



W.A.No.1173 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.04.2025

Pronounced on : 29.04.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.A.No.1173 of 2022

and

C.M.P.Nos.20625 of 2022 & 2539 of 2024

The Director General of Coast Guard,
Tatrakshak Mukhalaya,
Coast Guard Head Quarters,
National Stadium Complex,
New Delhi – 110 001.

... Appellant

Vs.

Capt.RC Rajan (Ex.Comdt 0080-E)
Flat 7, Prayag Apartments,
15, I Main Road, Gandhi Nagar,
Adayar, Chennai – 600 020.

... Respondent

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 10.01.2022 in W.P.No.14440 of 2009 on the file of this Court.



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For Appellant : Mr.ARL.Sundaresan
Additional Solicitor General
assisted by Mr.J.Madana Gopal Rao
Senior Panel Counsel

For Respondent : Mr.Rajagopal
Senior Counsel
for Mr.Vivekanandh

J U D G M E N T

S.S. SUNDAR, J.

This intra Court Appeal is to set aside the order of the learned Single Judge, dated 10.01.2022, in W.P.No.14440 of 2009, allowing the writ petition filed by the respondent to quash the proceedings of the appellant dated 11.05.2009 impugned in the writ petition and for consequential reliefs.

2.Brief facts that are necessary for the disposal of this Writ Appeal are as follows :

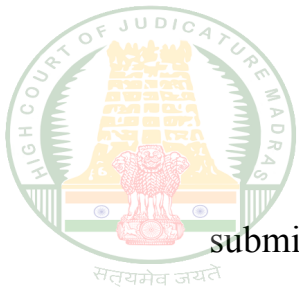
The respondent was a Pilot in Jet Airways. Originally, he joined the services of Coast Guard in August, 1983. He served in the Coast Guard in



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various capacities like Staff Pilot, Squadron Commander, Commanding Officer, Instrument Rating Examiner and Pilot Instructor. After putting in 16 long years of service without any break and having 5000 hours of flying in his service, the respondent/writ petitioner was awarded the DGCG Commendation, The Tatrakshak Medal for meritorious service, The Proficiency Award and The Safety Award for accident/incident free flying during the service in Coast Guard. The respondent had put in 16 long years of service in Coast Guard. It is stated by the respondent that, after completing the 16th year of service in Coast Guard, the respondent, due to personal family circumstances, requested for transfer in Chennai. It is stated further that, since his request for transfer was not heeded to, the respondent wanted to voluntarily retire from service. It is further stated that the respondent was allowed on premature release/discharge from the service voluntarily on compassionate grounds with effect from 01.07.1999. It is further stated that the respondent's request for premature release had been approved by the Government with effect from 01.07.1999. However, the respondent's request for disbursement of gratuity was rejected by the appellant by proceedings dated 26.07.2000. Thereafter, the respondent had



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submitted various representations and finally, the respondent submitted his request on 25.04.2009 seeking payment of gratuity. The request for payment of gratuity was rejected by the appellant by the order dated 11.05.2009 impugned in the writ petition, for the following reasons :

“2.You were released pre-maturely on your request on compassionate grounds under Rule 27 of CG (General) Rules, 1986. Your premature release/leaving service before completion of 20 years of qualifying service do not provide for pension/gratuity to you. In this regard, premature release/discharge on own request is considered as 'resignation' which entails forfeiture of past service and non-entitlement for any gratuity as per Rule 26 of CCS (Pension) Rules, 1972. Your case was further taken up with PCDA (N) & PCDA (P) for re-examination (copy enclosed). However, the same was not accepted by PCDA (P) due to the above reasons.

3.It is reiterated that your premature discharge from service on compassionate grounds on own request is equivalent to resignation for all practical purposes. Hence, your request for payment of gratuity cannot be reconsidered.”

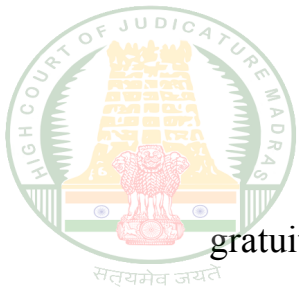


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WEB COPY 3.Challenging the same, the respondent filed the writ petition in W.P.No.14440 of 2009.

