



W.P.(MD)No.15367 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)No.15367 of 2017

and

W.M.P.(MD)Nos.12168 and 12169 of 2017

Panjamadevi Village Panchayat,
Represented by its Special Officer/
Block Development Officer (Village Panchayat),
Minnampalli Post,
Manmangalam Taluk,
Karur District.

... Petitioner

Vs.

1.The Assistant Commissioner of Labour/
The Controlling Authority under the Payment of Gratuity Act,
No.84, Nehrusi Nagar 1st Street,
Dindigul.

2.K.Subramanian (died)
3.Palaniammal
4.Thangaraj
5.Mahalakshmi

...Respondents

[R3 to R5 were impleaded vide order dated 05.11.2024]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records in pursuant to the impugned order passed by the first respondent in P.G.No.157 of 2016 dated 01.12.2016 and quash the same.



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W.P.(MD)No.15367 of 2016

For Petitioner : Mr.N.S.Karthikeyan
For R1 : Mr.P.Thambidurai
Government Advocate
For R2 to R5 : Mr.S.Arunachalam

ORDER

This writ petition has been filed challenging the order dated 01.12.2016 passed by the first respondent in P.G.No.157 of 2016.

2.The case of the petitioner is that second respondent was appointed as Motor Operator in the petitioner's village Panchayat and retired from service on 30.06.2014. Thereafter, the second respondent filed an application claiming gratuity along with the condone delay petition in P.G.I.A.No.11 of 2016. The said application was allowed and the claim petition was numbered as P.G.No. 157 of 2016. The first respondent without considering the facts and circumstances of the case, had allowed the claim petition and directed the petitioner to pay the amount claimed by the petitioner with 10% interest. The said order is under challenge in this writ petition. The petitioner and the third respondent in this writ petition will hereinafter be referred to as “employer” and “employee” for the sake of convenience.

3.The learned counsel for the employer submits that the employee had made his claim after a huge delay of more than 542 days and the second



respondent is the regular employee of the petitioner/employer. However, the first respondent without taking into consideration the objections raised by the employer with regard to the delay in filing the application, had allowed the claim petition filed by the employee.

4.The contention raised by the employee 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 first respondent has entertained the claim petition and allowed the same. Therefore, there is no error in the order passed by the first respondent.

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



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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.

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 insignificant as he is otherwise entitled for gratuity in terms of the provisions of the Section 7(2) of the Act, which mandates the employer to pay gratuity even without any application from the employee, in terms of Section 7(1) of the Act.



9. In the present case, the employee filed application claiming gratuity before the original authority along with the application 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 period prescribed under the Act. Therefore, this Court finds fault only on the side of the employer under the Act.

10. Such being the position, I do not find any error in the orders passed by the first respondent. Therefore, this Court is of the view that the employer is liable to pay the gratuity as claimed by the employee, if he is otherwise eligible in terms of the provisions of the Act. Since the employer/petitioner has taken a stand that the employee in these case is not eligible otherwise to get the gratuity, the petitioner is directed to decide the eligibility of the employee and if the employee is found eligible, the employer/petitioner shall pay the gratuity along



W.P.(MD)No.15367 of 2024

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 Petition is 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

The Assistant Commissioner of Labour/
The Controlling Authority under the Payment of Gratuity Act,
No.84, Nehrusi Nagar 1st Street,
Dindigul.



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W.P.(MD)No.15367 of 2017

KRISHNAN RAMASAMY, J.

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W.P.(MD)No.15367 of 2017

07.11.2024