

W.P.No.4612 of 2021

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

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RESERVED ON : 09.04.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

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

W.P.No. 4612 of 2021
and
W.M.P. No.5251 of 2021

V.Jayapal,
12/40, 4th Street, Padipudu Nagar,
Anna Nagar West Extension,
Chennai – 600 101.

...Petitioner

Vs.

- 1.The Appellate Authority under the Payment of Gratuity Act, 1972 and Deputy Chief Labour Commissioner (Central),
No.4, Haddows Road, Shastri Bhavan,
Chennai – 600 006.
- 2.The Controlling Authority under the Payment of Gratuity Act, 1972 and the Assistant Commissioner of Labour (Central), Chennai
O/o. The Dy. Chief Labour Commissioner (Central),
No.4, Haddows Road, Shastri Bhavan,
Chennai – 600006.
3. The Area Manager,
Food Corporation of India,
District Office,
No.8, Sathyamoorthy Salai,
Chennai – 600 031.

...Respondents



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Prayer in W.P.

To issue a writ, order or direction, in the nature of a Writ of Certiorari calling for the records from the files of the 1st respondent in G.A.No. 11/2018 and quash the impugned order dated 25.08.2020 and consequently restore the order passed by the 2nd respondent in G.A.No.9/2016 dated 05.09.2018 and pass such other order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in WMP

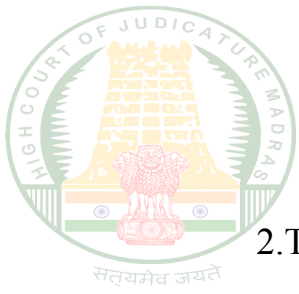
To grant an order of injunction restraining the 2nd Respondent from releasing or refunding the gratuity amount of Rs.1,10,413/- along with interest deposited by the 3rd respondent to the credit of G.A.No.9/2016 pending disposal of the above writ petition.

Appearance of Parties:

For Petitioner : Mr. K.M.Ramesh, Senior Advocate
For K.M.Ramesh, V.Subramani, S.Apunu,
R.Sandhya and V.Sivaraman, Advocates
For Respondent No.3 : M/s. M.Imthias and M.Vijayakumar, Advocates
For Respondent No. 1 and 2 : No appearance

J U D G M E N T

Heard.

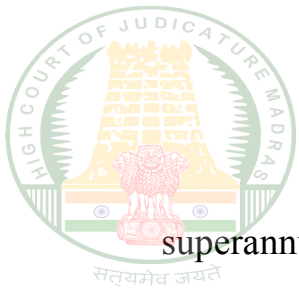


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2.The petitioner is a former employee of the 3rd respondent, the Food Corporation of India (FCI). In the present writ petition, he challenges the order dated 25.08.2020 passed by the 1st respondent–Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as “the P.G. Act”). By the said order, the Appellate Authority allowed G.A. No. 11 of 2018 filed by the 3rd respondent–FCI and rejected the petitioner’s claim for additional gratuity.

3.When the writ petition was taken up on 02.03.2021, this Court admitted the matter and granted an interim stay restraining the 3rd respondent–FCI from withdrawing the amount deposited with the second respondent–Controlling Authority under the P.G. Act. Pursuant to the court’s notice, the 3rd respondent entered appearance through counsel and filed a counter affidavit dated Nil, July 2024. When the matter was listed on 04.03.2025, this Court recorded the undertaking given by the petitioner that Ex.A3, which had not been previously filed, along with other supporting documents to establish his employment with FCI from 07.08.1975 to 15.10.1979 in a temporary capacity, would be produced before this Court.

4.As per the available records, the petitioner retired from service on



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superannuation on 31.07.2015. Thereafter, the 3rd respondent issued a sanction

order dated 05.08.2015, sanctioning a sum of Rs.8,33,469/- towards gratuity.

After deducting an amount of Rs.66,000/-, the petitioner was informed that the balance sum of Rs.7,67,469/- would be disbursed to him. The petitioner, by his letter dated 16.09.2015, raised an objection, contending that he had rendered a total of 41 years of service and that his period of employment at the Egmore godown had not been taken into account for gratuity computation. He accordingly claimed an additional gratuity of Rs.1,15,722/-. The 3rd respondent, however, refuted the claim by communication dated 13.10.2015.

