



W.A.(MD).No.1446 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.03.2024

CORAM:

THE HONOURABLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**

and

THE HONOURABLE **MR.JUSTICE K.K.RAMAKRISHNAN**

W.A.(MD).No.1446 of 2017

and

C.M.P.(MD).No.11076 of 2017

Union of India,
represented by its Administrative Officer,
S.S.Boopathy,
Son of K.V.Subramanian,
Heavy Water Plant, Department of
Atomic Energy,
Government of India,
Heavy Water Plant,
Tuticorin 628 007.

... Appellant

Vs.

1.The Assistant Labour Commissioner (Central)
& Controlling Authority,
Under the Payment of Gratuity Act, 1972,
Ministry of Labour and Employment,
Office of the Assistant Labour Commissioner (C),
New No.5, Old No.1-A (II Floor),
Lady Doak College Road,
Chinna Chokkikulam,
Madurai 625 002.



W.A.(MD).No.1446 of 2017

2.The Regional Labour Commissioner (Central) &
Appellate Authority,
Under the Payment of Gratuity Act, 1972,
Office of the Regional Labour Commissioner ©,
26, Haddows Road, Sastri Bhavan,
Chennai 600 006.

3.Sri.K.Muthuraj

... Respondents

Prayer: Writ Appal is filed under Clause 15 of Letter Patent against the order passed by this Court in W.P.(MD).No.5668 of 2011, dated 03.01.2017.

For Appellant	: Mr.K.Sankararaman
For R1 & R2	: Mr.S.Jeyasingh
For R3	: Mr.S.Sathya Chidambaram

J U D G M E N T

(Judgment of the Court was delivered by **V.BHAVANI SUBBAROYAN, J.**)

The Union of India filed this appal challenging the order passed by this Court in W.P.(MD).No.5668 of 2011, dated 03.01.2017.

2. The appellant/Union of India has filed the writ petition, wherein they have challenged the order of the second respondent thereby confirming the



W.A.(MD).No.1446 of 2017

order of the first respondent and for a consequential direction to reimburse the deposit amount of Rs.67,163/- to the petitioner. The learned single Judge of this Court, relying upon the decision of this Court in W.P.No.23127 of 2015 etc., batch dated 31.03.2016, dismissed the writ petition with the following directions:

“9. Since the amount, which is due to be paid to the third respondent has already been deposited by the petitioner, at the first respondent office, the first respondent is directed to forthwith release the said amount to the third respondent herein on production of a copy of this order”.

3. In the said order dated 31.03.2016, the learned Judge, after having extracted the earlier order passed by this Court in W.P.No.23577 of 2015, dated 29.01.2016, had dismissed those batch of cases also. The relevant portion of the order dated 29.01.2016, is reproduced hereunder:

“..16.Furthermore, the petitioner establishment has not obtained any permission from the Government of India by invoking Section 5 of the Act.

17. In such circumstances, the mere fact is that Gratuity has been provided as per the Pension Rules will not disentitle the respondents 3 to 6 to get their Gratuity computed and paid as per the Act. It is not the case of the respondents 3 to 6 that they seek for gratuity both under the Act and as per the Pension Rules. They are claiming



W.A.(MD).No.1446 of 2017

Gratuity under the Act and that they claim only the difference in Gratuity arising out of computation under the Act after giving credit to the Gratuity paid under the Pension Rules. Hence, for all the above reasons both the legal issues have to be necessarily answered against the petitioner.

18. The other contention raised by the learned counsel appearing for the petitioner is that the claim made by the respondents is a belated claim as the respondents 3 to 6 retired from service in the year 2007 and claim petitions had been filed in the year 2011. The application for payment of Gratuity would arise from the date on which the employee becomes eligible for the payment of Gratuity. In the instant case, prior to the retirement, Gratuity was computed in accordance with the Pension Rules and paid and thereafter, after obtaining legal advice, the respondents have moved the Controlling Authority. In terms of Rule 10 of the Payment of Gratuity (Central) Rules 1972, the employee may file an application within 90 days from the occurrence of the cause for the application and apply Form No.'N'. The application filed before the second respondent, Controlling Authority, was entertained and the Authority having been satisfied, directed the application to be taken on file. It appears that the petitioner establishment did not raise any objection before the second respondent with regard to limitation and therefore at this juncture they are not entitled to raise such plea. In any event, the respondents 3 to 6 having served for more than 35 years cannot be shut out at threshold and the applications could not have been rejected on the ground of limitation when there is no allegation of any malafide intention for belatedly approaching the Authority. Therefore, on this ground also, this Court is unable to accept the contention of the learned counsel for the petitioner.



