IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON : 17.04.2025
PRONOUNCED ON : 25.04.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.Nos. 2868 and 2875 of 2021, 27637, 27654, 27684, 28056, 29180 of 2022, 30789 and 13224 of 2023
and W.M.P.Nos. 3210 and 3218 of 2021,
26912, 26931, 26960, 27340, 28470 of 2022
12953 and 30463 of 2023

The Management,
Tamil Nadu Agricultural University,
Horticultural Research Center,
Ondikadai Post,
Yercaud – 636 602 .... Petitioner in all WPs

(Note: In WPs 27684, 28056 and 29180/2022,
Centre is described as Horticultural Research Station)

Vs.

1.The Appellate Authority under the
Payment of Gratuity Act,
And the Additional Commissioner of Labour,
Coimbatore – 18 .... 1st Respondent in all WPs

2. The Controlling Authority under the
Payment of Gratuity Act,
And the Deputy Commissioner of Labour,
Salem. ... 2nd Respondent in all WPs

3. T. Pushpam,
   W/o. Thangaraj,
   29/33, Jerrinakadu Murugan Nagar,
   Yercaud – 636 601.
   Salem. …. 3rd Respondent in 2868/2021

4. M.Jaya
   W/o. Manickam,
   Kommakadu, Asambur(PO)
   Yercaud – 636 601.
   Salem District. ….3rd Respondent in 2875/2021

5. S.Muthulakshmi,
   W/o. Late Samyappan,
   439 (1), Mel Alagapuram,
   Yercaud – 636 601 …3rd Respondent in 27637/2022

6. P.Sellammal
   W/o. Periyasamy,
   26/61, Murugan Nagar,
   Yercaud – 636 601. ….3rd Respondent in 27654/2022

7. R.Pushpam,
   W/o. Late Rajan,
   29/14E, Jaranikadu,
   Ondikadai Post,
   Yerkaud-636 601 ....3rd Respondent in 27684/2022

8. V.Saraswathi,
   W/o. Velusamy,
   29/221, 12th Street,
   Jaranikadu,

Yercaud – 636 601. ….3rd Respondent in 28056/2022

9. L.Pathima,
W/o. Lourdsamy,
10, Murugan Nagar,
Yercaud – 636 601. ….3rd Respondent in 29180/2022

10. Tmt.D.Manjula @ Chellammal,
W/o. Devados,
29/44G, Jerinakadu,
Near Kaaliamman Kovil,
Yercadu, Salem -636 601. ….3rd Respondent in 13224 /2023

11. K.Valliammal
W/o. Karuppiah,
29/102, Murugan Nagar,
Yercadu – 636 601. ….3rd Respondent in 30789/2023

Prayer in all WPs

To issue writ or order or direction in the nature of Writ of Certiorari after calling for the records relating to order dated (i) 21.10.2019 and 29.10.2019 in A.G.A.No.59 if 2021 (WP No.2868 of 2021), (ii) 21.10.2019 and 29.10.2019 in A.G.A No.61 of 2019 (WP No.2875 of 2021), (iii) 3.8.2022 in A.G.A No.22 of 2022 (WP No.27637 of 2022), (iv) 3.8.2022 in AGA No. 24 of 2022 (WP No.27654 of 2022), (v) 3.8.2022 in AGA No. 25 of 2022 (WP No. 27684 of 2022) (vi) 3.8.2022 in AGA No.26 of 2022 (WP No. 28056 of 2022) , (vii) 3.8.2022 in A.G.A.No.23 of 2022 (WP No.29180 of 2022), (viii) 22.02.2023 in A.G.A.No. 91 of 2022 (WP No. 13224 of 2023), (ix) 27.6.2023 in A.G.A.No. 92 of 2022 (WP No. 30789 of 2023) passed by the first respondent and quash the same as being illegal, arbitrary and unconstitutional and pass such other orders or directions as this Hon'ble Court deems fit and proper in the circumstances of the case.

