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W.P.No.35959 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.35959 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.P.Palani

... 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.18 of 2014 and quash the impugned order dated



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18.07.2014 passed by the 1st respondent.

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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.18 of 2014 dated 18.07.2014 and to quash the same.

The brief facts that is leading to dispose of the above writ petition are as below:

- ♦ The 2nd respondent was appointed as a Junior Assistant by the erstwhile Alandur Municipality and he got retired voluntarily on 10.09.2004 while he was serving as a Junior Assistant. Thereafter, the Corporation has paid all the benefits including the gratuity to the 2nd respondent. The 2nd respondent received the gratuity amount to the tune of Rs.1,50,728/- at the time of settlement of pensionary benefits payable to him in accordance with Pension Rules, 1972. The 2nd respondent having received the gratuity available under the avenue of Pension Rules,1978, on the misconception and misguidance, had also approached the 1st respondent for payment of gratuity under the Payment of Gratuity Act, 1972, and



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claimed gratuity in P.G.No.18 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.1,09,376/- to the 2nd respondent. Due to administrative reasons, the petitioner Corporation was not able to file a petition to set aside the exparte order dated 18.07.2014 within a stipulated time. In the meanwhile, the 2nd respondent approached this Court vide W.P.No.6533 of 2015 for a direction to implement the order of the 1st respondent. In the said order, the Writ Court had directed the petitioner Corporation to pay the gratuity claim amount to the 2nd respondent with interest at the rate of 9% per annum, against which Writ Appeal in W.A.SR.No.80068 of 2015 was preferred by the Corporation with a delay of 149 days. The Division Bench of this Court in the writ appeal proceedings observed that as per Section 4 and 5 of the Gratuity Act, the 2nd respondent is entitled to the maximum settlement of gratuity amount and suggested for withdrawal of the Writ Appeal in SR stage itself. Therefore, the petitioner withdrew the above said Writ Appeal in SR stage on its satisfaction that the 2nd respondent had been sufficiently paid with the gratuity and the Corporation is not



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required to pay any amount in furtherance. Moreover, the order made in W.P.No.6533 of 2015 also reads that the same has not been paid already.

Meanwhile, the 2nd respondent preferred a contempt petition and in the contempt petition the 2nd respondent refused to accept the proceedings dated 12.10.2015 as the gratuity paid to the 2nd respondent is different from the gratuity payable under the Payment of Gratuity Act, 1972. Therefore, the Court had directed the petitioner Corporation to pay the sum confirmed by the Controlling Authority. 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 as Junior Assistant and retired voluntarily from the services on 10.09.2004. Thereafter, his retirement benefits were settled to him and a sum of Rs.1,50,728/- was paid to him towards gratuity 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 and the Payment of Gratuity Act, 1972. The 2nd respondent



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by suppressing the material fact that he has already obtained his D.C.R.G benefits of Rs.1,50,728/-, once again filed an application under the Payment of Gratuity Act, 1972, and obtained an order for a sum of Rs.1,09,376/-. 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 exparte order. Though the petitioner has appeal provisions to challenge the exparte order passed by the 1st respondent, 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. He 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.

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3.Learned counsel appearing for the 2nd respondent would submit that the 2nd respondent was working as a Junior Assistant under the erstwhile Alandur Municipality and he was retired voluntarily from the services on 10.09.2004. At the time of settlement he obtained a settlement of gratuity amount to the tune of Rs.1,50,728/- under the Pension Rules, 1978. Though, he received the said DCRG amount as per Payment of Gratuity Act, 1972, he is entitled to a gratuity amount of Rs.1,09,376/-, thereby he filed a petition before the 1st respondent and the 1st respondent also agreed to pay the said sum of Rs.1,09,376/-. The petitioner despite 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, wherein, this Court directed the petitioner Corporation to pay the maximum gratuity amount. Thereafter, the Writ Appeal was filed and the same was withdrawn, and a contempt proceedings were initiated. In the contempt proceedings the petitioner Corporation was directed to pay the sum confirmed by the Controlling Authority. Since the Payment of Gratuity Act is a Special Act, the



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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.

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 voluntarily on 10.09.2004. Thereafter, he received the retirement benefits including the gratuity amount of Rs.1,50,728/- under the Pension Rules, 1978. In the year 2014, the 2nd respondent filed a petition alleging that he is entitled to the 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.1,09,376/-. According to the writ petitioner, the 2nd respondent by suppressing the facts that he had already received the gratuity amount of Rs.1,50,728/- under the Pension Rules, 1978, approached the 1st respondent and the 1st respondent also without



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applying its mind that the 2nd respondent is not entitled to the relief of claim of gratuity under Pension Rules, 1978, as per the law laid down by the Hon'ble Supreme Court in ***Municipal Corporation of Delhi V. Dharan Prakash Sharma & another*** [1998(11)LLJ 625 (SC)], wrongly applied the law and thereby the writ petition is maintainable. Apparently, 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, the Court observed that the 2nd respondent was retired voluntarily in the year 2004 and got gratuity amount under the Pension Rules to the tune of Rs.1,50,728/- but after a lapse of period he had 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 to withdraw the



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Writ Appeal in SR stage by directing the petitioner Corporation to pay the sum confirmed by the Controlling Authority. Thereby, the Writ Appeal was withdrawn at the SR stage. 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 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 a gratuity claim 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 employee cannot claim gratuity under Payment of Gratuity Act and under the Pension Rules, 1978. Therefore, as per the dictum laid down by the Hon'ble Supreme Court, the 2nd respondent is entitled to the payment of gratuity only under the Payment of Gratuity Act, 1972 and not under the Pension Rules, 1978.



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Since the 2nd respondent had already been sufficiently paid and received excess gratuity amount of Rs.1,50,728/- under the Pension Rules, 1978, the petitioner Corporation is not required to pay any amount in furtherance. The 1st respondent has also calculated the amount of gratuity to a sum of Rs.1,09,376/-, but failed to consider the amount that he has already been received under the Pension Rules, 1978. Therefore, this Court is of the view that the 2nd respondent is not entitled to any claim since he has already received excess gratuity amount of Rs.1,50,728/- instead of Rs.1,09,376/-. The petitioner Corporation has agreed in the writ appeal proceedings to pay the sum confirmed by the Controlling Authority to the 2nd respondent, since the 2nd respondent had already been sufficiently paid, the petitioner Corporation is not required to pay any amount in furtherance. Since there is a material suppression of facts, as the 2nd respondent obtained the order without mentioning the previous gratuity 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 2nd respondent has already been sufficiently paid, and the petitioner Corporation



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is not required to pay any amount to the 2nd respondent and the case need not be sent back once again for appeal. This Court also in the previous paragraph discussed about the maintainability of the writ petition.

9. With the above direction, this writ petition stands allowed and the order passed by the 1st respondent in P.G.No.18 of 2014 dated 18.07.2014 is hereby quashed. No costs.

18.12.2024
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To

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



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P.DHANABAL, J.
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