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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM:

THE HON'BLE DR.JUSTICE D. NAGARJUN

W.P.No.6266 of 2024
and W.M.P.No.6963 of 2024

The Secretary,
Pondicherry Market Committee,
Agricultural Complex,
Thattanchavady,
Puducherry – 605 009.

... Petitioner

Vs

1.The Controlling Authority-cum-Labour Officer (Enforcement),
(under the Payment of Gratuity Act, 1972),
Puducherry.

2.Krishnaraju

... Respondents

PARYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order dated 21.12.2018 passed by the 1st respondent in G.A.No.123/2018 and to quash the same as illegal and direct the 1st respondent to recalculate the actual gratuity payable based on the directions of this Court in W.P.No.32343 to 32354 of 2017 dated 28.10.2022 and to pass such further order.



For Petitioner : Mr.V.Vasanth Kumar
Addl.Government Pleader (Pondy)

For Respondents : Mr.B.Bala Vijayan

ORDER

This Writ Petition is filed seeking for issuance of Writ of Certiorari to quash the impugned order dated 21.12.2018 passed by the first respondent in G.A.No.123/2018 and direct the 1st respondent to recalculate the actual gratuity payable based on the directions of this Court in W.P.No.32343 to 32354 of 2017, dated 28.10.2022.

2. The petitioner is Secretary Pondicherry Market Committee of Puducherry. The second respondent joined the petitioner organisation as a casual labourer on 13.07.1978. Thereafter, his services were regularised with effect from 13.09.1978 and got retired from service on attaining the age of superannuation with effect from 30.11.2016. By the time he was holding the post of Market Superintendent Grade - I. He has totally put up 2 month as a casual labourer prior to his regularisation subsequently with effect from 13.09.1978 to 30.11.2016, he has put up 38 years 2 months and 17 days of regular service.



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3. The second respondent initiated proceedings before the first respondent under Section 7(4) of Payment of Gratuity Act, 1972 for settlement of gratuity dues. The first respondent has taken the service of the petitioner as a contract labourer prior to his regularisation also and while passed the impugned order to pay a sum of Rs.10,00,000/- (restricted as per the ceiling prescribed under the Act) for Rs.10,45,243.20/-, a sum equivalent to 27,506.40 X 33. Thereby, the petitioner Marketing Committee has filed this Writ Petition for a direction to set aside the said proceedings.

4. No counter was filed on behalf of the respondents.

5. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents and perused the materials available on record before this Court.

6. During the course of the submission, the learned counsel for the petitioner submitted that the second respondent services were regularised with effect from 13.09.1978, though he joined as casual labourer on 13.07.1978. Therefore, the period of service from 13.07.1978 until 13.09.1978, the period



which the second respondent worked as a casual labourer cannot be calculated for the purpose of gratuity. The second respondent retired from service on 30.11.2016. Therefore, the total period that can be calculated for the purpose of gratuity is from 13.09.1978 to 30.11.2016 which comes to 38 years 2 months and 17 days as regular service and half of the service rendered as casual labour from 13.07.1978 to 13.09.1978. Therefore, the total services of 38 years has to be taken for consideration for calculation of gratuity. Thereby, 38 years period will have to be converted into 76-six monthly period for the purpose of calculation of gratuity. Therefore, the total money to be paid to the second respondent is as follows:-

CALCULATION OF GRATUITY PAYABLE TO THIRU.

R.V.RAMAMOORTHY, MARKET SUPERINTENDENT Gr.I (RETIRED)

1.Pay as on 30.11.2016	Rs.13,900	
2.Grade Pay	Rs.2,800	Rs.43,628/-
3.Dearness allowances	Rs.20,875	
4.Date of joining in service as CLR	13.07.1978	
5.Date of joining in service as Regular	13.09.1978	
6.Date of retirement from service	30.11.2016	
7.Completed years of service	76 – six monthly periods	





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8. Mode of calculation $\frac{\text{Emoluments} \times 14 \times \text{six-monthly periods of qualifying service}}{}$

9. Amount payable as per the formula $= 43,628 \times \frac{1}{4} \times 76 = 8,28,932/-$

7. The learned counsel for the second respondent has also accepted, that the second respondent is entitled for gratuity to a tune of Rs.8,28,932/-. The learned counsel for the petitioner requested reasonable time to be granted for the petitioner to pay the said amount of Rs.8,28,932/-.

8. On hearing the submissions of the learned counsels appearing on both sides and on taking into consideration of the financial consideration of the petitioner Marketing Committee, the said Writ Petition is disposed of directing the petitioner Marketing Committee to pay the sum of Rs.8,28,932/- towards the gratuity to the second respondent as quickly as possible but not later than twelve (12) weeks from the date of receipt of a copy of this order along with statutory interest. No costs. Consequently, connected miscellaneous petition is closed.

15.04.2024

gba

Index : Yes/No

Speaking order : Yes/No

Neutral Citation : Yes/No

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D. NAGARJUN,J.

Gba

To

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