<u>Prayer in all WMP s</u>

To pass an interim order of stay of the operation of order dated (i) 21.10.2019 and 29.10.2019 in AGA No. 59 of 2019 (WMP No. 3210 of 2021), (ii) 21.10.2019 and 29.10.2019 in AGA No. 61 of 2019 (WMP No. 3218 of 2021), (iii) 3.8.2022 in AGA No.22 of 2022 (WMP No.26912 of 2022), (iv) 3.8.2022 in AGA No.24 of 2022 (WMP No. 26931 of 2022), (v) 3.8.2022 in AGA No.25 of 2022 (WMP No.26960 of 2022, (vi) 3.8.2022 in AGA No.26 of 2022 (WMP No.27340 of 2022), (vii) 3.8.2022 in A.G.A.No.23 of 2022 (WMP No. 28470 of 2022), (viii) 22.02.2023 in A.G.A.No. 91 of 2022 (WMP No. 12953 of 2023), (ix) 27.6.2023 in A.G.A.No.92 of 2022 (WMP No. 30463 of 2023) passed by the 1st Respondent pending disposal of the Writ Petition and pass such other orders or directions to meet the ends of justice.

<u>Appearance of Parties:</u>

For Petitioners : Mr.R.Sivakumar, Advocate assisted by
In all WPs S.Manikandan, Standing Counsel for TNAU

For Respondent 1 and 2
In all WPs : Mr.R.Kumaravel, AGP

For Respondent 3
In all WPs : Mr.K.M.Ramesh, Senior Advocate
For M/s.V.Subramani and M.G.Martin,
Advocates.

COMMON JUDGMENT

Heard.

2.In all nine writ petitions, the Petitioner is the Tamil Nadu Agricultural University, including its Agricultural Research Centre and Horticulture Research Station. These petitions challenge various orders passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (1st Respondent herein), whereby the appeals filed by the University were entertained and the orders of the Controlling Authority (2nd Respondent) directing the payment of gratuity to each of the contesting 3rd Respondents were confirmed. While issuing notice in all the writ petitions, interim stay of the impugned orders was granted in seven of them, whereas in the remaining two, only notice was ordered. As all the writ petitions involve identical legal contentions and arise out of similar factual backgrounds, they are grouped together and disposed of by this common order.

3.It is the case of the writ petitioner that the Tamil Nadu Agricultural University was established under the Tamil Nadu Agricultural University Act, 1971. Under its administrative control, 18 constituent colleges are functioning across 15 campuses, in addition to 39 research stations, 15 Krishi Vigyan Kendras, and 3 diploma institutions situated in various districts of the State. The contesting 3rd Respondents were engaged on different dates as casual labourers, primarily for fieldwork, based on the emergent needs of the University, and their engagement was purely temporary in nature. Subsequently, by G.O.Ms.No.352, Agriculture Department, dated 24.11.2008, those workers who had been employed either on consolidated or daily wages for more than 20 years and whose names were specifically mentioned in the annexure to the said Government Order, were brought under the time scale of pay with effect from 1.4.2008.

4.All the contesting respondents have retired from service. As per G.O.Ms.No.78 of the Agriculture Department dated 23.04.2013, it was notified that mazdoors who were placed on the time scale of pay would be entitled to various service benefits, including Dearness Allowance, House Rent Allowance, City Compensatory Allowance, and a Medical Allowance of Rs.100/-. In addition, they would receive a consolidated sum of Rs.50,000/- as a one-time payment upon their retirement.

5.The writ petitioner University also issued Proceedings No.