4.The writ petition was opposed by the appellant on the ground that the writ petitioner is covered by Central Civil Services (Pension) Rules, 1972, (hereinafter referred to as “CCS (Pension) Rules” for brevity) and hence, the Payment of Gratuity Act, 1972, is not applicable. It is further stated that, as an officer in the Coast Guard, the writ petitioner cannot be said to be an employee within the meaning of Section 2(e) of Payment of Gratuity Act, 1972, and that therefore, the writ petitioner is not at all entitled to the benefits available under the Payment of Gratuity Act, 1972. It is then stated that, under Rule 26 of CCS (Pension) Rules, 1972, the writ petitioner, having resigned from service, is not entitled to gratuity as such resignation entails forfeiture of past services.

5.However, the learned Single Judge allowed the writ petition by order dated 10.01.2022, holding that the writ petitioner had contributed his

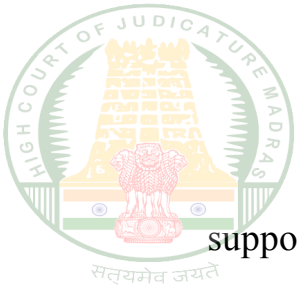


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gratuity amount to the appellant Department for his 15 years 10 months and 11 days of service in Coast Guard and that he is entitled to gratuity as per Section 4(1) of the Payment of Gratuity Act, 1972.

6. Aggrieved by the same, the respondent in the writ petition, who is the erstwhile employer of the writ petitioner, has preferred the above Writ Appeal.

7. Learned Additional Solicitor General appearing for the appellant Department referred to the definition of “employee” under the Payment of Gratuity Act, 1972, and submitted that the writ petitioner is not governed by Payment of Gratuity Act, 1972. Referring to Sections 2, 26 and 27 of CCS (Pension) Rules, 1972, the learned Additional Solicitor General submitted that the order of the learned Single Judge, ignoring the non-applicability of Payment of Gratuity Act, 1972, cannot be sustained. Learned Additional Solicitor General relied upon the judgment of Division Bench of this Court in a batch of cases in *W.A.Nos.1687 of 2021, etc. batch, [Union of India v. The Regional Labour Commissioner and others]*, dated 21.06.2023, in



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support of his arguments.

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8.On the other hand, learned counsel appearing for the respondent/writ petitioner, tried to sustain the order by showing the reasonings of learned Single Judge while allowing the writ petition.

9.This Court carefully considered the submissions on either side.

10.Learned Single Judge proceeded on the basis that the writ petitioner had contributed his gratuity amount to the appellant Department for his 16 years of service in Coast Guard and that therefore, he is entitled to gratuity as per Section 4(1) of the Payment of Gratuity Act, 1972. Of course, Section 4(1) of Payment of Gratuity Act, 1972, states that gratuity is payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease. However, Section 2(e) of Payment of Gratuity Act, 1972, reads as follows :



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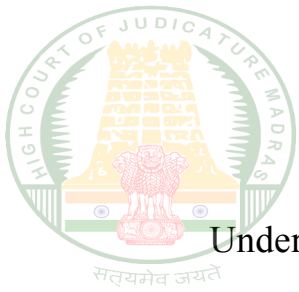


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“2. ... (e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment, to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

11.Question is whether the appellant is governed by any other Act or Rule providing for payment of gratuity.

12.In the said context, CCS (Pension) Rules is relevant. Rule 2 of CCS (Pension) Rules applies to Government servants including Civilian Government Servants in the Defence Services appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments. The Coast Guard is not an establishment which is excluded from CCS (Pension) Rules. The CCS (Pension) Rules specifically provide for not only pension, but also gratuity.



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Under CCS (Pension) Rules, every Government servant who is covered by CCS (Pension) Rules and who has completed 5 years of qualifying service, and who is eligible for pension under CCS (Pension) Rules, is eligible for gratuity. Therefore, this is a case where the respondent is governed by CCS (Pension) Rules which specifically provide for payment of gratuity. Therefore, the respondent would not come under the definition of an “employee” as under Section 2(e) of Payment of Gratuity Act, 1972. When Section 4(1) of Payment of Gratuity Act, 1972, is not applicable to the respondent, the learned Judge is not right in granting relief based on Section 4(1)(p) of Payment of Gratuity Act, 1972.

13. Secondly, the learned Additional Solicitor General also relied upon Rule 26 of CCS (Pension) Rules which reads as follows :

“26. Forfeiture of service on resignation Footnote :

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past



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service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely :-

(i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation ;

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made,



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the conduct of the person concerned was in no way improper ;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days ;

(iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.



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(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government.”

