



W.P.(MD)No.9622 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:23.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.9622 of 2018
W.M.P(MD).No.8886 of 2018

The Management,
Virudhunagar Municipality through
its Commissioner,
Virudhunagar (Post)
and District.

... Petitioner

Vs.

- 1.The Appellate Authority under the
Payment of Gratuity Act
(Joint Commissioner of Labour)
Tamil Nadu Housing Board Office Building,
Ellis Nagar, Madurai-16.
- 2.The Competent Authority under the
Payment of Gratuity Act,
(Assistant Commissioner of Labour),
Office of the Deputy Commissioner of Labour,
Race Course Road,
Madurai.

3.S.Thaveedhu

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records from the respondents impugned order made in P.G.No.273 of 2016 dated 10.01.2017 and the consequently order made in P.G.Appeal No.24 of 2017 dated 20.10.2017 passed by the second and first respondents and quash the same.

For Petitioner : Mr.C.G.Pethanaraj
For Respondents : Mr.M.G.M.Dhinakaran Babu
for R3
No-appearance for R1 and R2

ORDER

This Writ Petition has been filed to call for the records relating to the impugned order in P.G.No.273 of 2016 dated 10.01.2017 and the consequential order in P.G.Appeal No.24 of 2017 dated 20.10.2017 passed by the second and first respondents and quash the same.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the Municipality and the third respondent was engaged as daily wage NMR employee. As per G.O(Ms).No.21,



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Municipality and Water Board Department, dated 23.02.2006, he was appointed as Gang Mazdoor on 23.03.2006. He attained the age of superannuation on 31.03.2013, after completion of seven years and he is entitled to gratuity only for seven years. However, the third respondent filed the gratuity application before the second respondent in P.G.No.237 of 2016 claiming the gratuity from the date of his initial appointment. The petitioner has denied the length of service in the counter. Without considering the same, the second respondent has ordered for payment of gratuity of Rs.1,33,846/- on 10.01.2017. Aggrieved by the same, the petitioner has preferred an appeal before the first respondent in P.G.Appeal.No.24 of 2017. The first respondent, without considering the evidence and the documents filed by the petitioner, has dismissed the appeal and confirmed the order passed by the second respondent on 20.10.2017. Challenging the orders passed by the second and the first respondents, the present Writ Petition has been filed.



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3. The learned counsel appearing for the petitioner would submit that the third respondent was engaged as NMR employee in the year 1997 and his service was regularised in the year 2006. Admittedly, he is entitled to gratuity only from the date of regularization and not from the date of appointment. However, the Original Authority as well as the Appellate Authority has ordered the gratuity in favour of the third respondent from the date of his initial appointment, which is not sustainable one.

4. The learned counsel appearing for the third respondent would submit that the third respondent was appointed in the petitioner Municipality in the year 1997. Considering the past service rendered by him, he was brought into regular time scale of pay on 23.03.2006 as per G.O.Ms.No.21, Municipality and Water Board Department, dated 23.02.2006 and the third respondent is entitled for gratuity from the date of his initial appointment as per the Payment of Gratuity Act. Hence, the impugned orders passed by the first and second respondent cannot be interfered with by this Court.



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5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

6. The facts in the present case are not in dispute. Admittedly, the third respondent was engaged as Gang Masthoor on 19.03.1997 and his service was regularised on 23.03.2006. He retired from service on 31.03.2013. However, the petitioner has not paid the gratuity amount to the third respondent. Hence, he has filed the gratuity application before the second respondent and the second respondent, after considering the documents and the materials available on record, has ordered the payment of gratuity of Rs.1,33,846/- (Rupees One Lakh Thirty Three Thousand Eight Hundred and Forty Six only) with interest of 10% per annum payable by the petitioner to the third respondent. Aggrieved by the same, the petitioner has preferred an appeal before the first respondent and the first respondent, after considering all factual aspects, has dismissed the appeal filed by the petitioner and confirmed the order passed by the second respondent. When the Original Authority and the



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Appellate Authority have rendered the concurrent finding with regard to the third respondent's entitlement for gratuity, unless the petitioner has proved that the third respondent is not entitled to get the gratuity for a period of 16 years, this Court cannot interfere with the well-considered decisions of the Original Authority as well as the Appellate Authority.

7. Accordingly, this Writ Petition is dismissed. No costs.
Connected miscellaneous petition is closed.

23.02.2023

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



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M.DHANDAPANI,J.

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