



W.P(MD)No.17638 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17638 of 2020

and

W.M.P.(MD)No.14736 of 2020

The Regional Manager,
Tamilnadu Civil Supplies Corporation,
Regional Office,
Kurivikkaran Salai,
Gandhi Nagar,
Madurai.

... Petitioner

Vs.

1.The Additional Commissioner of Labour,
(Appellate Authority under
the Payment of Gratuity Act),
Office of the Additional Commissioner of Labour,
Madurai.

2.The Assistant Commissioner of Labour,
(Controlling Authority under
the Payment of Gratuity Act)
Office of the Joint Commissioner of Labour,
Madurai-2.

3.R.Puspa

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining the impugned orders passed by the first respondent in P.G.A.No.74 of 2019,



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dated 10.07.2020 confirming the order passed by the second respondent in P.G.No.188 of 2017, dated 27.05.2019 and quash the same.

For Petitioner : Mr.G.Mohankumar

For Respondents : Mr.K.Balasubramani
Special Government Pleader for R1 & R2
: Mr.S.Satheeskumar for R3

ORDER

Heard the learned standing counsel appearing for the writ petitioner corporation and the learned counsel appearing for the claimant.

2. The third respondent's husband Thiru.Rajasekaran joined the petitioner corporation as Apprentice Trainee on 03.08.1984. He was absorbed as regular employee on 18.10.1990. He passed away while in service on 09.06.2013. The gratuity dues payable to the legal heirs was settled by the management only in the year 2015. The claimant sought payment of interest for the belated payment. She made a further claim that the period during which her husband worked as Apprentice Trainee should also be included for the purpose of calculating the gratuity amount. The claim was allowed by the controlling authority. Questioning the same, the management filed an appeal before the appellate authority. The appellate authority confirmed the decision of the controlling authority. Challenging the same, the present writ petition came to be filed.



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3. No doubt, Section 2(e) of the Payment of Gratuity Act, 1972, excludes “apprentice” from the definition of “employee”. The learned standing counsel is right in his contention that the controlling authority may not have jurisdiction to even entertain any claim with regard to the period undergone by a person as apprentice. However, Section 4(5) of the Gratuity Act enables an employee to receive better terms of gratuity under any award or agreement or contract with the employer. The employer had issued circular bearing R.C.No.AGR3/67287/2013, dated 29.04.2019 including apprentices also within the scope of the term “employee”. Therefore, the impugned orders passed by the authorities will have to be sustained. I however find merit in the contention of the learned standing counsel that since this development took place only subsequently, interest awarded by the authorities in respect of the apprenticeship period of the claimant's husband may be set aside. The Management has deposited the amount awarded by the controlling authority. It had also deposited the accrued interest. The claimant can withdraw the same except the interest portion for the gratuity amount covering the apprenticeship period of her husband.

4. The Writ Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

30.03.2023

Index : Yes / No



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Internet : Yes/ No
rmi

G.R.SWAMINATHAN, J.

rmi

To

- 1.The Additional Commissioner of Labour,
(Appellate Authority under
the Payment of Gratuity Act),
Office of the Additional Commissioner of Labour,
Madurai.
- 2.The Assistant Commissioner of Labour,
(Controlling Authority under
the Payment of Gratuity Act)
Office of the Joint Commissioner of Labour,
Madurai-2.

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