



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE C.KUMARAPPAN**

W.A(MD)No.496 of 2016

Venugopal

...Appellant/Petitioner

.Vs.

1.The Joint Commissioner of Labour,
The Appellate Authority under the Payment
of Gratuity Act,
Madurai.

2.The Management of
Tanjavur Sarvodaya Sangham,
8,Kambatta Viswanathan East Street,
Kumbakonam,
Thanjavur District.

... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act praying this Court to set aside the order passed by this Court in W.P.No.11896 of 2008, dated 16.3.2012.



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For Appellant : Mr.D.Shanmugaraja Sethupathi

For Respondent-1 : Mr.M.Prakash
Addl.Govt.Pleader

For Respondent-2 :Mr.M.Pandiarajan

JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.

The writ appeal is filed by the Petitioner, who had lost the Writ Petition before the learned Single Judge.

2.The appellant along with two others, who were employed under the Management of Sarvodaya Sangam, Thanjavur, opted for Voluntary Retirement Scheme offered by the Management believing that they will be paid the gratuity as per the scheme ie., 45 months salary in lumpsum. However, the management had not paid the said gratuity amount, but settled their benefits based under the provisions of Payment of Gratuity Act ie., 15 days salary for every completed year of service. Being aggrieved, a Petition was filed before the Controlling

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Authority, however, got dismissed on the ground that the forum for adjudicating the cause is not before the Controlling Authority under the Payment of Gratuity Act, but should have before the appropriate authority.

3. The short point in this case is, while the enforcement of the provisions of the private scheme for payment of gratuity, Whether the Controlling Authority can entertain the appeal under Section 7 of the above Act for determining the amount of gratuity. Referring to catena of judgments, the learned Single Judge answered in negative, thereby confirmed the order of the appellate authority. However, when the parties have agreed to have their private scheme of payment of gratuity, if one of the parties aggrieved, there must be some recourse for redressal and in this case, out of 12 employees, who have opted for Voluntary Retirement Scheme, three were deprived of the application of the benefits, as per the private scheme. Hence they approached the Controlling Authority under Section 4(5) of the Payment of Gratuity Act and the same was entertained. However, the management preferred appeal before the Appellate Authority, which had reversed the award of the Controlling Authority. When the dissatisfied employees approached the High Court, the High Court confirmed the view of the



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Appellate Authority, citing the following reasons:

*11. The learned counsel also referred to the judgment of the Gujarat High Court reported in **2004(II) LLJ 389 Gujarat State Export Corporation Limited .vs. Madhusudan L.Khandwala**, which was relied on by the Appellate Authority and referred to the following passage found in paragraph 12:-*

“12.....In considered opinion of this Court, the benefits, to the extent of the same are flowing from the provisions of the Gratuity Act, the Authority under the Act has power to adjudicate for the same. But if benefits sought for are arising from settlement or private scheme, the same cannot be agitated before the Authority under the Act.”

*12. A reference was also made to another judgment of the Gujarat High Court in **Gujarat State Board Transport Corporation .vs. Chandrakani Tapubai Vyas** reported in **2004-III LLJ 86**. In paragraph 6, it was observed as follows:*



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“6.....it appears that the jurisdiction of the Controlling Authority would be attracted only if there is statutory liability to pay the amount of gratuity, and there is non payment by the employer concerned.”

*13.He further referred to another judgment of the Kerala High Court reported in **2003(99) FLR 154(Thomas Kurian .vs. Idukki District Cooperative Bank Limited and others)** for contending that once maximum gratuity is paid as per the Axt, there is no further scope for deciding the matter by the authorities. Reliance was placed on paragraph 5, which is as follows:-*

“5.....The Controlling Authority constituted under the Gratuity Act is incompetent to consider the legality or propriety of exhibit P-1 circular as he does not have any authority or jurisdiction to consider the same. When the right to get the maximum amount of gratuity



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under the Gratuity Act is not disputed by the bank, the Controlling Authority has no jurisdiction in adjudicating the dispute regarding the excess amount paid to the employee.”

*14.Lastly, the learned counsel referred to the judgment of the Supreme Court reported in **(2010) 2 SCC 44(Allahabad Bank and another .vs. All India Allahabad Bank Retired Employees Association)** and relied on the following passage found in paragraph 44:-*

‘‘44.....The Act nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court’s order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under Sub-Section (5) of Section 4, since Parliament in



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its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act.”

15. In the light of these legal precedents and the factual matrix involved in the Writ Petition, the order passed by the first respondent does not call for any interference.....”.

4. Being aggrieved, the present Writ Appeal is filed by one of the Writ Petitioner. In the course of argument, it is stated that the other two Writ Petitioners have received part of their claim during the pendency of the Writ Petition and recorded full satisfaction. It is also brought to the notice of this Court that out of 12 employees opted for Voluntary Retirement Scheme, 11 has been paid as per the scheme ie., 45 months salary, except this appellant. Though this Court is in total agreement with the order of the Appellate Authority and the order of passed by the learned Single Judge, the subsequent event which indicates that except this appellant, all the other employees were paid as per the scheme, without interest and recorded full satisfaction. Therefore the same has to be



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applied to this appellant also. For that reason, this Court is inclined to interfere and dispose of this Writ Appeal, with a direction to the second respondent Management to calculate the gratuity payable to the appellant at the rate of 45 months salary, after deducting the amount, if any, already paid towards gratuity, are directed to pay the balance amount to the appellant herein, within a period of eight weeks from the date of receipt of a copy of this order, along with lumpsum of Rs.50,000/- which shall be the composite payment towards interest. There is no order as to costs.

[G.J.,J.] [C.K.,J.]
09.01.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No

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