



W.P(MD)No.17888 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17888 of 2020

and

W.M.P.(MD)No.14920 of 2020

The Nagercoil Municipal Corporation
Represented by its Commissioner,
Nagercoil,
Kanyakumari District.

... Petitioner

Vs.

1.The Assistant Commissioner of Labour,
Office of the Joint Commissioner of Labour,
Tirunelveli 627007.

2.A.Subbu Lakshmi

... 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 to the impugned order made in Case No.PG(IA).10/2019, dated 07.08.2019 passed by the first respondent and quash the same.

For Petitioner : Mr.P.Athimoolapandian

For Respondents : Mr.G.Suriyananth
Additional Government Pleader for R1
: Mr.G.Ramanathan for R2



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ORDER

Heard the learned standing counsel appearing for the petitioner/local body and the learned Additional Government Pleader appearing for the first respondent and the learned counsel appearing for the second respondent.

2. The local body challenges the order passed by the controlling authority under the Payment of Gratuity Act primarily on the ground of lack of jurisdiction. The basic facts are not in dispute. The claimant filed W.P.No.2897 of 2004 before the High Court seeking regularization of her service as permanent typist in Nagercoil Municipality with effect from 17.05.2001 when recommendation was made in her favour by the Regional Director of municipal Administration. The petition was allowed on 02.11.2012. Aggrieved by the said order, the local body filed W.A.No.556 of 2016. The Hon'ble Division Bench vide order dated 24.08.2017 set aside the order passed by the learned Single Judge and allowed the writ appeal. The Hon'ble Division Bench held that the authorities cannot be directed to regularise the services of the writ petitioner with effect from an earlier date rather than the actual date of regularization. The stand of the local body is that the petitioner's services were regularised with effect from 13.07.2009 and that she retired on 31.05.2012 and for this period, she was paid the statutory benefits. The specific contention of



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the learned counsel appearing for the petitioner is that a member of the municipal service cannot maintain a petition under the Payment of Gratuity Act.

3. The learned counsel reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and allow the writ petition as prayed for.

4. I am not persuaded by the submission of the learned standing counsel. This is for more reasons than one. The learned counsel appearing for the claimant draws my attention to the decision of the Hon'ble Apex Court in ***AIR 1999 SC 293 (Municipal Corporation of Delhi Vs. Dharam Prakash Sharma)***. The Hon'ble Supreme Court held as follows:-

“2. The short question that arises for consideration is whether an employee of the MCD would be entitled to payment of gratuity under the Payment of Gratuity Act when the MCD itself had adopted the provisions of the CCS (Pension) Rules, 1972 (hereinafter referred to as the “Pension Rules”), whereunder there is a provision both for payment of pension as well as of gratuity. The contention of the learned counsel appearing for the appellant in this Court is that the payment of pension and gratuity under the Pension Rules is a package by itself and once that package is made applicable to the employees of the MCD, the provisions of payment of gratuity under the Payment of Gratuity Act cannot be held applicable. We have examined carefully the provisions of the Pension Rules as well as the provisions of the Payment of Gratuity Act. The Payment of Gratuity Act being a special provision for payment of gratuity unless there is any provision therein which



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excludes its applicability to an employee who is otherwise governed by the provisions of the Pension Rules it is not possible for us to hold that the respondent is not entitled to the gratuity under the Payment of Gratuity Act. The only provision which was pointed out is the definition of 'employee' in S. 2(e) which excludes the employee of the Central Government and State Government receiving pension and gratuity under the Pension Rules but not an employee of the MCD. The MCD employee, therefore, would be entitled to the payment of gratuity under the Payment of Gratuity Act. The mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in S.14 of the Payment of Gratuity Act, the provision for gratuity under Pension Rules will have no effect possibly for this reason. S.5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act if in its opinion the employee of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Admittedly, MCD had not taken any steps to invoke the power of the Central Government under S.5 of the Payment of the Gratuity Act. In the aforesaid premises, we are of the considered opinion that the employees of the MCD would be entitled to the payment of gratuity under the Payment of Gratuity Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension. Needless to mention that the employees cannot claim gratuity available under Pension Rules.”

5. Thus, even if there is any exempting provision, the same will not prevail against the provisions of the Payment of Gratuity Act in view of the aforesaid decision of the Hon'ble Apex Court. There is yet another reason for dismissing the writ petition. Even according to the local body, the petitioner's services were regularised on 13.07.2009 by applying the beneficial G.O issued



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by the Government from time to time. That clearly indicates that the petitioner was in the employment of the municipality even prior to 1996. In fact, the controlling authority ought not to have placed the evidentiary burden on the claimant. In such matters, it is the management that has possession of the requisite records and adverse inference can be drawn against the management for not taking a clear stand as regards the date when the petitioner was appointed on actual / daily wage basis. Since the workman has not filed any writ petition challenging the impugned order, I hold that the calculation done by the controlling authority does not call for interference. The management of the local body is also directed to comply with the direction issued by the Hon'ble Division Bench in W.A.No.556 of 2016.

6. The Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes/ No

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To

The Assistant Commissioner of Labour,
Office of the Joint Commissioner of Labour,
Tirunelveli 627007.



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G.R.SWAMINATHAN, J.

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