5.The petitioner subsequently submitted an application in Form N before the 2nd respondent—Controlling Authority under the P.G. Act, seeking the differential gratuity amount. As the 3rd respondent failed to file a reply to the application, the petitioner filed a rejoinder. In paragraph 3 of the rejoinder, he furnished specific details regarding his period of temporary engagement at the Egmore depot, which are as follows:—

“The applicant submits that he joined FCI as daily rated casual labour in the year 1974 in the FSD Egmore Depot and was working continuously without any break whatsoever. The said

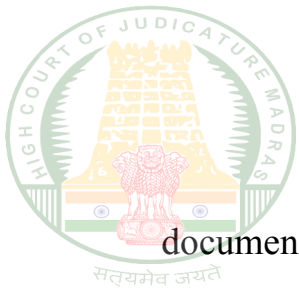


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FSD Egmore Depot was closed and the applicant was transferred to Madras Harbour to work in the office of the Joint Manager (PO), FCI, Madras as per order dated 16.10.1979. In the annexure enclosed with the said order the opposite Party has given the year of engagement of the workers in which the name of the applicant is found at Sl.No.35 with the year of engagement as 1974. The order of transfer is dated 16.10.1979 and the same is not the date of appointment of the applicant. The opposite party has wrongly noted the date of appointment as 16.10.1979 in its records now produced, which is not correct.”

6.The petitioner’s application was taken on file as G.A. No. 9 of 2016 by the 2nd respondent–Controlling Authority. In response, the 3rd respondent–FCI filed eight documents and explained that the petitioner’s appointment was made pursuant to a Memorandum of Settlement entered into between the FCI and the workers’ union. As per that settlement, the petitioner’s official date of appointment was recorded as 16.10.1979. It was on the basis of this date that gratuity was computed and the sanction order was issued. However, the Controlling Authority took note of a letter obtained by the petitioner under the Right to Information Act, which was marked as Ex.A3. This letter reflected the petitioner’s date of appointment as 07.08.1975. Relying on Ex.A3, the authority held that the petitioner had rendered service from 07.08.1975 to 16.10.1979 and was, therefore, entitled to gratuity for that period along with interest at the rate of 10%. A perusal of the order also shows that, in addition to the eight



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documents submitted by the 3rd respondent under cover of a letter dated 07.11.2016, the authority considered the following three additional documents:-

“9. FCI, District Office, Madras Letter No.DL/EG/CL/73 dated 8.11.1978 with the enclosure of Annexure A submitted before the Labour Court, Chennai 14

10. FCI Zonal Office Ref. No.L.16 (2)/79-SH dated 05.10.1979

11. The information obtained by the applicant from the FCI, District Office – Chennai vide letter no. 32(1) /2017/RTI Act 2005/DOC dated 28.08.2017 with enclosures of the appointment list of Casual labour.”

7. Aggrieved by the order dated 05.09.2018, the 3rd respondent preferred an appeal under Section 7(7) of the Payment of Gratuity Act before the first respondent–Appellate Authority, by way of appeal dated 05.11.2018. In the memorandum of appeal, it was contended that the 2nd respondent had not passed any order immediately after the final hearing and had issued the impugned order only after a delay of nearly one year. It was further submitted that the petitioner had never raised any claim regarding his earlier period of service at any prior stage and had also failed to produce wage bills or documentary evidence in support of such service. The appeal was taken on file as Gratuity Appeal No. 11 of 2018 by the 1st respondent, and notice was duly issued to the petitioner. In response, the petitioner filed a reply dated 04.03.2019.



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8. In the impugned order dated 25.08.2020, the Appellate Authority, after reproducing the grounds raised by the 3rd respondent—FCI in paragraphs 4(i) to 4(xii), proceeded to allow the appeal. However, the authority did so without assigning any specific findings on the grounds raised. Consequently, the order passed by the Controlling Authority was set aside. The operative portion of the appellate order reads as follows:-

“Thus, after analysing the views putforth by both sides and also after carefully examining the above facts, I pass the following Order:-

ORDER

The appeal is allowed and the claim of the Respondent for the payment of differential gratuity is rejected.

