



WEB COPY



W.P.No.35958 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

CORAM
THE HON'BLE MR. JUSTICE P.DHANABAL

W.P.No.35958 of 2015

The Zonal Officer
(The Assistant Commissioner)
Zone No.XII, Alandur
Corporation of Chennai
Chennai 600 016

(Formerly known as)
The Commissioner
Alandur Municipality
Alandur, Chennai 600 016

... Petitioner

Vs.

1.The Controlling Authority
Under payment of Gratuity Act 1972
The Asst. Commissioner of Labour
Joint Commissioner of Labour Office
Chennai 600 006

2.N.Mani

... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent in P.G.No.19 of 2014 and quash the impugned order dated



W.P.No.35958 of 2015

18.07.2014 passed by the 1st respondent.

WEB COPY

For Petitioner : Mr.S.Gopinathan
Standing Counsel

For Respondents : Mr.R.Karthikeyan - R2
No Appearance - R1

ORDER

This Writ Petition has been filed to call for the records of the 1st respondent passed in P.G.No.19 of 2014 dated 18.07.2014 and quash the same. The brief facts that is necessary to dispose of the above writ petition are as below:

- ♦ The 2nd respondent was appointed as a bill collector by the erstwhile Alandur Municipality and he was superannuated on 31.07.1996. On his superannuation, the Corporation has paid all the retirement benefits including gratuity to the 2nd respondent. The 2nd respondent received the gratuity amount to the tune of Rs.3,03,172/- at the time of settlement of pensionary benefits payable to him in accordance with Pension Rules, 1978. The 2nd respondent having received the gratuity available under the avenue of Pension Rules again he had also approached the 1st respondent for payment of gratuity under the Payment of Gratuity Act, 1972 and



W.P.No.35958 of 2015

WEB COPY

claimed gratuity in P.G.No.19 of 2014 and obtained an exparte order from the 1st respondent. The 1st respondent vide order dated 18.07.2014 had directed the petitioner Corporation to pay a sum of Rs.3,29,769/- to the 2nd respondent. In the meanwhile, the 2nd respondent approached this Court vide W.P.No.6532 of 2015 for a direction to implement the order of the 1st respondent. In the said order, the Court had directed the petitioner Corporation to settle the gratuity amount claimed by the 2nd respondent with interest at the rate of 9% per annum, against which the Corporation has preferred Writ Appeal in W.A.SR.No.79998 of 2015 with a delay of 149 days. In the Writ Appeal, the Division Bench of this Court envisages for maximum Settlement of Gratuity as per Section 4 and 5 of the Gratuity Act, 1972 and suggested to withdraw the Appeal as the 2nd respondent is entitled for payment of a differential sum that was confirmed by the 1st respondent and the amount that has already been paid to the 2nd respondent as gratuity and directed the petitioner Corporation to pay only the differential amount to the 2nd respondent. Therefore, the petitioner withdrew the above said Writ Appeal in SR stage on its satisfaction to pay the differential gratuity amount to the 2nd respondent. Meanwhile, the 2nd



W.P.No.35958 of 2015

WEB COPY

respondent preferred a contempt petition and in the contempt petition, the petitioner Corporation accepted to pay the differential amount of Rs.44,117/-, but the 2nd respondent refused to accept the said payment alleging that the gratuity paid to the 2nd respondent is different from the gratuity payable under the Payment of Gratuity Act, 1972. Therefore, the present writ petition is filed to quash the order passed by the 1st respondent.