A6/0149/(II)/2014, dated 04.06.2014, wherein the following order was passed:

> "In exercise of the powers conferred under item No.5(2) of chapter-III of the Regulations of TNAU the Mazdoor(s) on Time Scale of pay shown in the annexure are brought under regular establishment (Provincialisation) with effect from 01.04.2014 in the pay band 1A of Rs.4800-10,000 + Grade pay of Rs.1,300/- with usual allowances as applicable to regular employee, subject to the following conditions:-
>
> I. The Mazdoor (s) now brought under regular establishment is placed on probation with effect from 01.01.2014 for a period of 2 years on duty within a continuous period of three years governed by the service conditions. (viz., Tamil Nadu leave rules for the basic service, FSF, Gratuity, SPFCGS 2000 and contributory pension scheme vide G.O.Ms.No.259 Finance (Pension) Department dated 06.08.2013 as applicable to regular employees.
>
> II. Though the Services of the Mazdoor (s) are brought under regular establishment the farm work / Department work should not suffer during the holidays by way of availing the holidays by the Mazdoor (s). However, to ensure that the farm work / Department work does not suffer during the holidays, the Mazdoor (s) may be asked to work on holidays in turn according to the nature and necessity of the work in the farm / Department. There will not be any change in the working hours.
>
> III. In case there is any break of service within the continuous period of "5" years which is not recorded in the Service Register / roll and this is found at a later date, the regularization will be cancelled."

6.The learned counsel for the petitioner University also submitted a tabulated statement indicating the amounts paid to the contesting 3rd respondents at the time of their superannuation. This included lump sum payments made to three individuals, benefits under the Contributory Pension

Scheme extended to six individuals, and special contributions towards the CPF account in the case of two individuals. The details are as follows:

S.No.	W.P.No.& Name of the R3	Designation	Joining & Retirement dates	Lumpsum Payment	SLS	CPS	SPFCGS 2000
1.	2868/2021 T.Pushpam	MTSP	01.01.1988 30.06.2014	Rs.50,000/-	0	0	0
2.	13224/2023 D.Manjula	MTSP	16.06.1983 30.06.2013	Rs.50,000/-	0	0	0
3.	29180/2022 L.Pathima	MTSP	01.01.1988 30.06.2013	Rs.50,000/-	0	0	0
4.	27637/20022 S.Muthulakshmi	PUSM	01.01.1988 30.06.2017	0	Rs.17,516/-	Rs.1,21,427/-	0
5.	27654/2022 P.Chellammal	PUSM	01.01.1988 30.06.2017	0	Rs.17,516/-	Rs.1,22,368/-	0
6.	27684/2022 R.Pushpam	PUSM	01.01.1988 30.06.2017	0	Rs.17,516/-	Rs.1,22,574/-	0
7.	28056/2022 V.Saraswathi	PUSM	01.01.1988 31.08.2018	0	Rs.23,484/-	Rs.1,86,195/-	Rs.14,406/-
8.	2875/2021 M.Jaya	PUSM	01.01.1988 30.06.2015	0		Not received	
9.	30789/2023 K.Valliammal	PUSM	05.10.1982 30.06.2018	0	Rs.23,484/-	R.1,72,245/-	Rs.14,208/-

7.Dissatisfied with the terminal benefits paid to them, each of the contesting respondents issued individual notices to the University seeking payment of gratuity. Upon receiving no favourable response, they filed applications before the 2nd Respondent— the Controlling Authority under the Payment of Gratuity Act, 1972. The Controlling Authority took up the claims, assigned separate case numbers, and issued notices to the petitioner University.

8.Upon consideration, the Controlling Authority held that the provisions of the Payment of Gratuity Act, 1972 were applicable to the University, which falls within the ambit of Section 1(3)(b) of the Act. It was further observed that in earlier instances where similarly placed workmen had approached the authority seeking gratuity, the claims were allowed, and the University's appeals there against were dismissed. As those orders of the Appellate Authority remained unchallenged, gratuity amounts were disbursed to the concerned employees after obtaining No Objection Certificates from the University.