The Controlling Authority is directed to initiate further action for the payment of the above amount to the Appellant in accordance with the provisions of the above Order.

No order as to the cost.”

9. The present writ petition has been filed challenging the aforesaid appellate order. It is indeed unfortunate that a senior officer of the Labour Department, acting in the capacity of the Appellate Authority under the P.G. Act, has chosen to allow the appeal without assigning any reasons for the same. The appellate order merely sets out the list of grounds raised by the 3rd



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respondent, including a general assertion that the burden of proof lies on the claimant seeking relief. Beyond this, no independent reasoning or analysis is offered. Notably, one of the grounds cited in paragraph 4(viii) of the impugned order reads as follows:-

“The Respondent remained silent and never disputed his initial date of employment with the Appellant during his entire period of service of 36 years. The Respondent should have effected his claim immediately after the regularization of the service. The Respondent took no efforts to claim or settle this dispute during the entire career even though he was a trade union functionary.”

10.The primary issue that requires consideration is whether, based on the production of Ex.A3, the Controlling Authority had provided sufficient reasons to accept that the petitioner’s date of employment was not 16.10.1979, as claimed by the 3rd respondent, but rather 07.08.1975. In the order dated 05.09.2018, the Controlling Authority specifically referred to the settlement entered under Section 12(3) of the Industrial Disputes Act and highlighted the preamble to that settlement. The relevant portion of the order is as follows:—

“After analyzing the above records, it is pertinent to mention that applicant was appointed as casual labour in FSD Egmore and Memorandum of Settlement was signed on 15.9.1979 between the applicant union and the respondent management. The clause No.4 of the above settlement signed between the Zonal Manager, Food Corporation of India and President of

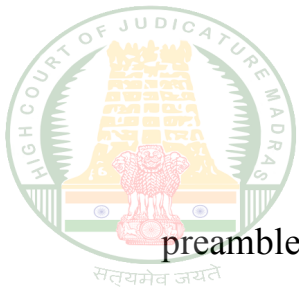


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Madras Port & Dock workers Union (Exhibit R2A) and clause No.5(d) of the Settlement signed between Zonal Manager, FCI, President of Transport and Dock Workers Union (Exhibit R2B) indicates that applicant was appointed as casual labour in FSD Egmore. It also indirectly indicates that the applicant might have been appointed by the respondent management before the date of settlement i.e. 15.9.1979. Further, it is known from the Exhibit A2 that the respondent management issued a transfer order to the applicant on 5.10.1979 based on the above settlement which also implies that 16.10.1979 is not the date of appointment. Further, the management had relieved the applicant from FSD Egmore in order to join in the Office of the Joint Manager, Madras Port on 16.10.1979. By the above all chronological events, it is a clear proof that 16.10.1979 is the date of transfer and not the date of appointment. Hence, the contention of the respondent is factually not correct. It is also noted that the applicant also failed to produce any document to prove the date of appointment of the applicant as 16.10.1974 as per Form 'N'. However, the applicant submitted the copy of letter which was obtained by the applicant from the respondent under RTI Act, 2005 (Exhibit A3). It indicates that the appointment of applicant is 7.8.1975.”

11.The settlement under Section 12 (3) of the Industrial Disputes Act, produced by the FCI before the 2nd respondent as Ex.R2A and Ex.R2B, was duly considered by the Controlling Authority. In the preamble to the terms of settlement, specific reference was made to the circumstances under which 91 handling mazdoors in the port wing were found to be idling, and the consequent decision to redeploy them to other departments. The relevant portion of the



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preamble, along with Clause No. 1 of the settlement, is extracted below:—

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“The management of Food Corporation of India, vide letter dated 1.7.08 forwarded 9A notice to change the service conditions of the Handling Mazdoor (Port Wing) by redeploying them to utilize their services gainfully stating that consequent on the closure of Joint Manager (Operations) Chennai Office, the Departmental Labours 91 Nos. have become idle and wages and allowances are being paid to them by the management without extending any work from them. Whereas in order to utilize their services gainfully, it has been decided to utilize their services in the Watch and Ward Category in depots. The management further stated that as per the request of the unions, 9A notice regarding the change of service conditions also issued to individual labour by District Office, Chennai.

