IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.26968 of 2012

S.Sivashanmugam ...Petitioner

-Vs-

Tamil Nadu Electricity Generation and Distribution Corporation
Rep. by its Superintending Engineer
Cuddalore Electricity Distribution Circle
Capper Hills
Cuddalore 607 004. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus calling for the records from the respondent, quash the order of the respondent dated 25.02.2011 bearing proceedings Ni.Ku.No.1288/Nir.3/U.Tha.2/Ko.O.No.2011 in so far as wrongly arriving at the Gratuity and the order of the respondent dated 25.02.2011 bearing Proceedings No.1298/Nir.3/U.Tha.2/2011 in so far as wrongly fixing the basic pension, commuted value of pension and the 2/3rd pension and consequently direct the respondent to arrive at the gratuity payable by taking into account of 29 years service rendered by the petitioner and arrive at the basic pension at Rs.11,470/-, pay arrears of commuted pension and continue to pay the 2/3rd value of the basic pension and pass such further orders.

For Petitioner : Mr.Balan Haridas

For Respondent : Mr.P.Subramanian
Standing Counsel for TANGEDCO

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the order of the respondent dated 25.02.2011 bearing proceedings Ni.Ku.No.1288/Nir.3/U.Tha.2/Ko.O.No.2011 in so far as wrongly arriving at the Gratuity bearing Proceedings No.1298/Nir.3/U.Tha.2/2011 and consequently direct the respondent to arrive at the gratuity payable by taking into account of 29 years of service rendered by the petitioner and arrive at the basic pension at Rs.11,470/-, pay arrears of commuted pension, and continue to pay the 2/3rd value of the basic pension.

2. The case of the petitioner is that he joined the Tamil Nadu Electricity Board on 24.07.1982, as an Assessor, which has now become the respondent Corporation (TANGEDCO). The petitioner was appointed on a permanent basis by a regular selection process and on a regular time scale of pay and appointment order dated 19.07.1992. Though it says that it is a temporary appointment for a period up to 30.11.1982, it was on a permanent basis and his services were regularized in due course. Thereafter, the petitioner gained promotions, and at the time of his retirement, he was

working as Revenue Supervisor and has retired with effect from 28.02.2011, on attaining the age of superannuation.

3. Learned counsel for the petitioner would submit that the respondent Corporation (TANGEDCO), by order dated 25.02.2011, had arrived at the gratuity payable to the petitioner of Rs.4,57,366/-, and while calculating the gratuity, the respondent Corporation (TANGEDCO) had taken his service rendered as 27 years and 3 months instead of 28 years and 7 months (29 years). Further, the dearness allowance has been arrived at 45% instead of 51%, and in this process, gratuity had been wrongly calculated and a lesser amount had been arrived at. He further submitted that the respondent Corporation (TANGEDCO), while arriving at the basic pension, had arrived at Rs.10,514/- instead of Rs.11,470/-. Consequently, the commuted value of the pension and the 2/3rd pension have also been reduced. In this regard, he made a representation dated 04.07.2011, however, there was no reply. He has also made representation dated 10.08.2011, since no information was provided, he made application under RTI and in reply to the same, the respondent has been informed, as if the gratuity was calculated properly, that his service from 24.07.1982 to 30.11.1983, was on a contract basis, and only from 01.12.1983, he has been appointed on a regular basis,

and therefore, his service is only 27 years and 3 months, that his dear allowance has been paid, that the basic pension has been correctly arrived at, and that 50% of the last drawn pay can be given as a basic pension only if he has rendered 30 years of service. Thus, the respondent Corporation (TANGEDCO) has declined to pay the correct gratuity, pension, and commuted value of pension through the impugned order dated 25.02.2011. Aggrieved by the impugned order passed by the respondent Corporation (TANGEDCO), the petitioner has come forward with the present writ petition.

4. Learned counsel would further submit that the contention of the respondent Corporation (TANGEDCO) that the service rendered from 24.07.1982 to 30.11.1983 was a contract service is without any basis. The petitioner had been regularly appointed in a time scale from 24.07.1982, though terming it to be for a fixed period. Only because the appointment was not for a fixed period, the petitioner was continued as an Assessor. Therefore, the entire service has to be taken into account for calculating gratuity.

5. Learned counsel further submitted that in the case of one K.Sivalingam, who has also been appointed as an Assessor on a temporary

basis for a fixed period, on his retirement, the respondent taken the service rendered for the temporary period for the purpose of calculating the gratuity. While so, different yardsticks cannot be adopted in respect of the petitioner and take away two years of service rendered to the respondent. The one-day wage has to be arrived at by dividing the basic plus dear allowance by 26, and only thereafter, the amount of gratuity has to be arrived at for the entire service rendered, i.e.,

$$\frac{\text{Basic + Dearness Allowance}}{26} \text{ X 15 X number of years of service}$$

However, the respondent Corporation (TANGEDCO) has divided the basic plus dearness allowance by 30 days, which has resulted in a short payment of gratuity. The Hon'ble Apex Court has held that the one-day wage has to be arrived at by dividing the basic plus dear allowance by 26. Hence, the amount of gratuity arrived at is grossly illegal.

