



W.P.(MD) No.22854 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 23.08.2023

ORDERS PRONOUNCED ON : 21.09.2023

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THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.22854 of 2016

C.Thangamani

... Petitioner

Vs.

1.The Principal Secretary to Government,
Transport Department,
Secretariat, Chennai-600 009.

2.The Managing director,
The Tamil Nadu State Transport
Corporation (Madurai) Limited,
Bye Pass Road, Madurai-625 016.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings issued by the 1st respondent in his letter No. 5965/C1/2014-1 dated 25.06.2014 and quash the same and consequently to direct the respondents to revise the petitioner's Gratuity based on the increased maximum ceiling of Gratuity of Rs.10/- lakh as provided in the



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GO.Ms.No.235 Finance (Pay Cell) Department dated 01.06.2009 and to pay the difference amount of Gratuity accordingly.

For Petitioner	:	Mr.G.Venkataraman
For R1	:	Mr.A.Sivanupandian Government Advocate
For R2	:	Mr.J.Senthil Kumariah Standing Counsel

ORDER

This writ petition is filed to quash the proceedings issued by the 1st respondent in his letter No.5965/C1/2014-1, dated 25.06.2014 and to direct the respondents to revise the petitioner's gratuity based on the increased maximum ceiling of gratuity of Rs.10/- Lakhs as provided in G.O.Ms.No.235 Finance (Pay Cell) Department, dated 01.06.2009 and to pay the difference amount of gratuity accordingly.

2. The case of the petitioner is that he entered into the service of the 2nd respondent-Corporation as Junior Assistant on 25.11.1974. Finally, he was promoted as Assistant Manager and was retired from service after



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attaining the age of superannuation on 31.05.2006. After retirement, the petitioner was paid gratuity amount to the tune of Rs.3.50/- Lakhs only taking into account the maximum ceiling of gratuity at Rs.3.50/- Lakhs. He submits that the Government of Tamil Nadu has enhanced maximum ceiling of gratuity payable to an employee from Rs.3.50/- Lakhs to Rs.10/- Lakhs with effect from 01.06.2009, to which he is eligible. Therefore, the petitioner was making representation in person to the 2nd respondent from 2009 onwards to revise his gratuity based on the increased ceiling of Rs.10/- Lakhs and to pay the difference amount of gratuity. But the 2nd respondent did not take any action. Therefore, the petitioner sent a petition dated 17.07.2012 to the 2nd respondent in writing to revise the gratuity and pay the difference amount of gratuity accordingly. But, the 2nd respondent has rejected the request stating that the petitioner is not entitled to the increased maximum ceiling of Rs.10/- Lakhs.

3. Aggrieved by the same, the petitioner sent an appeal petition dated 05.04.2013 to the 1st respondent requesting him to extend the benefit of enhancement of maximum quantum of gratuity from Rs.3.50/- Lakhs to



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Rs.10/- Lakhs as provided in G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009 on par with Government Employees and Statutory Board Employees. Since the 1st respondent did not take any action on the appeal petition, the petitioner filed a writ petition before this Court in W.P.(MD) No.4183 of 2014 seeking a direction to dispose of his appeal petition dated 05.04.2013. On 10.03.2014, this Court passed orders directing the 1st respondent to consider the petitioner's appeal petition dated 05.04.2013 and to dispose of the same on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of the order. The petitioner submits that he sent a petition dated 13.05.2014 enclosing a copy of the order dated 10.03.2014 to the 1st respondent requesting him to dispose of his appeal petition dated 05.04.2013 and to direct the 2nd respondent to pay the difference amount of gratuity. However, the 1st respondent rejected the petitioner's request *vide* the impugned Letter No. 5965/C1/2014-1, dated 25.06.2014 stating that since the petitioner is governed under the Payment of Gratuity Act, 1972, he is not entitled to the revised gratuity. Hence, the present writ petition.



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4. Counter affidavit has been filed by the 2nd respondent.

5. It is averred in the counter affidavit that the petitioner was working as Assistant Manager and retired from service on 31.05.2006. He filed a writ petition in W.P.(MD) No.4183 of 2014 seeking direction to the 1st respondent to dispose of his appeal petition dated 05.04.2013. This Court passed orders on 10.03.2014 directing the 1st respondent to consider the petitioner's appeal petition and dispose of the same on merits and in accordance with law within a period of 12 weeks. In pursuant to the direction, the 1st respondent disposed of the appeal petition *vide* Letter No. 5965/C1/2014-1, dated 25.06.2014, which is under challenge.

6. It is further averred that the Transport Corporation Employees, including officers, are governed under the Payment of Gratuity Act, 1972 and drawing the amount of gratuity under “Employees Gratuity Fund Trust Rules” of respective Transport Corporations. The revision of ceiling of gratuity was also amended in the Rules of the 2nd respondent-Corporation. But the Government servants are governed under Tamil Nadu Pension Rules,



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1978 and drawing gratuity under Death-cum-Retirement Gratuity Scheme.

The revised ceiling of gratuity amount was also approved in the Board of Directors of the 2nd respondent-Corporation in its 214th Meeting held on 29.06.2010 and the same was effected only with effect from 24.05.2010. It is further averred that the petitioner is not entitled to the claim of difference of gratuity of payment.

7. Heard learned counsel for the petitioner, learned Government Advocate for the 1st respondent and learned Standing Counsel for the 2nd respondent and perused the record.

8. The only issue to be considered in this writ petition is whether the petitioner is entitled for revision of his gratuity basing on the increased maximum ceiling of gratuity of Rs.10,00,000/- or not?

9. The petitioner was working as Assistant Manager and retired from service on 31.05.2006 on superannuation. As on the date of superannuation, the maximum ceiling limit of gratuity under the Payment of



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Gratuity Act, 1972 and Rules made thereunder, was Rs.3,50,000/-.

Subsequently, it was enhanced to Rs.10,00,000/-.

10. It is the case of the petitioner that as per the provisions of G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009, the gratuity ceiling limit enhanced to the Government employees to the extent of Rs.10,00,000/- shall be extended to the employees of the Transport Corporations including the petitioner.

11. The issue involved in this writ petition is identical to the issue decided by order dated 07.06.2023 in W.A.(MD) No.1626 of 2018 before the Madurai Bench of Madras High Court. The relevant paragraphs of the said order are extracted hereinunder:

“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 employer.



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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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12. In the present case, the petitioner admittedly retired on 31.05.2006, which is well before the cut off date, i.e., 24.05.2010. Hence, he is not entitled to get the higher ceiling of gratuity.

13. For the aforesaid reasons and in the light of the judgment of the Division Bench of this Court, it is to be held that the petitioner is not entitled for the relief as sought.

14. Accordingly, this Writ Petition is dismissed.

15. There shall be no order as to costs.

21.09.2023

Note: Issue order copy by 26.09.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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BATTU DEVANAND, J.

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To

- 1.The Principal Secretary to Government,
Transport Department,
Secretariat, Chennai-600 009.
- 2.The Managing director,
The Tamil Nadu State Transport
Corporation (Madurai) Limited,
Bye Pass Road, Madurai-625 016.

Pre-delivery Order made in
W.P.(MD) No.22854 of 2016

21.09.2023