9.The authority also relied on certain decisions of this Court cited before it and held that the consolidated sum of Rs.50,000/- paid pursuant to a government order did not amount to payment of gratuity under the Act. Consequently, the authority directed the University to pay gratuity to the contesting respondents along with interest at the rate of 10%.

10.Aggrieved by the orders passed by the respective Controlling Authorities, the petitioner University preferred appeals under Section 7(7) of the Payment of Gratuity Act, 1972, before the 1st Respondent Appellate Authority.

In the appeals, the University contended that it does not fall within the purview of the Tamil Nadu Shops and Establishments Act. It was further submitted that the contesting respondents were merely casual labourers who were not appointed against any sanctioned posts. The University also asserted that the respondents had neither completed 240 days of service in any given year nor had they rendered five years of continuous service, thereby disentitling them from gratuity under the Act.

11.With regard to the production of muster rolls, the University contended that such records were maintained only for a period of three years and, therefore, the Controlling Authority ought not to have drawn an adverse inference to conclude that the workmen had completed the requisite minimum period of service. However, the Controlling Authority rejected these submissions and held that the provisions of the Payment of Gratuity Act, 1972 were applicable to the contesting respondents. In support of its conclusion, the authority also relied on the judgment of this Court in W.P. No. 3359 of 2009 dated 28.02.2011 (Tamil Nadu Agricultural University, Yercaud), wherein the applicability of the Gratuity Act to the University was upheld. In light of the above findings, the appeals filed by the petitioner University were dismissed.

Bottom of Form

12.The learned counsel for the petitioner placed reliance on the following four judgments:

1.Srinivasa Resorts Limited & Ors Vs. State of Andhra Pradesh& Ors. reported in 2002 (1) LLJ 1256 (AP)
2.Allahabad Bank & Ors.Vs. All India Allahabad Bank Retired Empls. Assn and Ors. reported in 2010 (2) SCC 44
3.Municipal Corporation of Delhi Vs. Dharam Prakash Sharma & Ors reported in 1998 (7) SCC 221
4.Rajkot Municipal Corporation Vs. Aniruddh Fulshankar Shukla reported in 1999 (II) LLJ 830 Guj

13.In the first judgment, a Full Bench of the Andhra Pradesh High Court struck down Sections 47(3) and (4) of the Andhra Pradesh Shops and Establishments Act, 1966, which provided for payment of gratuity even upon completion of just one year of service. The Court held these provisions to be arbitrary and unconstitutional, observing that under the Payment of Gratuity Act, 1972, a minimum of five years of continuous service is a statutory requirement for entitlement to gratuity.

14.In the second judgment, **Allahabad Bank & Others vs. All India Allahabad Bank Retired Employees Association & Others** [(2010) 2 SCC 44], the Hon'ble Supreme Court held that the provisions of the Payment of

Gratuity Act, 1972, safeguard an employee's right to gratuity even if the individual has received benefits under a pension scheme, unless the employer has obtained a valid exemption under the Act. The Court, in paragraph 27 of the judgment, observed as follows:

> "27. .....The Act, nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub- section (5) of Section 4 as to whether the terms of gratuity payable under any Award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under sub-section (5) of Section 4, since the Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act. Even on merits the conclusions drawn by the Controlling Authority that the Pension Scheme (old) offered by the Bank is more beneficial since the amount of money the pensioners got under the Pension Scheme is more than the amount that could have been received in the form of gratuity under the provisions of the Act is unsustainable. The Controlling Authority failed to appreciate that sub- section (5) of Section 4 of the Act, protects the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer than the benefits conferred under the Act. The comparison, if any, could be only between the terms of gratuity under any award or agreement or contract and payment of gratuity payable to an employee under Section 4 of the Act. There can be no comparison between a Pension Scheme which does not provide for payment of any gratuity and right of an employee to receive payment of gratuity under the provisions of the Act. Viewed from any angle the order of the Controlling Authority is unsustainable.

The order is liable to be set aside and the same is accordingly set aside."

