,
Dindigul 624 004.

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10.The Deputy Commissioner of Labour – Tirunelveli,
The Controlling Authority
under the Payment of Gratuity Act,
Combined Labour Department Office Buildings,
Opposite to All India Radio,
Konam,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Z3/3691/2021-1 on the file of the second respondent dated 13.07.2021 and quash the same as illegal and consequently for a direction, directing the first respondent to cancel the exemption granted in favour of the third respondent Corporation, in the light of the judgment of this Court in W.P.(MD).No.33704 of 2002 dated 04.03.2011 and to issue suitable orders clarifying that the petitioners are all entitled for gratuity under Payment of Gratuity Act, 1972 which is more beneficial than the gratuity under the Pension Scheme of the third respondent and entitled for payment of difference in gratuity along with interest at the rate of 12% Compound Interest per annum within the time period stipulated by this Court.

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For Petitioners : Mr.T.Aswin Rajasimman
for M/s. T.Lajapathi Roy

For R1, R2,
R5 to R10 : Mr.S.P.Maharajan
Special Government Pleader

For R3 and R4 : Mr.M.Paramasivan

W.P.(MD)No.21093 of 2021

1.R.Muthuirulandi
2.Smt.K.Chinnathal
3.G.Krishnan
4.S.Ayyam Perumal
5.P.Jesuraj
6.M.A.Abdul jabbar
7.C.Rajan
8.P.Kolappa Pillai
9.P.Ganesan
10.A.Soloman Edwin
11.S.Mutham Perumal
12.E.Gombal
13.R.Pitchai
14.M.Rajagopal
15.A.Muthu
16.R.Karunanithi
17.T.pakkirisamy
18.A.John Napoleon
19.R.Perumal
20.D.Martin Deborus
21.M.Dakhsnamoorthy
22.S.Emalda
23.C.Elongovan

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24.S.Ramasamy
25.K.Rajendran
26.K.Subramanian
27.K.Poonusamy
28.S.Jesudasan
29.M.Sudalai
30.P.Kannan
31.R.Ramar
32.K.Murugan
33.M.Muthukrishnan
34.R.Hariharan
35.K.Vadivel
36.N.Shunmugavelu
37.M.Ganthi
38.R.Ganthi
39.G.Kannan
40.R.Lakshmanan
41.L.Krishnan
42.R.Saivadurai
43.P.Ganesan
44.S.Jeyaprakash
45.R.Dinakaran
46.K.Uthiran
47.M.Govindarajan
48.S.Sarathamani Devi

... Petitioners

Vs.

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Chennai 600 002.

4.Tamil Nadu Electricity Board (TNEB),
Presently known as Tamil Nadu Generation and
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5.The Deputy Commissioner of Labour,
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Combined Labour Court Complex,
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6.The Additional Commissioner of Labour,
Appellate Authority under the Payment of Gratuity Act,
Ist Floor, Tamil Nadu Housing Board,
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7.The Deputy Commissioner of Labour,
The Controlling Authority
under the Payment of Gratuity Act,
Office of Joint Commissioner of Labour, Sengulam Colony,
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8.The Joint Commissioner of Labour,
The Appellate Authority
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Sengulam Colony,
Tiruchirapalli 620 020.

9.The Deputy Commissioner of Labour,
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Dindigul Collector Office,
Chettinaickenpatti,
Dindigul 624 004.

10.The Deputy Commissioner of Labour – Tirunelveli,
The Controlling Authority
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Opposite to All India Radio,
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... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Z3/3691/2021-1 on the file of the second respondent dated 13.07.2021 and quash the same as illegal and consequently for a direction, directing the first respondent to cancel the exemption granted in favour of the third respondent Corporation, in the light

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of the judgment of this Court in W.P.(MD).No.33704 of 2002 dated 04.03.2011 and to issue suitable orders clarifying that the petitioners are all entitled for gratuity under Payment of Gratuity Act, 1972 which is more beneficial than the gratuity under the Pension Scheme of the third respondent and entitled for payment of difference in gratuity along with interest at the rate of 12% Compound Interest per annum within the time period stipulated by this Court.