2.Learned counsel appearing for the petitioner would submit that the 2nd respondent was working under the erstwhile Alandur Municipality and retired from service on 31.07.1996. Thereafter, his retirement benefits were settled to him and a sum of Rs.3,03,172/- was paid to him as gratuity amount as per the Pension Rules, 1978. Thereafter, the 2nd respondent filed a petition for payment of gratuity under the Payment of Gratuity Act, 1972. In fact, the 2nd respondent is not entitled to claim gratuity both under the Pension Rules as well as under the Payment of Gratuity Act, 1972. The 2nd respondent by suppressing the material fact that he has already obtained his gratuity under D.C.R.G to the tune of Rs.3,03,172/-, once again filed an application under the Payment of Gratuity Act,



1972, and obtained an order for a sum of Rs.3,29,769/-. The 1st respondent also without applying its mind that the gratuity amount has already been settled to the 2nd respondent and he is not entitled to a double claim through his application, passed an impugned order. Though the petitioner has appeal provisions to challenge the exparte order passed by the 1st respondent, he has approached the Writ Court since the order was obtained by suppressing the material facts and contrary to the law laid down by the Hon'ble Supreme Court. The petitioner challenges the said order through the writ petition and thereby the writ petition is maintainable. He added that there is a patent error on the face of the records and the applicability of law by the 1st respondent. Therefore, the writ petition is filed by the petitioner to quash the same. The learned counsel also relied on the decision of the Hon'ble Supreme Court in ***Municipal Corporation of Delhi V. Dharan Prakash Sharma & another*** [1998(11)LLJ 625 (SC)], wherein it is stated that the payment of pension and gratuity under the Pension Rules would not dis-entitle the employee to the claim of gratuity payable under the Payment of Gratuity Act, 1972. It is needless to mention that the employees are not entitled to claim gratuity available under the Pension Rules, 1978.

3.Learned counsel appearing for the 2nd respondent would submit that the



2nd respondent was working as a Bill Collector under the erstwhile Alandur Municipality and he was retired from the services on 31.07.1996. After his retirement, he got a gratuity claim to the tune of Rs.3,03,172/- under the Pension Rules, 1978. Though, he received Rs.3,03,172/- DCRG amount as per the Payment of Gratuity Act, 1972, he is entitled to a claim of Rs.3,29,769/-, thereby he filed a petition before the 1st respondent and the 1st respondent also agreed to pay a sum of Rs.3,29,769/-. The petitioner instead of filing an appeal as against the order passed by the 1st respondent, he has preferred the present writ petition. The 2nd respondent also filed a contempt petition to implement the order passed by the 1st respondent and the Court directed the 1st respondent to settle the gratuity amount of Rs.3,29,769/-. Thereafter, Writ Appeal was filed by the petitioner and the same was withdrawn, and in the contempt proceedings the petitioner Corporation has agreed to pay the differential amount. Since the Payment of Gratuity Act is a Special Act, the 2nd respondent is entitled to claim gratuity under the said Act, irrespective of the same, the 2nd respondent received the amount under the Pension Rules, 1978. Therefore, the order passed by the 1st respondent is in order and there is no suppression of facts by the 2nd respondent. Accordingly, he prays for dismissal of the above petition.



W.P.No.35958 of 2015

WEB COPY

4.Heard both sides and perused the records.

5.In this case, there is no dispute that the 2nd respondent was working under the erstwhile Alandur Municipality and got retired on 31.07.1996. Thereafter, he received the retirement benefits including the gratuity amount of Rs.3,03,172/- under the Pension Rules, 1978. In the year 2014, the 2nd respondent filed a petition alleging that he is entitled to a claim of gratuity under the Payment of Gratuity Act, 1972, thereby he filed an application and obtained an exparte order from the 1st respondent for a sum of Rs.3,29,769/-. According to the writ petitioner, the 2nd respondent has suppressed the receipt of gratuity amount under the Pension Rules, had approached the 1st respondent and the 1st respondent also without applying its mind that the 2nd respondent is not entitled to the relief under Pension Rules, 1978, as per the law laid down by the Hon'ble Supreme Court in *Municipal Corporation of Delhi V. Dharam Prakash Sharma & another* [1998(11)LLJ 625 (SC)], wrongly applied the law and thereby the writ petition is maintainable. There is an error on the face of records in applying law.

