



W.P.(MD)No.6187 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.6187 of 2018

and

W.M.P(MD)No.6027 of 2018

The Managing Director,
The Thanjavur Consumers Co-operative Wholesale Stores T-878,
Thanjavur,
Thanjavur District.

... Petitioner

Vs.

1.K.Jayalakshmi

2.The Joint Commissioner of Labour,
Tiruchirappalli,
Tiruchirappalli District.

3.The Assistant Commissioner of Labour,
Tiruchirappalli,
Tiruchirappalli District.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to quash the order passed by the second respondent in P.G.A.No.103 of 2016 dated 15.09.2017 filed against the order passed in P.G.No.536 of 2016 on the file of the third respondent and quash the same consequentially direct the third respondent to refund the amount deposited by the petitioner establishment.

For Petitioner : Mr.V.Chandrasekar

For Respondents : Mr.S.P.Maharajan - for R2 & R3
Special Government Pleader
No Appearance - for R1

ORDER

This writ petition has been filed to quash the order passed by the second respondent in P.G.A.No.103 of 2016 dated 15.09.2017 filed against the order passed in P.G.No.536 of 2016 on the file of the third respondent and consequentially direct the third respondent to refund the amount deposited by the petitioner establishment.



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2. The case of the petitioner is that the first respondent worked in the petitioner's establishment and her service was regularized on 14.10.2008 and the said appointment was an irregular appointment. Even in the appointment order it was made clear that the order of appointment will not confer any right for regularization in the post and consequent benefits such as seniority promotion etc. Further, an irregular employee getting time scale of pay shall not be legally entitled to claim any service benefits. Whiles, the first respondent retired from service on 31.03.2013 on attaining the age of superannuation. After a lapse of three years, the first respondent has filed an application claiming gratuity under the Payment of Gratuity Act, 1961, on 12.05.2016 along with an application to condone the delay of 1120 days. However, without numbering the condone delay application, straight-away the main application was numbered and allowed in favour of the first respondent, by the Controlling Authority. As against the order passed by the Controlling Authority, the petitioner preferred appeal before the Appellate Authority and the Appellate Authority also confirmed the order passed by the Controlling Authority. Challenging the



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concurrent findings rendered by the Fact Finding Authority, the present writ petition is filed.

3. The learned counsel for the petitioner submitted that since the first respondent was continuously employed for not less than 5 years, she is not eligible for gratuity amount. Further, the first respondent is not employed as a regular employee of the petitioner-management and the first respondent is only a temporary employee and temporary employee is not entitled for any gratuity amount under Section 4 of the Payment of Gratuity Act, 1961. Hence, the order passed by the Original Authority which was confirmed by the Appellate Authority is liable to be set aside. Accordingly, he prayed for allowing the writ petition.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

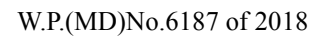
5. The facts in the present case are not in dispute. Admittedly, the first respondent's service was regularized on 14.10.2008 by the petitioner



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and brought under time scale of pay based on the G.O.Ms.No.75, dated 29.04.2008 and fixed Rs.1800/- with effect from 01.08.2008 in the time scale of pay Rs.1800-40-2000-45-2225-50-2525 with certain conditions and subsequently, the first respondent retired from service in the year 2013 and she made an application before the Gratuity Authority, as if the first respondent entered into service on 01.05.1972 and subsequently, brought under the time scale of pay and thereafter, retired from service on 31.03.2013, for the above said period, she claimed the gratuity amount and the issue was elaborately considered by the Original Authority and passed a detailed order after providing opportunity to the petitioner Co-operative Store and arrived at a conclusion that the first respondent is entitled for Rs.65,847/- as gratuity amount and the said order was confirmed by the Appellate Authority. Once the Fact Finding Authority as well as the Appellate Authority has arrived a conclusion in favour of the first respondent, which cannot be interfered with unless there is an error apparent on the face of records. Hence, the prayer sought for by the petitioner in the writ petition cannot be granted.



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Index : Yes / No
Internet : Yes / No
NCC : Yes / No

RM



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M.DHANDAPANI, J.

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