



W.A.(MD)No.1626 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 07.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.1626 of 2018

P.Govindarajan

... Appellant/Writ Petitioner

Vs.

1.The Secretary to Government of Tamilnadu,
Transport Department,
Secretariat, Chennai – 9.

2.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Bye Pass Road,
Madurai – 16

... Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 22.11.2018 made in W.P.(MD)No.59 of 2015 on the file of this Court.

For Appellant : Mr.S.Govindan

For 1st Respondent : Mr.N.Ramesh Arumugam
Government Advocate

For 2nd Respondent : Mr.J.Senthil Kumaraiah
Standing Counsel



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JUDGMENT

WEB COPY (Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This Writ Appeal has been directed against the order of the Writ Court dated 22.11.2018 made in W.P.(MD) No.59 of 2015.

2. The appellant herein was the Deputy Manager of the second respondent Transport Corporation and on his superannuation, he retired from the service on 30.11.2009.

3. Till his superannuation, the maximum ceiling limit of gratuity under the Payment of Gratuity Act, 1972, as well as the Payment of Gratuity Fund Rules, 1972, which govern the employees and the officers of the respondent Transport Corporation was Rs.3.50 lakhs.

4. However, subsequently, it has been enhanced to Rs.10.00 lakhs. In this context, it was the stand of the appellant / writ petitioner that, the Government issued in G.O.Ms.No.235 Finance (Pay Cell) Department. Dated 01.06.2009, what was the benefit that has been provided and accrued



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on employees of Government on the said Government Order, since has been adopted to be implemented for the employees and officers of the Transport Corporations, including the second respondent Corporation, shall be mutatis mutandis be made applicable to the employees and officers of the Transport Corporations also.

5. In that premises, it was the case of the appellant / writ petitioner before the Writ Court that, by implementing the provisions of G.O.Ms.No. 235 Finance (Pay Cell) Department, dated 01.06.2009, the gratuity ceiling limit enhanced to Government employees to the extent of Rs.10.00 lakh shall be extended to the employees of the Transport Corporations, including the petitioner / appellant, unmindful of the fact that he had retired on superannuation on 30.11.2009. With this plea, he approached the Writ Court by filing the said Writ Petition.

6. The learned Judge of the Writ Court, who had considered the said plea raised by the petitioner / appellant has rejected the same on the ground that, insofar as the gratuity payable to the employees and officers of the Transport Corporations are concerned, it is governed by the provisions of



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the Payment of Gratuity Act, 1972 (In short the ' Gratuity Act') and the ceiling of the gratuity hitherto was Rs.3.50 lakhs, which was considered to be enhanced by the Central Government and an amendment has been issued and a notification in this regard since has been issued on 18.05.2010 with effect from 25.05.2010, the enhanced ceiling of the gratuity for all employees and officers of the Transport Corporation has been implemented with effect from 24.05.2010 only.

7. However, since the appellant / writ petitioner retired from service on 30.11.2009, as on that date, since he was entitled to get the gratuity, which was prior to the enhancement i.e., Rs.3.50 lakhs, that was alone to be paid to him and that has been paid and he is not entitled for any enhanced ceiling of the gratuity of Rs.10.00 lakhs and therefore, on that ground the learned Judge rejected the plea raised by the petitioner by the impugned order.

8. Assailing the same, Mr.S.Govindan, learned counsel appearing for the petitioner would submit that, when the Government issued G.O., giving various financial benefits like pay scale, pensionary benefits as well as



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gratuity benefits to various category of the employees of the State Government and the import of the said G.O. having been accepted or adopted by the Transport Corporations like the second respondent, who is none other than the employer of the appellant, the benefit accrued to every employee of State Government with effect from the G.O. was issued, should have been extended to the Transport Corporation employees also, including the petitioner / appellant.

9. However, Mr.J.Senthil Kumaraiah, learned Standing Counsel appearing for the second respondent Corporation has relied on para 9 of the counter affidavit, which reads thus:-

“9. I humbly submit that the Government of India has published in the Gazette No.20, dated 18.05.2010, and revision of ceiling of gratuity from Rs.3.50 lakhs to Rs.10.00 lakhs duly amended the Gratuity Act w.e.f. 24.05.2010 and the same was also approved in the Board of Directors of Transport Corporation in its 214th Meeting held on 29.06.2010 and the revision of ceiling was effected w.e.f. 24.05.2010 and hence, this enhancement of Gratuity ceiling effect is not applicable to the petitioner / Appellant, in view of Petitioner / Appellant retirement was fallen before that period (i.e. on 30.11.2009).”