14. Since CCS (Pension) Rules, 1972, govern the respondent and Rule 26 of the said Rules entails forfeiture of past services in the cases of resignation from service or a post unless it is allowed to be withdrawn in public interest by the Appointing Authority, this Court is unable to sustain the view of the learned Single Judge. One of the submissions of writ petitioner before the Writ Court is that the writ petitioner had not resigned, but was permitted to go on premature release and that therefore, there cannot be a forfeiture of past services. It is seen from the impugned order in the writ petition that the writ petitioner was released prematurely on compassionate grounds under Rule 27 of Coast Guard (General) Rules, 1986, notified by the Central Government in exercise of the powers conferred by Sub-Section (1) read with Clauses (a), (d), (e), (f), (k) and (l) of Sub-Section (2) of Section 123 of the Coast Guard Act, 1978 (Act 30 of 1978). Rule 27 of Coast Guard (General) Rules, 1986, reads as follows :



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“27.Procedure for discharge/release or retirement on own request : (1) *A member of the Coast Guard may, in exceptional cases, obtain his discharge, release or retirement from the service on extreme compassionate grounds, i.e. in cases where it is clear that undoubted material hardship will be caused to the member of the Coast Guard or his family members by his retention in the service.*

(2)*The Central Government or the Additional Director General may, having regard to the circumstances of any case, permit discharge, release or retirement of an officer from the service before attaining the age of retirement. The question of discharge, release or retirement shall be a matter within the discretion of the Central Government or Deputy Director General as the case may be.*

(3)*The Additional Director General in the Coast Guard Headquarters may discharge, release or retire a member of the Coast Guard other than on officer on compassionate grounds.*

(4)*Application for discharge, release or retirement on compassionate grounds shall be forwarded by the Commanding Officer through the Regional Commander, to Coast Guard Headquarters for further necessary action.”*



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15.It is the case of the appellant that premature release/leaving service before completion of 20 years of qualifying service does not provide for pension/gratuity to the employee. It is also stated that the premature release or discharge on the request of writ petitioner was considered as resignation which entails forfeiture of past services. The writ petitioner himself admitted that his decision to seek premature release or resignation was on account of rejection of his request for transfer to a place very near to his native. It is also stated in the affidavit filed by the writ petitioner that he is compelled to go on voluntary retirement due to the family compulsion, as his parents were under the threat of murderous attack by a convict who was under 14 years of imprisonment. Under Rule 26 and Rule 27, even though the term “premature release” and resignation are not specifically differentiated under the Coast Guard (General) Rules, 1986, which specifically deal with service, for the purpose of gratuity, Rule 26 of CCS (Pension) Rules, cannot be excluded from application in the case of the respondent/writ petitioner.

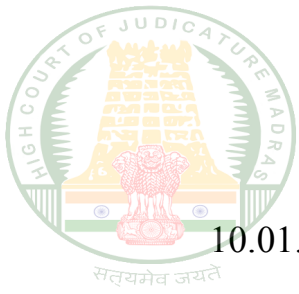


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16.It is true that, under Section 14 of Payment of Gratuity Act, 1972, provisions of Payment of Gratuity Act, 1972, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Payment of Gratuity Act, 1972. However, under Payment of Gratuity Act, 1972, gratuity is payable to an employee on the termination of his employment. However, the term “employee” is defined under Section 2(e) of the Act. When this Court has held that the writ petitioner is not an employee as defined under Section 2(e) of the Payment of Gratuity Act, 1972, the contention of the writ petitioner that he is entitled to gratuity under Payment of Gratuity Act, 1972, cannot be accepted. When we fall back on CCS (Pension Rules), the writ petitioner, who has resigned from service though after completion of 15 years of service, is not eligible for gratuity on account of forfeiture of past services as provided under Rule 26 of CCS (Pension) Rules.

17.Therefore, in view of the conclusions we have reached, this Court is unable to sustain the order of the learned Single Judge. As a result, **this Writ Appeal is allowed** and the order of the learned Single Judge, dated



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10.01.2022, made in W.P.No.14440 of 2009, is set aside. Consequently, the

Writ petition in W.P.No.14440 of 2009 stands dismissed. Connected miscellaneous petitions are closed.

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(S.S.S.R., J.) (R.H., J.)
29.04.2025

Internet : Yes

Index : Yes

Neutral Citation : Yes

To

The Director General of Coast Guard,
Tatrakshak Mukhalaya,
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and
R. HEMALATHA, J.

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Judgment in
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