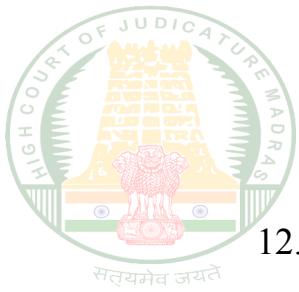
The instant case was taken on file and JDs were held on 23.7.08, 13.8.08, 3.9.08, 14.10.08, and 5.12.08.

During the course of discussion, the parties were advised to hold bilateral discussions to work out of the modalities and come to an amicable solution before drafting a final settlement.

During the CPs held on 17.12.08, upon the persuasion of the Conciliation Officer and the Deputy Chief Labour Commissioner (Central), Chennai the management and the unions agreed to arrive at a settlement under Section 12(3) of the Industrial Disputes Act, 1947 on the following terms and conditions

TERMS AND CONDITIONS

1.It is agreed that Departmental Labourer's services will be utilized in depots as Watch & Ward and they will be posted to Depots in Chennai and Vellore Districts, Female workers will be accommodated in Chennai City.”



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12. Although the annexure to the minutes of the proceedings forming part of the settlement under Section 12(3) lists the names of 91 workmen—including the petitioner, who appears at Sl. No. 25 with Token No. 2369—and mentions 16.10.1979 as the “date of appointment,” this cannot be construed as the petitioner’s initial appointment with FCI. The term “date of appointment” used therein does not refer to the original induction into service with FCI. This is evident from the relieving order dated 16.10.1979, marked as Ex.R3, which clearly states in the subject column that the petitioner was being transferred to the Office of the Joint Manager (PO), thereby indicating prior service.

13. Likewise, the office order dated 05.11.2009, marked as Ex.R6, also supports the petitioner’s claim. The subject line of the said order reads as follows:-

“IR – Re-deployment of Departmental Labourers (Chennai Port Trust Workers) as Watch & Ward in the Depots of Chennai and Vellore Districts – Reg.”

14. It is thus evident that the date of appointment relied upon by the FCI does not indicate a fresh appointment, but merely reflects the date on which the services of departmental labourers, including the petitioner, were redeployed as



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Watch and Ward staff in other depots. When there is documentary material establishing that the petitioner had been engaged even prior to such redeployment—and his relief from the earlier post is also evidenced—the Controlling Authority was justified in accepting that prior service. The finding was based on cogent reasoning and supported by evidence. In such circumstances, the first respondent, functioning as an appellate authority, could not have set aside the well-reasoned order of the Controlling Authority, particularly without assigning any independent reasons for doing so.

15. In view of the foregoing, Writ Petition No. 4612 of 2021 is allowed. The order passed by the 1st respondent in G.A. No. 11 of 2018 dated 25.08.2020 is set aside, and the order of the 2nd respondent in G.A. No. 9 of 2016 dated 05.09.2018 is restored. Consequently, the connected miscellaneous petition stand closed. In light of this order, the petitioner is at liberty to withdraw the amount deposited with the 2nd respondent. There shall, however, be no order as to costs.

29.05.2025

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NCC : Yes / No

Index : Yes / No

Speaking Order / Non-speaking Order

To

- 1.The Appellate Authority under the Payment of Gratuity Act, 1972 and Deputy Chief Labour Commissioner (Central),
No.4, Haddows Road, Shastri Bhavan,
Chennai – 600 006.
- 2.The Controlling Authority under the Payment of Gratuity Act, 1972 and the Assistant Commissioner of Labour (Central), Chennai
O/o. The Dy. Chief Labour Commissioner (Central),
No.4, Haddows Road, Shastri Bhavan,
Chennai – 600006.

DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P.No. 4612 of 2021
and
W.M.P. No.5251 of 2021

29.05.2025