



WEB COPY



W.P.No. 19217 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

29.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No. 19217 of 2015

and

MP.Nos. 1 & 2 of 2015

The Commissioner
Pollachi Municipality
Pollachi.

.. Petitioner

Versus

1. The Assistant Commissioner of Labour
Under Payment of Gratuity Act,
Coimbatore-18.

2.The Thasildhar
Pollachi Taluk, Pollachi.

3.P.Ramathaal
4.A.Palanisamy
5.R.Subbiyan

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, prays for issuance of Writ of Certiorari to call for the records relating to the impugned order passed by the first respondent in G.A.Nos. 38, 39 and 40 of 2010 dated 21.10.2010 and to quash the same.



W.P.No. 19217 of 2015

WEB COPY

For Petitioner : Mr.E. Nedunchezhiyan
For RR 1&2 : Mr.S. Anitha
Special Government Pleader
For RR 3 to 5 : No appearance
Mr.M. Syed Anwar
Amicus Curiae

ORDER

This Writ Petition is filed for issuance of Writ of Certiorarified to quash the impugned order passed by the first respondent in G.A.Nos. 38, 39 and 40 of 2010, dated 21.10.2010.

2. According to the petitioner, the Petitioner/Pollachi Municipality challenging the order passed by the first respondent/Assistant Commissioner of Labour under the payment of Gratuity Act, Coimbatore, passed in G.A.Nos. 38, 39 and 40 of 2010, dated 21.10.2010 and the respondents 3 to 5 have been settled with DCRG based on the Tamil Nadu Pension Rules as on the date of their retirement and therefore, they are not entitled for service Gratuity under the provisions of Payment of Gratuity Act.



W.P.No. 19217 of 2015

3. Pursuant to the order passed in similar cases as against the Petitioner/Municipality in W.A.Nos.3088 to 3090 of 2004, dated 16.03.2011, wherein, it has been observed that the Petitioner/Municipality has not been exempted under Section 5 of the Tamil Nadu Payment of Gratuity Act, 1972, whereas, following the earlier order passed by this Court, directing the petitioner/Management to pay the Gratuity amount payable both under the payment of Gratuity Act and under the Pension Rules shall be calculated and the Gratuity amount which is payable to the employee shall be paid after adjusting the Gratuity amount already paid to the concerned employee under the Pension Scheme.

4. Today, when the case came up for hearing, the learned counsel for the Petitioner/Pollachi Municipality submitted that the 5th respondent is no more. However, no death certificate was produced before this Court.

5. The learned counsel for the petitioner/Pollachi Municipality has produced the order of the Division Bench of this Court in W.A.Nos. 3088 to 3090 of 2004, dated 16.03.2011, which were filed for the very same relief.

Pursuant to the earlier order passed by this Court in W.A.Nos. 3088 to 3090 of



W.P.No. 19217 of 2015

2004, dated 16.03.2011 directing the Petitioner/Management that the retired municipal employees are entitled for the differential amount of Gratuity after adjusting the Gratuity amount already paid to the employees concerned under the Service Rules.

6. Learned Amicus Curiae pointed out that the respondents 3 to 5 are entitled for the benefit of in the writ appeal which is claimed the payment of Gratuity. It is not in dispute whether the respondents 3 to 5 are entitled for the Gratuity amount. Therefore, following the ratio laid down in the aforesaid writ petition, the present writ petition is dismissed and the order passed by the first respondent is hereby held.

7. With regard to the 5th respondent who said to have been died which is the third respondent herein to identify the legal-heirs of the 5th respondent and all the exercise shall be completed. The ground on which the 5th respondent is entitled to the amount of Gratuity and the same shall be deposited in any Nationalized Bank with accrued interest.



W.P.No. 19217 of 2015

8. It is now stated by the learned counsel for the petitioner/Municipality that the respondents 3 to 5 were already paid the Gratuity amount under the Gratuity Act. Though the writ petition was filed as against the award of the first respondent, the Petitioner/Municipality had taken steps to disburse the Gratuity amount under the Gratuity Act to the respondents 3 and 4.

9. With regard to the specific averments made in the additional affidavit filed by the Petitioner/Municipality herein, it is the duty of the Petitioner/Municipality to take necessary steps to make the Gratuity amount to the respondents 3 to 5 which is due under the Gratuity Act, within a period of 12 weeks from the date of receipt of a copy of this order.

10. Despite notice has been served on the respondents 3 to 5, none appeared on behalf of the respondents 3 to 5.



W.P.No. 19217 of 2015

11. In view of the above facts and circumstances of the case, this Court
Mr.Syed Anwar, Advocate, [MS 7403/2022] is appointed as **Amicus Curiae** to
assist this Court in this case.

12. This Court appreciates the learned *Amicus Curiae* as sincere efforts
taken by him and to arrive at a conclusion enabling this Court to find out laid
down the proposition of law in the above matter.

13. In view of the above, the Writ Petition is disposed of. No costs.
Consequently, connected Miscellaneous Petition is closed.

29.01.2024

Index:Yes:No

Speaking order : Yes:No

Neutral Citation : Yes:No

MSM



W.P.No. 19217 of 2015

To
WEB COPY

1. The Assistant Commissioner of Labour
Under Payment of Gratuity Act,
Coimbatore-18.

2.The Thasildhar
Pollachi Taluk,
Pollachi.



WEB COPY



W.P.No. 19217 of 2015

N. SENTHILKUMAR, J

MSM

W.P.No. 19217 of 2015

29.01.2024