



W.P.Nos.28862 & 28863 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.Nos.28862 & 28863 of 2015

and

M.P.Nos.1 & 1 of 2015

Satish Bharat Petroleum Corporation Dealers,
Represented by its Partner, Mr.S.Prakash,
No.256/3, Thadagam Road, Kovil Medu,
Coimbatore – 641 020.

... Petitioner in both WPs

Vs.

1.The Controlling Officer/Deputy Commissioner of Labour (General),
Deputy Labour Commissioner Office,
Coimbatore – 641 018.

... 1st respondent in both WPs

2.V.Mailsamy

... 2nd respondent in W.P.No.28862 of 2015

3.K.Masilamani

... 2nd respondent in W.P.No.28863 of 2015

Prayer in both WPs: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the entire records pertaining to the impugned order dated 25.05.2015 passed in G.A.Nos.304 & 305 of 2012 on the file of the 1st respondent herein and quash the same.

For Petitioner : Mr.A.Devnarendran



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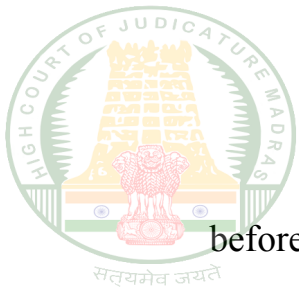
(in both WPs)

For Respondents : Mr.K.Surendran
(in both WPs) Additional Government Pleader [R1]
Mr.V.Ajoy Khose [R2]

ORDER

These Writ Petitions have been filed by the petitioner seeking for a Writ of Certiorari, to call for the entire records pertaining to the impugned order dated 25.05.2015 passed in G.A.Nos.304 & 305 of 2012 on the file of the 1st respondent herein and quash the same.

2. The case of the petitioner is that, it is a partnership firm which was carrying on the business of a running a petrol pump station as a dealer of Bharat Petroleum Company. The respective 2nd respondent joined the petitioner concern as cashier and there were only 6 workers who were employed in the petitioner's petrol bunk at that point of time. Since they were constrained to vacate the premises, the petitioner had requested all the 6 workers to relocate the work in the petrol bunk, however, the respective 2nd respondent and 2 other workers refused to take their employment at the new address and consequently, never turned up for work, thereby, abandoning their employment. Under such circumstances, the respective 2nd respondent raised industrial disputes



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before the Labour Officer, Coimbatore and while the same was pending,

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they have also filed cases under the Payment of Gratuity Act before the 1st respondent in G.A.Nos.304 and 305 of 2012 alleging that gratuity amount was not paid to them and sought for payment of Rs.1,01,250/- each respectively. The petitioner had countered the same categorically stating the provisions of the Payment of Gratuity Act was not applicable to them, since at no point of time, there were more than 8 workers in the petitioner firm. However, the 1st respondent passed the impugned order dated 25.05.2015 directing the petitioner to pay a sum of Rs.1,01,250/- each respectively towards gratuity to the respective 2nd respondent. Challenging the same, these writ petitions have been filed.

3. Learned counsel appearing for the petitioner submits that, the 1st respondent ought to have found that the petitioner firm in which the strength of the employees did not cross eight at any point of time and consequently, should have held that the firm does not fall within the purview of Section 1(3)(b) of the Payment of Gratuity Act, 1972, which provides that the Act shall apply to establishments in which 10 or more workmen are employed on any day of the preceding 12 months. Further, he submitted that the 1st respondent has erred in coming to the conclusion



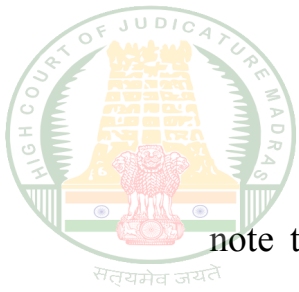
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that there were more than 10 persons employed in the firm on the basis of certain vague statement in the cross examination which did not establish that there were 10 or more persons employed. Accordingly, he prays for allowing these writ petitions.

4. Learned Additional Government Pleader appearing for the 1st respondent and the learned counsel appearing for the respective 2nd respondent submitted that, as against the impugned order passed by the 1st respondent, there is an effective appeal remedy available before the appellate authority. Hence, he submitted that, without doing so, filing the present writ petitions is not sustainable. Accordingly, he prays for dismissal of these writ petitions.

5. Heard the learned counsel appearing for the parties and also perused the materials available on record.

6. Admittedly, the respective 2nd respondent filed petitions seeking gratuity before the 1st respondent and the 1st respondent ordered gratuity in favour of the respective 2nd respondent. Aggrieved by the same, the petitioner has filed the present writ petitions. However, it is pertinent to



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note that, as against the impugned order passed by the 1st respondent, there is an effective appeal remedy available before the appellate authority. Hence, without exhausting the appeal remedy available under the statute, filing the present writ petitions is *per se* unsustainable. Therefore, the prayer sought for by the petitioner cannot be acceded to and these writ petitions are liable to be dismissed.

7. Accordingly, these Writ Petitions are dismissed. However, the petitioner is at liberty to workout the remedy in the manner known to law and the period during which these writ petitions are pending before this Court is excluded for the purpose of limitation. No costs. Consequently, the connected writ miscellaneous petitions are also dismissed.

11.03.2025

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To
The Controlling Officer/Deputy Commissioner of Labour (General),
Deputy Labour Commissioner Office,
Coimbatore – 641 018.



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M.DHANDAPANI, J.

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