



W.P.(MD)Nos.12746 to 12479 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2024

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.(MD)Nos.12746, 12747, 12748 and 12749 of 2017

and

W.M.P.(MD)Nos.9853, 9854, 9855 and 9856 of 2017

Muruga Home Industries,
Thachanallur, Tirunelveli,
Rep.by its Managing Partner

... Petitioner in all petitions

Vs.

1.The Appellate Authority Under the
Payment of Gratuity Act, 1972,
(Joint Commissioner of Labour),
Madurai.

2.The Controlling Authority under the
Payment of Gratuity Act, 1972,
(Assistant Commissioner of Labour),
Tirunelveli.

...1st and 2nd respondents in all
petitions

3.Chitirai Kannu

...3rd Respondent in W.P.(MD)No.
12746/2017

3.A.Kuruvammal

...3rd Respondent in W.P.(MD)No.
12747/2017

3.Muthiah Nadar

... 3rd Respondent in W.P.(MD)No.
12748/2017

3.K.Vel Mayil

...3rd Respondent in W.P.(MD)No.
12749/2017



COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned orders dated 10.02.2017 (received on 28.04.2017) passed by the first respondent in P.G.Appeal (IA) No.1, 2, 3 and 4 of 2016, respectively and quash the same as illegal.

In all petitions:

For Petitioner	: Mr.M.Jerin Mathew
For R1 & R2	: Mr.P.Thambidurai Government Advocate
For R3	: No Appearance

COMMON ORDER

These writ petitions have been filed challenging the orders dated 10.02.2017 passed by the first respondent in P.G.Appeal (IA) Nos.1, 2, 3 and 4 of 2016, respectively.

2.The petitioner company in all these writ petitions is a partnership firm. The third respondent in all these writ petitions are claiming themselves as workers under the petitioner. The third respondent in all writ petitions claiming to be the workers of the petitioner company have filed applications in P.G. (IA) Nos.91, 77, 92 and 67 of 2013, respectively for condoning the delay of 11 years in filing the application for payment of gratuity along with the main application. The said applications were dismissed on 12.01.2016. Challenging the same, the third respondent in all these petitions filed appeals before the first respondent in



P.G.(Appeal) (IA)No.1, 2, 3 and 4 of 2016, respectively. The first respondent had allowed the said appeals by orders dated 06.02.2017 by setting aside the orders of the second respondent. The said orders are under challenge in these writ petitions. The petitioner and the third respondent in all these writ petitions are hereinafter referred to as “employer” and “employees” for the sake of convenience.

3.The learned counsel for the employer submits that the employees had made their claim after a huge delay of more than 11, 16 and 13 years, respectively. However, the appellate authority without taking into consideration the objections raised by the employer with regard to the delay in filing the applications, had allowed the appeals filed by the employees.

4.The contention raised by the employees is that it is obligatory on the part of the employer in terms of the provisions of Section 7(2) of the Payment of Gratuity Act, 1972 (hereinafter referred to as “the Act” for the sake of brevity and convenient) to determine and pay the gratuity within a period of 30 days from the date of superannuation even without any application in terms of Section 7(1) of the Act. Taking into consideration the said aspect, the appellate authority has entertained the said appeals and allowed the same. Therefore, there is no error in the orders passed by the appellate authority.



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5.I have given careful consideration to the submissions made on side and perused the materials placed on record.

6.Before going into the issue involved in these writ petitions, it would be appropriate to extract Sections 7(1) and 7(2) of the Payment of Gratuity Act as under:

“Determination of the amount of gratuity.

(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined.”

7.Section 7(1) of the Act provides that an employee, who retired from service or superannuated, is supposed to make an application before the employer within a period of 60 days from the date of superannuation or retirement from service. However, section 7(2) of the Act provides that it is obligatory on the part of the employer, whether an application referred to in sub-section (1) has been made or not immediately after superannuation, to



determine the amount of gratuity and pay the same within a period of 30 days from the date of superannuation.

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8. Reading of the above provisions makes it clear that filing an application by the employee for gratuity under Section 7(1) of the Act is not mandatory and it is only directory in nature and it is also immaterial.

9. In the present case, the employees filed applications claiming gratuity before the original authority along with the applications for condoning the delay in filing such application. A conjoint reading of the provisions in Sections 7(1) and 7(2) of the Act shows that filing an application on the part of the employees is insignificant and even in the absence of any application on the part of the employees, Section 7(2) of the Act mandates the employer to determine the gratuity and pay the same within a period of 30 days from the date of superannuation after providing notice in writing to the employee. When the Act mandates the employer to pay the gratuity, the employer is duty bound to follow the same. In the present case, there is a total failure on the part of the employer to quantify the gratuity and give notice in writing to the employees within the specified period under the Act. Therefore, this Court finds fault only on the side of the employer under the Act.



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10. Such being the position, I do not find any error in the orders passed by the appellate Authority. Therefore, taking into consideration the observation made above that the application for payment of gratuity is immaterial, this Court is of the view that the employer is liable to pay the gratuity as claimed by the employees, if they are otherwise eligible in terms of the provisions of the Act. Since the employer/petitioner has taken a stand that the employees in these cases are not eligible otherwise to get the gratuity, the petitioner is directed to decide the eligibility of the employees and if the employees are found eligible, the employer/petitioner shall pay the gratuity along with the interest as specified under the Act. The said exercise shall be completed within a period of thirty days from the date of receipt of a copy of this order.

11. These Writ Petitions are disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

07.11.2024

Index:yes/no
Internet:yes/no
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To

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KRISHNAN RAMASAMY, J.

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