15.In the third case, **Municipal Corporation of Delhi vs. Dharam Prakash Sharma & Others** [(1998) 7 SCC 221], the Hon'ble Supreme Court held that, notwithstanding the existence of a pension scheme, an employee of the Municipal Corporation would still be entitled to receive gratuity under the Payment of Gratuity Act, 1972. The Court, in paragraph 2 of the judgment, observed as follows:

> "The short question that arises for consideration is whether an employee of the MCD would be entitled to payment of gratuity under the Payment of Gratuity Act when the MCD itself has adopted the provisions of the CCS (Pension) Rules, 1972 (hereinafter referred to as "the Pension Rules"), whereunder there is a provision both for payment of pension as well as of gratuity. The contention of the learned counsel appearing for the appellant in this Court is that the payment of pension and gratuity under the Pension Rules is a package by itself and once that package is made applicable to the employees of the MCD, the provisions of payment of gratuity under the Payment of Gratuity Act cannot be held applicable. We have examined carefully the provisions of the Pension Rules as well as the provisions of the Payment of Gratuity Act. The Payment of Gratuity Act being a special provision for payment of gratuity, unless there is any provision therein which excludes its applicability to an employee who is otherwise governed by the provisions of the Pension Rules, it is not possible for us to hold that the respondent is not entitled to the gratuity under the Payment of Gratuity Act. The only provision which was pointed out is the definition of "employee" in Section 2(e) which excludes the employees of the Central

Government and State Governments receiving pension and gratuity under the Pension Rules but not an employee of the MCD. The MCD employee, therefore, would be entitled to the payment of gratuity under the Payment of Gratuity Act. The mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Admittedly MCD has not taken any steps to invoke the power of the Central Government under Section 5 of the Payment of Gratuity Act. In the aforesaid premises, we are of the considered opinion that the employees of the MCD would be entitled to the payment of gratuity under the Payment of Gratuity Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension. Needless to mention that the employees cannot claim gratuity available under the Pension Rules."

16.The fourth judgment, rendered by the Gujarat High Court, followed the decision of the Hon'ble Supreme Court in **Municipal Corporation of Delhi** (cited supra) and held that unless an exemption has been granted under Section 5 of the Payment of Gratuity Act, 1972, an employer cannot avoid liability for payment of gratuity. However, it is unclear how any of these judgments support the case of the petitioner University.

17.Even in the case of the petitioner University, there have been multiple decisions of this Court directing payment of gratuity to employees engaged by it, as rightly noted by both the Controlling and Appellate Authorities. As early as two decades ago, Justice V.S. Sirpurkar (as he then was), in **The Management of Agricultural vs. The Controlling Authority under the Payment of Gratuity Act**, W.P. No. 1061 of 1995 dated 21.06.2002, upheld the order passed by the gratuity authority. Similarly, in **The Management, Tamil Nadu Agricultural University vs. The Appellate Authority,** W.P. No. 1474 of 2017 dated 14.02.2022, this Court dismissed the writ petition filed by the University and confirmed the order of the gratuity authority, noting that the contesting respondent had not been served. Consequently, the order passed in AGA No. 147/2016 dated 14.10.2016 was affirmed.

18.Although the authorities were referred to a decision of Justice K. Chandru, wherein it was held that the provisions of the Industrial Disputes Act would apply to the petitioner University in light of the decision in **Bangalore Water Supply and Sewerage Board**, and that the provisions of the Tamil Nadu Conferment of Permanent Status Act would also be applicable, this view has not received uniform judicial acceptance. While Justice G. Chandrasekharan, in *W.P.(MD) No. 9319 of 2014* dated 02.09.2022, followed the reasoning of Justice K. Chandru in *W.P. No. 3359 of 2009* dated 28.02.2011, Justice S. Srimathy, in *W.P.(MD) No. 9322 of 2014* dated 01.06.2023, took a contrary view and declined to follow it. However, the divergence of opinion on this issue need not detain this Court in deciding the applicability of the Payment of Gratuity Act to the petitioner University.