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for M/s. T.Lajapathi Roy

For R1, R2,
R5 to R10 : Mr.S.P.Maharajan
Special Government Pleader

For R3 and R4 : Mr.M.Paramasivan

W.P.(MD)No.17828 of 2021

1.V.Vellaiappan
2.K.Rajacholan
3.K.Marappan
4.V.Krishnan
5.P.Nagappan
6.A.Subramanian
7.Dhanapackiyam
8.T.kuppan
9.M.Duraimanicakkam
10.M.Chinnan
11.S.Dhanapal

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12.G.Kathirvel
13.R.Santhanakrishnan
14.T.Ramu
15.P.Ramanujam
16.A.Ganeshan
17.S.Susairaj
18.M.Vaiyapuri
19.R.Muthiyan
20.P.Balasubdram
21.M.Subramanian
22.P.Anbalagan
23.C.Vincent Cardoge
24.T.Devasahayam
25.A.picthai
26.K.Antonyraj
27.A.Solaman
28.G.Pappaiah
29.R.Sethu
30.M.Maheswari
31.P.Murugesan
32.S.Rethinam
33.R.Jayaraj
34.M.Thangavel
35.S.Velayutham
36.G.Srinivasan
37.D.Jaganathan
38.P.Marimuthu
39.R.Jayaraman
40.R.Gurusami
41.P.Balachandran
42.R.Arusamy
43.V.Palaniyappan
44.K.Durgaiyandi
45.N.Arasuappan
46.N.Petchimuthu

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47.N.Balan
48.K.Thangaraju
49.M.Karunanidhi
50.G.Pandian
51.V.Ayyyavoo
52.S.Nagan
53.A.Ayyasamy
54.S.Nagarajan
55.U.Krishnan
56.A.Damullalam
57.S.Sundramurhi
58.K.Gandhi
59.K.Gandhi
60.M.Govindan
61.K.Nagasamy
62.R.Loganathan
63.M.Manikkam
64.R.Mahalingam
65.M.Chinnathambi
66.K.Sathaia
67.PK.Karuppaiah
68.K.karuppiah
69.C.Muthusamy
70.K.Muthuramalingam
71.S.Sabasthian
72.N.Angusamy
73.C.Ganesan
74.R.Muthukrishnan
75.N.Ganesan
76.R.SEkaran
77.M.Ganesan
78.S.Soundaram
79.N.Ragavan
80.N.Solapandiyan
81.M.Rajendran

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82.R.Gananshanmugam
83.M.Angusamy
84.S.Murugan
85.R.Ambigai Sundaram
86.V.Gowri
87.B.Balu
88.M.Sumathi
89.V.Mariammal
90.V.Sethuraman
91.M.Abdul Hameed
92.M.Natrajan
93.P.Kuppusamy
94.K.Palani
95.S.Sudarsan
96.E.Gangaiyan
97.V.Thiruvettai
98.P.Ramasamy
99.P.R.Suriya Kumar
100.R.R.Govindraj
101.S.Thangapandi
102.P.Valli
103.S.Nargisjan
104.G.Saroja
105.S.Arumugam
106.V.Murugandi
107.V.Ganesan
108.V.V.Kannan
109.P.Raman
110.S.Velusamy
111.P.Chinnamuthu ... Petitioners

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For Petitioners : Mr.T.Aswin Rajasimman
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COMMON ORDER

Since the issue involved in these writ petitions is one and the same, they have been taken up together and disposed of by this common order.

2. The petitioners in W.P.(MD).Nos.859 of 2022, 17828 of 2021 and 21093 of 2021 and the second respondent in W.P.(MD).No.5134 of 2020 are referred to as 'employees of the Corporation' and the Tamil Nadu Electricity Board is referred to as 'respondent Corporation'.

3. The petitioners are the retired employees of the respondent Corporation and they were retired from service on various dates. Since the Office of the Deputy Commissioner of Labours, who are the controlling authorities under Payment of Gratuity Act 1972 (hereinafter referred to as the Act) comes within the territorial jurisdiction of this Court, the employees of the Corporation have filed these writ petitions before this Court. The Tamil Nadu Generation and Distribution Corporation Limited has not paid

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the gratuity amount to their employees, as per the Act. Hence, some of the employees had approached the Deputy Commissioner of Labour and obtained orders for grant of gratuity under the Act. Aggrieved by the same, the respondent Corporation has preferred a writ petition in W.P.(MD).No. 7859 of 2021 before this Court, seeking to consider the representation of the Corporation and not to entertain any application under the Act against the respondent Corporation, contrary to the exemption granted under Section 5 of the Act, vide G.O.(Ms.).No.699, Labour and Employment Department, dated 16.03.1983. Despite the Gratuity authority entertained the applications filed by the retired employees, aggrieved by the order of the Controlling authority, the respondent Corporation filed the writ petition in W.P.(MD).No.5134 of 2020 and the employees of the respondent Corporation filed the other writ petitions before this Court challenging the impugned order dated 13.07.2021, wherein, the Commissioner of Labour issued a direction to the Gratuity authority not to entertain application against TANGEDO claiming gratuity filed by persons under the Pension Scheme.