6. Learned counsel for the petitioner further submitted that terminal benefits such as gratuity and pension cannot be reduced in a manner not known to law. Such an action is in violation of Article 14 of the Constitution of India.

7. Learned counsel for the petitioner relied on the judgment of the

Hon'ble Supreme Court reported in ***(1984) 4 SCC 356***, ***Jeewanlal Ltd. and Others Vs. Appellate Authority under the Payment of Gratuity Act and Others.***

8. Per contra, the learned Standing Counsel appearing for the respondent Corporation (TANGEDCO) has submitted that a copy of the Board Proceedings No.1 dated 04.01.2013, by which the Assessors appointed on a contract basis for direct recruitment during the year, 1982-1983, under a contract period till 01.12.1983 (i.e. The date of their absorption into regular service), be taken into account for calculating net qualifying service so as to sanction pensionary benefits alone.

9. Learned Standing Counsel drew the attention of this Court to the respondent Corporation (TANGEDCO) Proceedings dated 10.04.2013, in regard to the counting of temporary service under contract period revision of commutation of pension, and sanction was also accorded by the respondent Corporation (TANGEDCO).

10. Learned Standing Counsel further submitted that the revised

commutation of pension a sum of Rs.7,265/- was also paid and before revision, it was Rs.7,010/-. As a result, the commuted value is a sum of Rs.12,858/-.

11. Learned Standing Counsel drew the attention of this Court to Section 5 of the Payment of Gratuity Act, 1972, which reads as follows:

> ***"Power to exempt***
>
> *(1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in* ***receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.***
>
> *(2) The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of employees are in* ***receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.***
>
> *(3) A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially affect the interests of any person."*

The respondent Corporation (TANGEDCO) is exempted from paying gratuity, and the memo of calculation submitted by the petitioner is as per the Payment of Gratuity Act, 1972, which is not applicable to the respondent Corporation (TANGEDCO) since it has been exempted under Section 5 of the Act.

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

13. In the case on hand, the gratuity to be paid to the petitioner as per the respondent Corporation (TANGEDCO) is a sum of Rs.4,93,606/-. According to the petitioner, the gratuity payable is Rs.33263 X 15 X 29 (years of service) / 26 = Rs.5,56,515/- and the balance amount to be paid towards gratuity by the Board is a sum of Rs.62,909/- along with 10% interest from the date of retirement till date of payment.

14. In this regard, the learned Standing Counsel appearing for the respondent Corporation (TANGEDCO) contended that the above calculation is based on the Payment of Gratuity Act, 1972, and the same is not applicable to the respondent Corporation (TANGEDCO) since it has been

exempted from payment of gratuity as per Section 5 of the Act.

15. The judgment of the Hon'ble Supreme Court reported in ***(1984) 4 SCC 356***, ***Jeewanlal Ltd. and Others Vs. Appellate Authority under the Payment of Gratuity Act and Others,*** relied on by the learned counsel for the petitioner, in which it is held as follows:

> ***"12.*** *It is not correct to say that the decision in Shri Digvijay Woollen Mills case [(1980) 4 SCC 106 : 1980 SCC (L&S) 513 : (1981) 1 SCR 64 : (1980) 2 LLJ 252] does not lay down any principle. Gupta, J. speaking for the Court set out the following passage from the judgment of the Gujarat High Court in Shri Digvijay Woollen Mills case [SCA No 1641 of 1976, dated 12-10-76] : [SCC paras 4 and 5, p. 108: SCC (L&S) p. 515]*
>
> > *"The employee is to be paid gratuity for every completed year of service and the only yardstick provided is that the rate of wages last drawn by an employee concerned shall be utilised and on that basis at the rate of fifteen days' wages for each year of service, the gratuity would be computed. In any factory it is well known that an employee never works and could never be permitted to work for all the 30 days of the month. He gets 52 Sundays in a year as paid holidays and, therefore, the basic wages and dearness allowance are always fixed by taking into consideration this economic reality…. A worker gets full month's wages not by remaining on duty for all the 30 days within a month but by remaining on work and doing duty for only 26 days. The other extra holidays may make some marginal variation into 26 working days, but all wage boards and wage fixing authorities or tribunals in the country have always followed this pattern of fixation of wages by this method of 26 working days."*

And then observed:

"The view expressed in the extract quoted above appears to be legitimate and reasonable."

