



W.P.No.2382 of 2004

.IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	3/10/2023
Pronounced on	13/2/2024

C O R A M

The Hon'ble Dr.Justice **D.NAGARJUN**

Writ Petition No.2382 of 2004

a n d

W.M.P.No.2689 of 2004

Valliyammal Matriculation Higher

Secondary School

rep. By its Chairman/President

Mr.A.P.Maikandan

F.40 I Main Road

Anna Nagar East

Chennai 102.

...

Petitioner

Vs

1. The Joint Commissioner of Labour
(Payment of Gratuity Authority)
Office of Commissioner of Labour
DMS Building, Teynampet
Chennai 6.

2. The Assistant Commissioner of Labour
(Payment of Gratuity Authority)
Office of Commissioner of Labour
DMS Building, Teynampet
Chennai 6.

3. P.K.Vijayarani

...

Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records concerning the order passed in P.G.A.Nos.37 and 39 of 2003 by the first respondent dated 17/11/2003 and consequently quash the said order as illegal and arbitrary.

For petitioner	...	Mr.S.Arun Kumar
For respondents	...	Ms.C.Sangamithirai Special Government Pleader for R.R.1 and 2
		Mr.S.Sathia Chandran for R.3.

O R D E R

This writ petition is filed by the Management, challenging the order passed in P.G.A.Nos.37 and 39 of 2003 by the first respondent, whereunder, the gratuity of Rs.20,582/- was ordered to be paid as against Rs.17,820/-.

2. The facts in a nutshell are as follows:-

The petitioner Society is running an Educational Institution without getting any aid from the Government. The third respondent was working under the petitioner Institution as a Physical Training Assistant under the teacher



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grade category from 6/6/1987 on a consolidated salary of Rs.835/- per month.

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3. The third respondent has worked from June 1987 to November 1987, June 1988 to September 1989, November 1989 to July 1992, October 1992 to October 1993 and July 1996 to August 1998, in all third respondent has worked for 7 years and 7 months. Third respondent had filed a petition in P.G.No.86 of 2001 before the second respondent wherein, she had claimed a sum of Rs.17,820/- towards gratuity amount calculated for a period of eleven years. The third respondent has not fulfilled the primary condition to invoke the provision of Section 2 (A) and 4 of the Payment of Gratuity Act. The second respondent has admitted that there was a break in service and awarded Rs.13,085/- as gratuity, in P.G.No.86 of 2001. Being aggrieved, the petitioner had preferred P.G.A.No.37 of 2003 before the first respondent and third respondent had preferred P.G.A.No.39 of 2003 before the first respondent for enhancement of gratuity amount. The first respondent had enhanced the gratuity amount from Rs.17,820/- as originally prayed for by the third respondent in the petition to Rs.20,562/- without any basis. Being not satisfied, the petitioner has come forward with the instant writ petition.

4. Heard Mr.S.Arunkumar, learned counsel for the petitioner, Ms.C.Sangamithirai, learned Special Government Pleader for the respondents 1



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and 2 and Mr.S.Sathiachandran, learned counsel for the third respondent.

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5. The learned counsel appearing for the petitioner submitted that the second respondent authority has taken into consideration the services as defined under Section 2 (A) (2) (1) of the Act and accordingly, excluded certain periods for counting the gratuity and granted Rs.17,820/-, however, in P.G.A.Nos.37 and 39 of 2003, erroneously, first respondent has taken 11 years of service as claimed by the petitioner and granted a sum of Rs.20,582/-.

6. Learned counsel for the petitioner has cited the following citations, viz.,

(i). LALAPPA LINGAPPA AND OTHERS Vs. LAXMI VISHNU TEXTILE MILLS LTD (1981) 2 SUPREME COURT CASES - 238, wherein at paragraph No.15, it has been held thus:-

15. In our judgment, the High Court rightly observed : "It is important to bear in mind that in Explanation I the legislature has used the words 'actually employed'. If it was contemplated by Explanation I that it



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was sufficient that there should be a subsisting contract of employment, then it was not necessary for the legislature to use the words 'actually employed'." It is not permissible to attribute redundancy to the legislature to defeat the purpose of enacting the Explanation. The expression 'actually employed' in Explanation I to s.2 (c) of the Act must, in the context in which it appears, mean 'actually worked'. It must accordingly be held that the High Court was right in holding that the permanent employees were not entitled to payment of gratuity under sub-s. (1) of s.4 of the Act for the years in which they remained absent without leave and had 'actually worked for less than 240 days in a year.

