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W.P.No.32989 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.No.32989 of 2024

and

W.M.P.Nos. 35785 & 35786 of 2024

The Management,
Tamil Nadu State Transport Corporation (Salem) Limited,
Dharmapuri Region, Bharathipuram,
Dharmapuri – 636 705.

... Petitioner

Vs

1. The Appellate Authority/ Additional Commissioner of Labour,
(Appellate Authority under the Payment of Gratuity Act, 1972)
Coimbatore.
2. The Controlling Officer,
Under the Payment of Gratuity Act, 1972,
Officer of the Joint Commissioner of Labour,
Salem.
3. B.Sardarkhan

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records pertaining to the impugned order dated 05.05.2023 passed by the first respondent in P.G.A.No. 44 of 2022 by confirming the impugned order dated 16.03.2022 passed by the



W.P.No.32989 of 2024

second respondent in P.G.No. 250 of 2021 and quash the same as illegal, arbitrary and unconstitutional.

For Petitioner : Mr.K.Raja
For R1 & R2 : Mr.K.Tamilvendan
Government Advocate
For R3 : No appearance

ORDER

Notice has been served on the third respondent. The matter is taken up for final hearing.

2. It is observed that the order impugned in the writ petition is the order of the appellate authority, confirming the order of the Gratuity Payment Authority, ordering the payment of gratuity to the third respondent workman. It can be seen that, as ordered, a sum has also been deposited by the petitioner management. As far as the merits of the management's case is concerned, it is no longer *res integra*, as the matter has been considered by this Court in W.P(MD).No. 1247 of 2021 and it has been held against the management. The said order is also followed by W.P. Nos. 33897 of 2023 etc., dated 27.08.2024. The entire order that is passed in W.P.No. 33897 of 2023 etc., is



W.P.No.32989 of 2024

extracted hereunder for ready reference:-

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“These writ petitions have been filed challenging the impugned order dated 02.11.2022 passed by the first respondent by directing the petitioner corporation to pay the balance gratuity amount along with 10% interest till the date of realization and further directed the petitioner to pay 10% interest for belated payment.

2. Mr.K.Raja, the learned counsel for the petitioner, submitted that similar issue has already been dealt by this Court in W.P.(MD) No.1247 of 2021 and vide order dated 22.02.2024, this Court has partly allowed the writ petition by modifying the interest portion. He further submitted that these writ petitions can also be disposed by following the same terms in W.P.No.1247/2021 dated 22.02.2024.

3. The learned counsel for the respondents are also in agreement with the submission of the learned counsel for the petitioner.

4. This Court vide order dated 22.02.2024 made in W.P.(MD) No.1247/2021 has passed the following order:

“ 4. The very same issue has fallen for



WEB COPY



W.P.No.32989 of 2024

consideration before this Court in W.P.(MD)Nos.2334 to 2357 of 2019 and this Court by order dated 01.02.2019 has held as under:

“3. The learned counsel appearing for the workmen contended that the orders passed in these writ petitions do not warrant any interference. His submission is that as per Section 7(3A) of the Payment of Gratuity Act, 1972, a notification was already issued by the Central Government and it provides for awarding 10% interest. He would contend that the notification that was issued as early as in 1987 is still holding good and no modification notification has been issued. His specific contention is that the management is not justified in placing reliance on a notification issued by the Central Government setting out the rate for repayment of long term deposit and that a special notification under Section 7(3A) of the Act is required. In as much as the notification earlier issued under this provision is still holding the field, this Court will have to necessarily abide by the same.

4. I am not able to subscribe to the aforesaid submission. As rightly pointed out by the learned Standing Counsel for the management, no doubt, the special notification issued by the Central Government under Section 7(3)A of the Act stipulates awarding of 10% interest and that it has not been modified till date. But then, a notification issued under a statutory provision cannot be applied, if it would run counter to the statutory mandate. Section 7(3A) of the Act states that the employer shall pay from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify. In other words, this provision provides a upper ceiling limit for the rate of interest to be awarded. The upper ceiling limit is the rate notified by the Central Government for repayment of long term deposits.

5. It is not in dispute that for the period in question, the rate notified by the Central Government



W.P.No.32989 of 2024

for repayment of long term deposit was between 8.7% per annum to 8.5% per annum. If the notification of the year 1987 that was originally issued under the provision is applied that would certainly run counter to the restriction laid down in Section 7(3A) of the Payment of Gratuity Act. Therefore, I am of the view that the appellate authority erred in awarding 10% interest. Considering the facts and circumstances of this case, the same is modified and reduced to 8.5% per annum.”

5. In the light of the above, this Court is not inclined to examine the matter afresh and inclined to follow the decision of this Court as noted above. Accordingly, the impugned order is modified only to the extent of awarding of interest at 10% and accordingly, the rate of interest payable to the respondent herein shall be 8.5% on the delayed payment of gratuity amount.

6. With the above direction, this Writ Petition is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.”

5. Since the relief sought in the present writ petitions are also the same, I feel these writ petitions can also be disposed in the same lines and on the terms adopted in the order dated 22.02.2024 made in W.P.(MD)No.1247/2021.

6. Thus, these writ petitions are disposed on the terms followed in the order dated 22.02.2024 made in W.P.(MD)No.1247/2021. No costs. Connected miscellaneous petitions are closed.”

3. In view thereof, this writ petition is also disposed of on the same



W.P.No.32989 of 2024

terms. It is needless to mention that the third respondent will be entitled to withdraw the sum deposited before the authorities, along with accrued interest, if any. Consequently, connected miscellaneous petitions are closed.

No costs.

20.12.2024

Neutral Citation: Yes/No
nsl

To

1. The Appellate Authority/ Additional Commissioner of Labour,
(Appellate Authority under the Payment of Gratuity Act, 1972)
Coimbatore.
2. The Controlling Officer,
Under the Payment of Gratuity Act, 1972,
Officer of the Joint Commissioner of Labour,
Salem.

D.BHARATHA CHAKRAVARTHY, J.



WEB COPY



W.P.No.32989 of 2024

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W.P.No.32989 of 2024

20.12.2024