



WP(MD)No.28 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

**WP(MD)No.28 of 2017 and
WMP(MD)No.23 of 2017**

Poompuhar Shipping Corporation Limited,
Represented by its Dy General Manger,
Marine Workshop, Harbour Estate,
Tuticorin – 628 004.

... Petitioner

Vs

1. The Appellate Authority /
Dy Chief Labour Commissioner (Central),
No.26, Haddows Road,
Sastri Bhavan,
Chennai – 600 006.
- 2.The Controlling Authority/
Assistant Labour Commissioner (Central),
No.5, Old No.1A, Lady Doak College Road,
Madurai – 625 002.
- 3.A.Jothimony
- 4.M/s.Susand Agencies
135, Victoria Street,
Tuticorin – 628 001.
- 5.M/s.Ayyavoo & Co,
1-21, E-8, Khader Meeran Nagar,
Thermal Nagar,
Tuticorin – 628 006.



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6.M/s.Prabhu Engineering Construction & Co,
4/15, 4E, Sundar Nagar,
Muthiapuram,
Tuticorin – 628 005.

7.M/s.Rajan,
Rajan Complex,
East Bus Stand,
Kalakkadu,
Tirunelveli.

8.M/s.Clean Care Service Centre,
23 -C/6, Besant Road,
Chinna Chokkikulam,
Madurai – 625 002.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records of the 1st and 2nd respondents in their order in GA.No.2/2015 dated 21.10.2016 and PG.No.01/2012-AM dated 18.07.2012 and quash the same as it is passed without jurisdiction.

For Petitioners : Mr.Ananth C.Rajesh

For Respondent : Mr.G.Rajarajam

Nos.1 and 2

For Respondent : No representation

Nos.3,4,5,7 and 8



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ORDER

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The Poompuhar Shipping Corporation Limited has filed this writ petition as against the orders of the 1st and 2nd respondents in GA.No.2/2015 dated 21.10.2016 and in PG.No.01/2012-AM dated 18.07.2012 respectively on the ground that the respondents are not having jurisdiction to decide the issue and the claim petition of the 3rd respondent is barred by limitation.

2.The learned Counsel for the petitioner submits that the petitioner Corporation is an undertaking of the Government of Tamil Nadu, having separate service rules for its employees. The third respondent herein has claimed gratuity that he has worked with different contractors in the petitioner shipping corporation from June, 1989. Even according to the third respondent, he has worked with nine contractors. While so, without claiming gratuity with the contractors, who have engaged his services, he claimed gratuity from the petitioner Corporation.



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3.He further submits that as per the definition of appropriate Government provided under Section 2 (a)(ii) of the Payment of Gratuity Act, the State Government is the authority in the case of the petitioner Corporation to decide the issue and not the Union Government.

4.He also submits that the third respondent has not proved that he has rendered continuous service for not less than five years and has not filed the application within the stipulated period, as per Section 7(1) of the Payment of Gratuity Act. The third respondent has neither established that he was working under the respondents 4 to 8 nor filed any documents to support his claim. The respondents 4 to 8 have also not supported the claim of the third respondent and in the absence of any material that he was a contract employee and he was engaged for the services of the petitioner Corporation, orders passed by the respondents 1 and 2 are not only without jurisdiction, but also a void one passed in a time barred claim.

5.The learned Counsel for the 1st and 2nd respondents submits that the 3rd respondent was working as an Electrician in the workshop at



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Tuticorin VOC Port and his work was to transport the coal on behalf of the petitioner shipping corporation. Though there was no contract between the 3rd respondent and the petitioner shipping corporation, he was working under respondents 4 to 8, who are the contractors of the petitioner shipping corporation. The contractors have not paid gratuity amount and therefore, the petitioner shipping corporation is liable to pay the gratuity as per Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970.

6.The learned Counsel also submits that no time limit has been prescribed under the Payment of Gratuity Act for claiming gratuity and therefore there is no reason to interfere with the orders passed by this respondents 1 and 2.

7.This Court considered the rival submissions made and perused the materials placed on record.

8.The 3rd respondent has filed an application before the 2nd respondent / the Controlling Authority seeking payment of gratuity.



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The said application was agitated by the petitioner corporation on two grounds that the application ought to have been filed within a period of 30 days from the date of gratuity becomes payable and this application has been filed after a period of 733 days without any valid reason and the 2nd respondent / the controlling authority has no competence to decide the application under the Payment of Gratuity Act and it has to be filed only before the State Authority.

9.The 2nd respondent by order dated 18.07.2012 allowed this application that no period of limitation is prescribed in the Payment of Gratuity Act for filing an application in Form IX. The 2nd respondent has also relied on various orders passed by the High Courts in support of his decision.

10. Insofar as the ground of limitation raised by the petitioner to file the application for claiming gratuity is concerned, admittedly the Payment of Gratuity Act does not prescribe any limitation for claiming gratuity and therefore, this Court is not inclined to accept the contention of the petitioner that the application for payment of gratuity was filed by



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the workman belatedly. With regard to the other ground of competence of the 1st and 2nd respondents in deciding the issue is concerned, the 1st respondent has in his order held that the petitioner is the contractor within the meaning of Section 2(c) of the Contract Labour (Regulation and Abolition) Act, 1970 and has taken a lease of coal handling berths from VOC Port Trust. VOC port trust is a major port for whom the central government is the appropriate Government under the various labour laws including the Payment of Gratuity Act and the petitioner being a contractor of VOC Port Trust has obtained labour licence from the licensing officer appointed and notified by the central government. Therefore, the contention of this petitioner that the 1st and 2nd respondents have no jurisdiction is not acceptable and accordingly, this contention of the petitioner is also rejected.

11.The petitioner has further relied on Section 21 (4) of the Contract Labour (Regulation and Abolition) Act and submitted that the petitioner is not liable to pay the gratuity, since the 3rd respondent was the employee of the respondents 4 to 8 and there is no contract between the petitioner and the 3rd respondent. Section 21(4) of the Contract Labour



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(Regulation and Abolition) Act is extracted as under:

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“21. Responsibility for payment of wages. –

(4)In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.”

12.Though the petitioner claims that the 3rd respondent was the employee of the respondents 4 to 8, as per the above provisions, the principal employer viz., the petitioner has to pay the gratuity to the 3rd respondent in view of the provision u/s21(4) of the Act.

13.In view of the above discussion, this Court is not inclined to entertain this writ petition and accordingly, this writ petition is dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.

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Index : Yes / No
DSK



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