W.A.(MD).No.1446 of 2017

19. *The decision relied upon by the learned counsel appearing for the petitioner in the case of Pallavan Transport Corporation(Metro), Ltd., Madras and Ms.Simrose and Others arose out of slightly a different factual situation and taking note of the definition of employees as defined under Section (2)(e) of the Act, this Court held that the employee therein cannot seek for counting the service rendered by him with the Government for computation of Gratuity. However, in the instant case, the petitioner establishment has been declared as a Public Utility Service by the Government of India and fall under the purview of Section 2(n) of the Industrial Disputes Act and therefore, the petitioner establishment is an employer as contemplated under Section 2(f) of the Act.*

20. *For all the above reasons, the petitioner has not made out any case for interference with the impugned orders. Accordingly, the writ petitions fail and they are dismissed. As the amount computed as difference of Gratuity has already been deposited by the petitioner organisation before the second respondent, the second respondent is directed to forthwith release the amount to the respondents 3 to 6, on production of copy of this order. Consequently, connected miscellaneous petitions are closed. No costs."*

4. Challenging the same, the Union of India has filed the present writ appeal stating that the third respondent does not fall under the purview of the definition 'employee' under Section 2(e) of the Payment of Gratuity Act, 1972. Hence, he is not entitled to claim gratuity under the Payment of Gratuity Act, 1972. Further, the third respondent being a Central Government employee



W.A.(MD).No.1446 of 2017

cannot invoke the provision of Payment of Gratuity Act and claim gratuity under payment of Gratuity Act.

5. The learned counsel appearing for the appellant/Union of India would submit that similar matters have been challenged before this Court in W.A.Nos.1687 of 2021 etc., batch and the Hon'ble Division Bench of this Court allowed the writ appeals on 21.06.2023, by holding that the employees concerned herein do not fall under the exclusive definition of 'employee' and to be more precise, they are excluded from the definition of Section 2(e) of Payment of Gratuity Act, 1972. Once they are excluded, no provision under the Payment of Gratuity Act, 1972 could be made applicable and no relief can be granted.

6. For the sake of convenience, the relevant portion of the judgment in W.A.Nos.1687 of 2021 etc., batch dated 21.06.2023, is extracted hereunder:

“11. In the present case, the employees, who were holding the posts under the Central Government, are governed by CCS (Pension) Rules, 1972, in particular, Rule 50 of the said Rules for payment of Retirement/Death Gratuity and Rule 49 of the said Rules for payment of pension. A reading of the judgment of the Hon'ble Apex Court and a careful consideration of the contentions of parties would make it very clear that the employees must satisfy the requisite conditions to be



W.A.(MD).No.1446 of 2017

governed by the provisions of *Payment of Gratuity Act, 1972*. The Appellate Authority concerned in the writ appeals and writ petitions had taken extensive steps to grant the relief to the employees by confirming the order of the Controlling Authority concerned in the writ appeals and writ petitions. Certainly that exercise has got to be appreciated, but only the first limb of the definition of “employee” under *Section 2(e)* of the Act will be applicable to the employees herein and not the exclusion clause. In the present case, as rightly pointed out by the learned Additional Solicitor General, the Municipal Corporation of Delhi had decided to adopt the CCS (Pension) Rules, 1972 to extend the benefit of pension to its employees. The employees of Municipal Corporation of Delhi were already covered by the *Payment of Gratuity Act, 1972*. When the Act is not applicable to a person, who holds a post under the Central Government or State Government and is governed by any other Act or any other Rules providing for Gratuity, the employees concerned cannot demand any benefit under the *Payment of Gratuity Act, 1972*. Though we are in entire agreement with the contention of the learned counsel for the employees that *Section 14* of *Payment of Gratuity Act, 1972* provides the power to override other Acts, and that no benefits that flow under the *Payment of Gratuity Act, 1972* can be taken away by way of settlement or agreement, *Section 14* will be applicable provided the employees fall within the inclusive definition of “employee” and not otherwise.

12. As discussed supra, we are of the view that in the present case, the employees do not come under the provisions of *Payment of Gratuity Act, 1972* as they are Central Government Employees originally covered by the CCS (Pension) Rules, 1972 unlike employees of Municipal Corporation of Delhi wherein CCS (Pension) Rules, 1972 have been adopted for the purpose of providing pension. Even assuming for the



W.A.(MD).No.1446 of 2017

sake of argument that the entire CCS (Pension) Rules, 1972 have been adopted by the Municipal Corporation of Delhi, the employees therein are governed not only by the provisions of *Payment of Gratuity Act, 1972* but also under the CCS (Pension) Rules, 1972. In any event, better benefits will have to be extended to them and the Hon'ble Supreme Court, in that context, had granted the relief of payment of difference in gratuity to those employees, who had better benefits under the *Payment of Gratuity Act, 1972* than the one under the Pension Rules. Hence, we are of the view that the employees concerned herein do not fall under the exclusive definition of “employee” and to be more precise, they are excluded from the definition of *Section 2(e)* of *Payment of Gratuity Act, 1972*. Once they are excluded, no provision under the *Payment of Gratuity Act, 1972* could be made applicable and no relief can be granted.”

7. Following the same, we are of the view that the writ appeal has to be allowed as the third respondent do not fall under the category of employee. Accordingly, this Writ Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

[V.B.S.,J.] [K.K.R.K.,J.]
07.03.2024

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

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W.A.(MD).No.1446 of 2017

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W.A.(MD).No.1446 of 2017

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