The learned Judge then went on to say:

"Ordinarily of course a month is understood to mean 30 days, but the manner of calculating gratuity payable under the Act to the employees who work for 26 days a month followed by the Gujarat High Court cannot be called perverse."

He further observed that it was not necessary to consider whether another view was possible and declined to interfere under Article 136 in a matter where the High Court had taken a view favourable to the employees and the view taken could not be said to be in any way unreasonable and perverse, and then added: [SCC para 5, p. 108: SCC (L&S) p. 515]

"Incidentally, to indicate that treating monthly wages as wages for 26 working days is not anything unique or unknown,…."
We find that the same view has been taken by as many as three High Courts viz. by the Calcutta, Bombay and Gujarat High Courts in the cases referred to at the Bar. We find no compelling reason to take a view different from the one expressed by this Court in Shri Digvijay Woollen Mills case [(1980) 4 SCC 106 : 1980 SCC (L&S) 513 : (1981) 1 SCR 64 : (1980) 2 LLJ 252] .

***13.** The intention of the Legislature enacting sub-section (2) of Section 4 of the Act was not only to achieve uniformity and reasonable degree of certainty, but also to create and bring into force a self-contained, all-embracing, complete and comprehensive code relating to gratuity as a compulsory, retiral benefit. The quantum of gratuity payable under sub-section (2) of Section 4 of the Act has to be fifteen days' wages based on the rate of wages last drawn by the employee concerned for every completed year of service or more in excess of six months' subject to the maximum of 20 months' wages as provided by sub-section (3) thereof. The whole object is to ensure that the employee concerned must be* *paid gratuity at the rate of fifteen days' wages for 365 days in a year of service. The total amount of gratuity payable to such employee at that rate has to be multiplied by the number of years of his service subject to the ceiling imposed by sub-section (3) of Section 4 of the Act viz. that such amount shall not exceed 20 months' wages. The construction of sub-section (2) of Section 4 of the Act adopted by the learned Single Judge of the Andhra Pradesh High Court in Associated Cement Company case [(1976) 1 LLJ 222 (AP)] and later approved by a Division Bench of that Court in Swamy case [(1978) 52 FJR 138 (AP)] would make it utterly unworkable. If the determination of the amount of gratuity payable under sub-section (2) of Section 4 depends on the number of calendar days in a month in which the services of the employee concerned terminates, the quantum of gratuity payable would necessarily vary between an employee and an employee, belonging to the same class, drawing the same scale of wages, with like service for the same number of years. Obviously, this could not have been the legislative intention.*

14. *The next question is: whether a month cannot mean 26 working days for purposes of sub-section (2) of Section 4 of the Act and 30 days for purposes of sub-section (3) thereof. It is said that if a month under sub-section (2) connotes 26 working days in a month for purposes of calculating the amount of gratuity, then the rule of harmonious construction requires that the words "20 months' wages" in sub-section (3) thereof must mean wages for 520 working days taking the actual working days in 20 months and not 600 days taking that a month consists of 30 days. The contention is wholly misconceived. Sub-sections (2) and (3) of Section 4 of the Act are designed to achieve two separate and distinct objects and they operate at two different stages. While sub-section (2) provides for the mode of calculation of the amount of gratuity, sub-section (3) seeks to impose a ceiling on the amount of gratuity payable at 20 months' wages. It is meant to provide an incentive to employees to serve for the period of 30 years or more. By no rule of construction, sub-section (2) of Section 4 of the Act which uses the words "fifteen days' wages" and not half a months wages, be called in aid for construction of the words "20 months' wages" appearing in sub-section (3) of Section 4 of the Act.* **"**

In view of the above judgment, the contention of the petitioner is that the gratuity is to be calculated by 26 and not 30 days, as done in the case of the petitioner by the respondent Corporation (TANGEDCO), which is illegal and unsustainable.

16. **In view of the above factual matrix of this case and the ratio laid down by the Hon'ble Supreme Court of India, this Court is of the considered view that the petitioner is entitled to payment of the balance gratuity amount of Rs.62,909/- as divided by 26 days instead of 30 days. The petitioner is entitled to a sum of Rs.62,909/- as per the memo of calculation. The respondent Corporation (TANGEDCO) is directed to pay a sum of Rs.62,909/-, the balance gratuity amount payable to the petitioner, along with 5% interest from the date of retirement till the date of payment, and this exercise shall be complied with within a period of six weeks from the date of receipt of a copy of the order.**

17. In the result, the writ petition stands disposed of with the above

observations and direction. No costs.

29.02.2024

cda
Index : Yes/No

To

The Superintending Engineer,
Tamil Nadu Electricity Generation and Distribution Corporation,
Cuddalore Electricity Distribution Circle,
Capper Hills,
Cuddalore 607 004.

J.SATHYA NARAYANA PRASAD, J.

cda

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