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10. By relying upon the same, he would submit that, the Government of India since has published in the Gazette No.20 dated 18.05.2010, based on which, the revision of ceiling of gratuity from Rs3.50 lakhs to Rs.10.00 lakhs was duly amended in the Gratuity Act itself with effect from 24.05.2010, from that date only the enhanced ceiling can be put to implementation.

11. Whereas, admittedly, since the petitioner / appellant retired from service on superannuation on 30.11.2009, on that date, since the enhanced ceiling has not come into effect, he would not be entitled to get such enhanced amount, therefore, the amount already been fixed i.e., Rs.3.50 lakhs was paid to him. Hence, the reasons stated by the learned Judge in rejecting the plea made by the petitioner / appellant is justifiable, hence, he wants to sustain the order impugned.

12. We have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.



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13. As has been rightly pointed by the learned Standing Counsel appearing for the respondent Corporation, the service conditions, especially, insofar as the gratuity of the employees of the Transport Corporations like the petitioner / appellant is concerned, it is governed only by the provisions of the Gratuity Act, based on which, the Payment of Gratuity Funds Rules also had been framed by every such Corporation, including the second respondent Corporation.

14. It is an admitted case on the part of the petitioner / appellant that, hitherto, the employees and officers of the second respondent Corporation had been governed by the provisions of Gratuity Act.

15. However, it is the contention of the learned counsel for the appellant / petitioner that, under Section 4(5) of the Gratuity Act, nothing in this Section shall affect the right of the employees to receive better terms of gratuity under any award or agreement or contract with the employer.

16. Quoting this provision, he canvassed the point that, the ceiling fixed under the Gratuity Act, if it is lessor one and better ceiling is available



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under any mode, that can be availed by the employee concerned, for which, the provision could not stand in the way and that is the import of Section 4(5) of the Gratuity Act, he contended.

17. He would further submit that, insofar as the employees of the Transport Corporation, including the appellant / petitioner is concerned, the G.O.Ms.No.235, since has been adopted by the Transport Corporations, including the second respondent, the import of that G.O and the benefit accrued thereon shall be extended to all the employees of the Transport Corporations also and that would be in consonance with Section 4(5) of the Gratuity Act, therefore, the petitioner / appellant would be entitled to get the higher gratuity ceiling i.e., Rs.10.00 lakhs.

18. We are not impressed with the said argument made by the learned counsel appearing for the appellant / petitioner.

19. The language used in Section 4(5) of the Gratuity Act is that, nothing in this Section shall affect the right of the employee to receive better term of gratuity under any award or agreement or contract with the



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employer. (emphasis supplied).

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20. If at all any award has been passed or there has been any agreement between the employees and the employer or there has been any contract or settlement like Section 20 of Industrial Disputes Act settlement, if that governs any higher ceiling of the gratuity between the employees and employer as an agreed term, certainly Section 4(5) of the Gratuity Act will come to the rescue of such kind of employees or officers of the Transport Corporation.

21. However, here in the case in hand, there is no such award or agreement or contract. In the absence of the same, the provisions of the Gratuity Act alone would apply to the employees of the Transport Corporation and according to the amendment made by the Government of India in the Gratuity Act, by making the ceiling into Rs.10.00 lakhs with effect from 24.05.2010, those who retires on or after 24.05.2010 alone would be entitled to get the enhanced ceiling of gratuity of Rs.10.00 lakhs and not others who have already superannuated and retired from service prior to 24.05.2010.



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22. Here in the case in hand, the appellant / petitioner admittedly retired on superannuation on 30.11.2009, which is well before the cut of date i.e., 24.05.2010, therefore, he is not entitled to get the higher ceiling of gratuity and this has been rightly pointed out by the learned Judge, who passed the order impugned in the Writ Court, hence, we feel that the said order does not warrant any interference from this Court, accordingly, this appeal fails, hence, it is dismissed. However, there shall be no order as to costs.

(R.S.K., J.) & (K.K.R.K, J.)
07.06.2023

NCC : Yes
Index : Yes
Internet : Yes
SJ

To

1.The Secretary to Government of Tamilnadu,
Transport Department,
Secretariat, Chennai – 9.



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