(ii). In DUNGERBHAI MEGHABAI Vs. SHRI ARBUDA MILLS LTD & ANR (1995 SCC ONLINE Guj 37), at paragraph 7, it has been held as follows:-

In somewhat similar circumstances in a recent decision reported in (1991-I-LLJ-35) the Supreme Court held that the period of non-employment of period after discharge cannot be counted for the purpose of giving continuity of service under the cessation of work for no fault of the



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workman.

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(iii). In STATE OF TAMIL NADU AND OTHERS Vs. NELLAI COTTON MILLS LTD AND OTHERS (1999) 2 SUPREME COURT CASES 518), wherein at paragraph 9, it has been held as follows:-

That apart, the view taken by the High Court, in striking down a portion of sub-section (2), in our opinion, cannot be found fault with. Sub-section (2) of section 3 consists of three parts. The first part refers to interruption of service including service which may be interruption on account of sickness or authorised leave or an accident or a strike which is not illegal or a lockout. The second part Consists of the portion which has been struck down by the High Court as unreasonable restriction on the right of the employer. The third part refers to cessation of work which is not due to any fault on the part of the workmen. The provisions under the first and the third parts seem to be similar to the terms of section 25B of the Industrial Disputes Act which also provides for continuous service of the workman. The second part dealing with non-employment and discharge of a workman is distinct from the first and the third parts. It refers to the period during



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which there is no subsisting relationship of master and servant. We agree with the High Court that the word 'non-employment' would include retrenchment as well and a person whose services have been terminated or discharged albeit illegal cannot at all be said to be a person in service. much less in continuous service. Therefore, the period of non-employment or the period after discharge cannot be counted for the purpose of giving continuity of service. If the discharge is set aside and workman is reinstated by process known to law the workman automatically gets continuity of service. No special provision is necessary for such purposes."

7. Heard both sides and perused the materials available on record.

8. The petitioner has raised the question as to whether the Teachers working in an educational institutions which are not getting the aid from the Government are covered under the Payment of Gratuity Act. However, so far as this aspect is concerned, the issue has already been settled as per the judgment of the Hon'ble Supreme Court of India, thereby, the petitioner cannot allege that the petitioner who was working in the School is not entitled for Payment of Gratuity Act.



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9. Further, the very fact that the petitioner has preferred an appeal against the original order of payment of Rs.17,820/- and filing of the writ petition challenging the enhancement of gratuity to the tune of Rs.20,582/- on the ground that the third respondent has no continuous five years of service go to show that the petitioner Management has in principle no objection in respect of entitlement of gratuity to the Teachers working in the educational Institutions.

10. Coming to the other aspect of not having continuous service is concerned, according to the petitioner as seen from the affidavit filed along with this petition, third respondent has no continuous service of five years from June 1987 to August 1998. At para No.2 of the affidavit, the petitioner has given a break up of the spells during which the third respondent worked as a Teacher and also has given the details of break in service in different spells. Therefore, if this is taken into consideration as rightly submitted by the learned counsel for the petitioner there is no continuous service of five years period but the same has been challenged by the third respondent.

11. It is submitted by the learned counsel for the third respondent that



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Principal of the School has given a certificate that she has got continuous of service. The petitioner has contended that the said certificate was given for different purposes and that the Principal is not competent to give any such certificate whereas the Correspondent is competent to give certificate. The petitioner has not filed any proceeding or authority or Rule which go to show that the Principal is not competent to give service certificates and the Correspondent alone is the competent.

12. Further, the question is not whether there was a break in service. The break in service is authorised or unauthorised whether during that period, the third respondent was removed from service or reinstated. All these things have to be taken into consideration. There is no clarity in respect all these aspects. Therefore, taking into consideration of the certificate given by the Principal of the School, this Court is of the opinion that the third respondent has got continuity of service. Accordingly, the order passed by the labour Court cannot be interfered with.

13. In the result, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed



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Index: Yes/No

Neutral Citation: yes/No

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Dr.D.NAGARJUN,J

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**Pre-delivery order made in
W.P.No.2382 of 2004**

13/2/2024