19.It is necessary to reiterate the legal position concerning the applicability of the Payment of Gratuity Act, 1972 to the petitioner University. Section 1(3)(b) of the Act, which governs its scope and applicability, reads as follows:

> "every shop or establishment within the meaning of **any law for the time being in force** in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;"

20.While interpreting the phrase "any law for the time being in force" under Section 1(3)(b) of the Payment of Gratuity Act, the Hon'ble Supreme Court, in **State of Punjab vs. Labour Court, Jullundur** [(1980) 1 SCC 4], held as follows:

> ".... Section 1(3)(b) speaks of "any law for the time being in force in relation to shops and establishments in a State". There can be no dispute that the Payment of Wages Act is in force in the State of

Punjab. Then, it is submitted, the Payments of Wages Act is not a law in relation to "shops and establishments". As to that the Payment of Wages Act is a statute which, while it may not relate to shops, relates to a class of establishments that is to say, industrial establishments. But, it is contended, the law referred to under S. 1(3)(b) must be a law which relates to both shops and establishments such as the Punjab Shops and Commercial Establishments Act, 1958. It is difficult to accept that contention because there is no warrant for so limiting the meaning of the expression "law" in the S. 1(3)(b). The expression is comprehensive in its scope, and can mean a law in relation to shops as well as separately, a law in relation to establishments, or a law in relation to shops and commercial establishments and a law in relation to non-commercial establishments. Had S. 1(3)(b) intended to refer to a single enactment, surely the appellant would have been able to point to such a statute, that is to say, a statute relating to shops and establishments, both commercial and non-commercial. The Punjab Shops and Commercial Establishments Act does not relate to all kinds of establishments. Besides shops, it relates to commercial establishments alone. Had the intention of Parliament been, when enacting S. 1(3)(b), to refer to a law relating to commercial establishments, it would not have left the expression "establishments" unqualified. We have carefully examined the various provisions of the Payment of Gratuity Act, and we are unable to discern any reason for giving the limited meaning to S. 1(3)(b) urged before us on behalf of the appellant. Section 1(3)(b) applies to every establishment within the meaning of any law for the time being in force in relation to establishment in a State. Such an establishment would include an industrial establishment within the meaning of S. 2(ii)(g) of the Payment of Wages Act ....

21.This Hon'ble Court, in its decision in **SIET Women's College,**

Madras vs. Mohamed Ibrahim reported in 1992 (1) LLJ 91, held that even the Employees' Provident Funds Act could be considered as "a law for the time being in force" applicable to an institution, thereby bringing such institutions within the ambit of the Payment of Gratuity Act. It was further held that the provisions of the P.G. Act would extend to private colleges as well. In the case of Tamil Nadu Agricultural University, several statutes are applicable, including the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (Act 43 of 1981), wherein the term "establishment" under Section 2(c) includes "any industry." Therefore, in light of the earlier judicial pronouncements and the express language of Section 1(3)(b) of the Payment of Gratuity Act, the applicability of the said Act to the petitioner University stands beyond doubt.

22.It is an admitted position that the petitioner University has not obtained any exemption under Section 5 of the Payment of Gratuity Act, 1972. Consequently, the employees of the University, including the contesting 3rd Respondents, are entitled to gratuity under the provisions of the Act. Although the learned counsel for the petitioner submitted that certain 3rd Respondents were paid a lump sum amount pursuant to a Government Order and that some others received a special contribution to their Provident Fund, such payments cannot be treated as a substitute for gratuity as mandated under the Act.