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4. The learned counsel appearing for the employees of the Corporation would submit that the petitioners are the retired employees of the respondent Corporation and they are receiving pension under the Pension Rules of the respondent Corporation. Apart from that, they are entitled for gratuity under the Act and depriving their rights, the Commissioner of Labour issued a direction to the Gratuity authority not to entertain any application against TANGEDCO for claiming gratuity filed by persons under the Pension Scheme, which is not sustainable one and the same is contrary to the order passed by this Court in W.P.(MD).No.33704 of 2002 and as against the decision of the Apex Court in the case of ***Allahabad Bank Vs. All India Allahabad Bank Retired Employees Association*** reported in ***2010 (2) SCC 44***. Accordingly, he prayed for appropriate orders.

5. The learned counsel appearing for the respondent Corporation would submit that as per Section 5 of the Act, the State Government may, by notification and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oil field, plantation, port, railway company or shop to which this Act applies from the operation

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of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment factory, mine, oil field, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. The very same State Government, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oil field, 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, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

6. As per the power available under Section 5 of the Act, the State Government has issued G.O.(Ms.).No.699, Labour and Employment Department, dated 16.03.1983, exempting from the application of Payment of Gratuity Act to the respondent Corporation and the same was confirmed by the Division Bench of this Court in W.A.No.75 of 2018. The Division

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Bench of this Court, vide order dated 27.09.2018, set aside the order passed by the learned single Judge and confirmed the exemption granted to the respondent Corporation and the decision of the Apex Court relied on by the learned counsel for the petitioners is not applicable to the case on hand. Hence, he prayed for appropriate orders.

7. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

8. The issue arises in the present writ petitions is whether the person, who receiving the pension, is entitled for gratuity or not. For better appreciation, Section 5 of the said Act reads as follows:

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,*

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railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(2) The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in 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, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(3) A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially affect the interests of any person. "

9. A perusal of Section 5 of the Act reveals that the State Government have power to exempt any establishment or any employee for getting gratuity amount, if they received gratuity or pensionary benefits not less than the benefits conferred under this Act. Admittedly, the petitioners are the retired employees of the respondent Corporation and they are also

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pensioners and already they were paid the death cum retirement gratuity under the Pension Scheme. Apart from that, they have made applications before the Gratuity authority claiming gratuity amount under the Payment of Gratuity Act, 1972. The learned single Judge has allowed the writ petition in W.P.(MD).No.33704 of 2002 filed by the employee of the respondent Corporation claiming gratuity amount under the Act 1972. However, the same was challenged before the Division Bench of this Court and the Division Bench of this Court has set aside the order and held in favour of the respondent Board. Equally, it is also undisputed that the State Government granted exemption to the respondent Corporation from application of the Act vide G.O.(Ms.).No.699, Labour and Employment Department dated 16.03.1983. Further, this Court has perused the order of learned single Judge and the learned single Judge order was modified by the Division Bench of this Court. Hence, as a judicial discipline, this measure was followed by the Division Bench of this Court and not carrying the Apex Court decision. In the Apex Court decision, the establishment, who was arrayed as a party before the Apex Court, was not exempted from payment of gratuity. However, in the present cases, exemption was granted to the

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respondent Corporation from payment of gratuity in respect of the person, who receiving pension from the respondent Corporation.

10. In view of the above, the writ petition in W.P.(MD).No.5134 of 2020 filed by the respondent Corporation is allowed and the other writ petitions in W.P.(MD).Nos.859 of 2022, 17828 of 2021 and 21093 of 2021 filed by the employees of the Corporation are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

30.01.2023

akv

To

1.The Secretary to the Government,
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The Controlling Authority
under the Payment of Gratuity Act,
Combined Labour Department Office Buildings,
Opposite to All India Radio,
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11.The Assistant Commissioner of Labour
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