6.This Court also perused the entire records. On a perusal of the records,



W.P.No.35958 of 2015

the Court observed that the 2nd respondent was superannuated in the year 1996 and got his gratuity claim amount under the Pension Rules to the tune of Rs.3,03,172/-, but after a period of time he again filed an application before the 1st respondent under the Payment of Gratuity Act,1972, without mentioning about the payment that he had already received under the Pension Rules, 1978.

7.As far as the maintainability of Writ Petition is concerned, though there is an appeal provision as against the order of the 1st respondent, since the petitioner has already approached the division bench of this Court vide Writ Appeal, and the division bench has also advised the petitioner Corporation to withdraw the Writ Appeal in SR stage on suggesting that the differential amount between the Pension Rules and the Payment of Gratuity Act shall be paid to the 2nd respondent. However, the 2nd respondent had obtained the exparte order by suppressing the facts, the 1st respondent also without applying law passed the exparte order, hence, the writ petition is maintainable when the law is wrongly applied, and obtained order by suppressing the material facts.

8.As far as the entitlement of the 2nd respondent is concerned, the law is



W.P.No.35958 of 2015

well settled by the ratio laid down by the Hon'ble Supreme Court, in ***Municipal Corporation of Delhi V. Dharan Prakash Sharma & another*** [1998(11)LLJ 625

(SC)], wherein the Hon'ble Supreme Court has held that the staff of Municipality are entitled to gratuity under the Payment of Gratuity Act, 1972 since the Act has over riding effect U/s.14 of the Act, and the Pension Rules have no relevance for the payment of gratuity, however, it is needless to mention that the staff cannot claim gratuity both under the Payment of Gratuity Act and under the Pension Rules. Therefore, as per the dictum laid down by the Hon'ble Supreme Court, the 2nd respondent is entitled to payment of gratuity only under the Payment of Gratuity Act, 1972 and not under the Pension Rules, 1978. Since the 2nd respondent had already received gratuity amount of Rs.3,03,172/- under the Pension Rules, he is only entitled to the differential amount calculated under the Payment of Gratuity Act, 1972. The 1st respondent has also calculated the amount of gratuity to a sum of Rs.3,29,769/-, but failed to consider the amount that has already been received under the Pension Rules, 1978. Therefore, this Court is of the firm view that it is only appropriate to deduct the gratuity amount that has already been paid to the 2nd respondent under the Pension Rules, 1978, and the 2nd respondent is entitled only to the remaining amount. The petitioner



W.P.No.35958 of 2015

Corporation has also agreed to pay the differential amount in the Writ appeal proceedings, the 2nd respondent is now only entitled to the payment of sum of Rs.44,117/-. Since there is a material suppression of facts, as the 2nd respondent obtained the order without revealing the previous gratuity claim amount received by him under the Pension Rules, 1978, it is appropriate to interfere with the order of the 1st respondent. Moreover, though there is an appeal provision to challenge the proceedings of the 1st respondent, considering the fact that the writ petition was filed in the year 2015, and it is pending for more than 9 years, and since the petitioner Corporation itself has agreed to pay the differential amount due and payable to the 2nd respondent, this Court deems it appropriate not to send back the case once again for appeal and this Court already in the previous paragraph has discussed about the maintainability of the writ petition. Therefore, the petitioner Corporation is hereby directed to pay the differential amount of Rs.44,117/- (Rupees Forty Four Thousand one Hundred and Seventeen only) to the 2nd respondent.

9. With the above direction, this writ petition stands allowed and the order



W.P.No.35958 of 2015

passed by the 1st respondent in P.G.No.19 of 2014 dated 18.07.2014 is hereby

quashed. No costs.

18.12.2024
(1/2)

kas

Index : yes / no
Neutral citation

To

1.The Controlling Authority
Under payment of Gratuity Act 1972
The Asst. Commissioner of Labour
Joint Commissioner of Labour Office
Chennai 600 006

P.DHANABAL, J.
kas



WEB COPY



W.P.No.35958 of 2015

W.P.No.35958 of 2015

18.12.2024

(1/2)