23.In this regard, a similar issue arose in the case of the Tamil Nadu Electricity Board, where the Hon'ble Supreme Court, in **Katheeja Bai vs. The Superintending Engineer & Others** reported in (1984) 3 SCC 518, rejected the contention that alternative payments could replace gratuity and held as follows:

> "If the Special Contribution has some common features with gratuity, it has also distinctive features which distinguish it from gratuity payable under the payment of Gratuity Act, For example, one important feature which discriminates the Special Contribution under Regulation 37 from gratuity under the Payment of Gratuity Act is that while the Payment of the latter is obligatory and can only be denied if the employee's services have been terminated for his riotous or disorderly conduct or any other act of violence on his part or any act which constitutes an offence involving moral turpitude and can also be denied to the extent of the damage or loss caused by the employee, where the employee's services have been terminated for any act, wilful omission or negligence causing any damage or to loss, or destruction of property belonging to the employer, the payment of the former is discretionary and may not be made if the service of the employee has not been good, efficient and faithful. The employee has also the discretion to withhold or reduce the Special Contribution in any particular case. Of course, the employer cannot arbitrarily claim that the employee's service was not good, efficient and faithful, or with-hold or reduce the Special Contribution in an arbitrary fashion. Even so, the distinction between the mandate of the Payment of Gratuity Act and the discretion involved in making the Special

Contribution under Regulation 37 is intelligibly clear. Another feature which distinguishes the two is that the benefit of the Payment of Gratuity Act is confined to persons drawing wages not exceeding Rs. 1000 and does not extend to persons employed in a managerial or administrative capacity whereas the Special Contribution under Regulation 37 is not so confined and extends to every employee of the Board a except casual employees, State or Central Government employees employed with the Board on foreign service terms etc. etc. For the purpose of contribution of Provident Fund under Regulation 11 or Regulation 37 it makes no difference that a person is employed in a managerial or administrative capacity on that he draws wages more than Rs. 1000 per month. A third feature which marks the two apart is that the contribution to the Provident Fund whether under Regulation 11 or Regulation 37 becomes part of the Fund established by Regulation 3 and is to be managed and administered by trustees under Regulation 3-A to 3-K, whereas the payment of Gratuity Act does not provide for the Constitution of a fund to be managed and administered by trustees. In addition to these broad features, we have the outstanding circumstance that the Board themselves have described the contribution under Regulation 37 as a contribution to Provident Fund and have chosen to include it in their Provident Fund Scheme. That should conclude the matter.

Dr. Chitaley invited our attention to s. 14 of the Payment of Gratuity Act, 1972 which provides, "The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in an enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act." He argued that the provision for Special Contribution under Regulation 37 was inconsistent with the provisions of the Payment of Gratuity Act and therefore the latter should prevail to the exclusion of the former. This argument is dependent on the assumption that the Special Contribution under Regulation 37 is the same thing as the gratuity contemplated by the

Payment of Gratuity Act. We have held that it is not and the argument, therefore, fails."

24.In as much as the payments made to the 3rd Respondents do not constitute gratuity under the Payment of Gratuity Act, 1972, and the petitioner University has not obtained any exemption under Section 5 of the said Act, the amounts disbursed to the respondents cannot be treated as a substitute for gratuity. Therefore, the impugned orders passed by the 1st and 2nd Respondents are not liable to be interfered with. No substantial arguments were advanced with respect to the length of service, last drawn wages, or the quantum of gratuity, and this Court finds no infirmity in the findings rendered by the authorities on those issues. Accordingly, all the writ petitions stand dismissed. Consequently, all the connected Miscellaneous Petitions are also closed.

25.If the University had already deposited the entire gratuity amount before the 2nd Respondent, as mandated for preferring an appeal, the respective 3rd Respondents shall be permitted to withdraw the same. In the event of the demise of any of the 3rd Respondents, their legal representatives shall be entitled to withdraw the said amount.

25.04.2025

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

To

1. The Appellate Authority under the
   Payment of Gratuity Act,
   And the Additional Commissioner of Labour,
   Coimbatore – 18

2. The Controlling Authority under the
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DR. A.D. MARIA CLETE, J

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