



W.P(MD)No.17542 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.17542 of 2018

and

W.M.P.(MD)No.15428 of 2018

1.The Special Officer / Block Development Officer,
Sukkampatti Panchayat,
Vadamadurai Union, Ayyalur Via,
Vedasandur Taluk, Dindigul District-624 801.

2.The Commissioner,
Vadamadurai Panchayat Union,
Vedasandur Taluk, Dindigul District-624 804.

... Petitioners

Vs.

1.P.Gandhi

2.The Assistant Commissioner of Labour Cum
Controlling Officer,
Payment of Gratuity Act,
Dindigul.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the 2nd respondent in case number in P.G. 50/2017, dated 28.09.2017 and quash the same.

For Petitioners : Mr.P.Thambidurai,
Government Advocate



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For R1 : Mr.S.Arunachalam

For R2 : No Appearance

ORDER

Challenge has been made to the order of the 2nd respondent dated 28.09.2017, where the petitioners were directed to pay a sum of Rs.37,662/- (Rupees Thirty Seven Thousand Six Hundred and Sixty Two Only) towards gratuity along with 10% interest from the date of retirement of the 1st respondent, ie., 31.01.2017, to the 1st respondent.

2.The learned counsel appearing for the petitioner would submit that the 1st respondent was engaged as Overhead Tank Operator at the 1st petitioner Panchayat on daily basis from 01.07.1993. He retired on 31.01.2017, after attaining the age of superannuation. Thereafter, he filed an application, seeking gratuity under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the said Act') before the 2nd respondent, who in turn passed the order impugned herein.

3.He would further submit that the said Act is applicable for the establishment, where more than 10 persons are working, whereas, in the petitioners' establishment only 8 persons are working. Therefore, the said Act



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is not applicable for the petitioners' establishment. However, without considering the said aspect, the 2nd respondent passed the impugned order. Therefore, on this ground, the same is liable to be set aside.

4.The learned counsel appearing for the 1st respondent would submit that it is the duty of the the petitioners to inform about the number of persons, who are working under their establishment to the 2nd respondent. Further, at the time of the appointment of the 1st respondent, more than 10 persons were working in the petitioners' establishment and hence, the said Act is applicable to the petitioners' establishment. Therefore, there is no need to interfere with the order of the 2nd respondent.

5.I have given due consideration to the submissions made on either side and perused the materials available on record carefully.

6.It is necessary to extract Section 1(3)(c) of the Payment of Gratuity Act, 1972 hereunder:-

“It shall apply to such other establishments or class of establishments in which ten or more employees are employed or were employed on any day of the preceding twelve months, as the central Government may, by notification, specify in this behalf.”



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7.It is the contention of the petitioners that the said Act is not applicable to the petitioners' establishment, since only 8 persons are working under them. If at all only 8 persons are working under the petitioners' establishment, they have raised the issue before the 2nd respondent. However, on perusal of the impugned order, it is seen that nowhere the petitioners made a plea that at the time of retirement of the 1st respondent or throughout his employment, only 8 persons were working. Throughout the period of the employment of the 1st respondent or at the time of his appointment, if more than 10 persons were working, automatically the said Act is applicable, even if the strength of the employees is less than 10 persons at the later point of time. The 2nd respondent, having considered all these reasons, passed the impugned order, which is well considered one. Therefore, this Court is not inclined to interfere with the same. Further, I do not find any merits in the contention raised by the petitioners.

8.At this juncture, the learned counsel appearing for the petitioners would submit that a sum of Rs.65,666/- (Rupees Sixty Five Thousand Six Hundred and Sixty Six Only) has been deposited before the Labour Court. Therefore, the 1st respondent is permitted to withdraw the said amount along



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with interest accrued from the date of deposit till the date of withdrawal. In the event if any request is made, the authorities concerned are directed to release the said amount within a period of five working days from the date of such request.

9. With the above observations, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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KRISHNAN RAMASAMY, J

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