



W.P.No.14354 of 2020

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

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RESERVED ON : 12.03.2025

PRONOUNCED ON : 29.04.2025

PRESENT:

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

W.P.No. 14354 of 2020

and

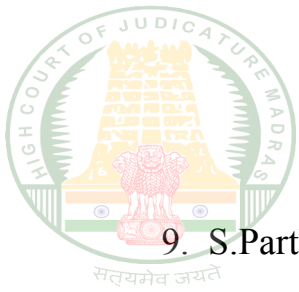
WMP No. 17828 of 2020

Chevalier T.Thomas Educational Trust,
Rep. by its Managing Trustee,
Sri. L.Palamalai, I.A.S (Retd.)
No.16, St.Mary's Road,
Sembiam, Chennai – 600 011. ...Petitioner
Vs.

1.The Joint Commissioner of Labour,
Appellate Authority
Under the Payment of Gratuity Act,
DMS Building, Chennai – 6.

2. Assistant Commissioner of Labour-I
Controlling Authority
Under the Payment of Gratuity Act,
DMS Building, Chennai – 6.

3. Sri.A.M.Sundar (deceased)
4. S.Poongothai, W/o. A.M.Sundar
5. S.Sudhakar, S/o. Late A.M.Sundar
6. S.Jothi, D/o. Late A.M.Sundar
7. S.Sunil Kumar, S/o. Late A.M.Sundar
8. S.Jaganbabu, S/o. Late A.M.Sundar,



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9. S.Parthiban, S/o. Late A.M.Sundar

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R4 to R9 are LR's of R3
(impleaded vide order dt. 4.3.2025)
R4 to R9 are residing at
No.5, 5th Street,
Gandhi Nagar, Putlur,
Thiruvallur District – 602 024.

...Respondents

Prayer in W.P.

To issue a writ, order or direction in the nature of a writ certiorari to call for the records of the 1st respondent in P.G.Case Appeal No. 17 of 2019 on his file and that of the 2nd respondent in P.G.Case No. 12 of 2016 on his file and to quash the orders dated 22.01.2020 (copy received on 20.07.2020) and 04.09.2018 respectively and to pass such further or other orders as may deem fit proper in the circumstances of the case.

Prayer in WMP

To direct the 1st and 2nd respondents to withhold the payment of Rs.8,79,535 (Deposited by the petitioners) to the 3rd respondent pending disposal of the writ petition pending disposal of the above Writ Petition and to pass such further or other orders as may deem fit and proper in the circumstances of the case.

Appearance of Parties:

For Petitioner : Mr.S.Vennimalai, Advocate
For Respondents 1 & 2 : Mr.R.Kumaravel, AGP
R3 : deceased
For R4 to R9 : M/s.S.Ravi and A.Meena, Advocates



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JUDGMENT

Heard.

2. The writ petitioner is an educational trust managing both a college and a higher secondary school. The 3rd Respondent, now deceased, was appointed as a driver by the Trust on 10.12.1973 and retired from service on 31.05.2012. It was contended that he was covered under the Pension Scheme extended to both teaching and non-teaching staff who had completed more than 20 years of service. In February 2015, the 3rd Respondent requested the settlement of his gratuity. However, the Petitioner Trust informed him that, since he was already receiving a pension under the scheme, he was not entitled to claim gratuity.

3. The 3rd Respondent filed an application for gratuity before the 2nd Respondent–Controlling Authority, which was taken on file as P.G. Case No. 12 of 2016. Notice was issued to the Petitioner Trust, which raised a similar defense before the Authority. In the proceedings, the 3rd Respondent examined



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himself as PW1 and filed eight documents, which were marked as Exhibits P1

to P8. On behalf of the Trust, one Ramakrishnan was examined as RW1, and six documents were filed on their side, marked as Exhibits R1 to R6.

4. Among the documents filed by the Petitioner Trust was the resolution of the Trust dated 18.12.2009, marked as Ex.R4. In the said resolution, the Trust set out the genesis of the pension scheme formulated for the benefit of teaching and non-teaching staff employed by it. It was also recorded that employees who were not covered under the pension scheme would be paid gratuity upon their superannuation.

5. Notwithstanding the defense raised by the Petitioner Trust, the Controlling Authority, by order dated 04.09.2018, held that the action of the Trust in denying gratuity was not justified and that the monthly payment of pension could not be a substitute for the statutory gratuity payable under the Payment of Gratuity Act, 1972. Accordingly, the Authority, after calculating the total service of the 3rd Respondent as 38 years, 5 months, and 21 days (rounded off to 38 years) and taking into account his last drawn salary of Rs.24,316/-, computed the gratuity amount at Rs.5,33,082/- and directed that the said sum be



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paid along with interest at the rate of 10% per annum.

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6. Aggrieved by the order directing the payment of gratuity to the 3rd Respondent, the Petitioner Trust preferred an appeal before the 1st Respondent–Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972, by filing an appeal dated 31.12.2018. Although the Act mandates the pre-deposit of the entire amount of gratuity awarded by the Controlling Authority as a condition for entertaining the appeal, the Petitioner Trust deposited a sum of Rs.5,33,082/- towards gratuity and Rs.3,46,503/- towards interest only by way of a Demand Draft dated 20.12.2018.

7. Even before the Appellate Authority, the sole contention raised by the Petitioner Trust was that, since it was paying pension to its employees, it was not liable to pay gratuity under the Payment of Gratuity Act, 1972. However, during the pendency of the appeal, the Petitioner Trust passed a resolution at its meeting held on 10.01.2019, whereby it decided to discontinue the payment of pension. The minutes of the meeting, which were communicated to the 3rd Respondent, read as follows:–

“The Board considered the payment of Pension amounting to Rs.5,60,110/- to Mr.A.M.Sundar, retired employee upto



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31.12.2018 under the scheme of Pension operated by the Management in addition to the deposit of a sum of Rs.8,79,585/- towards Gratuity and interest thereon in terms of order of the Controlling Authority, Chennai-6 as ordered in P.G.No.12/2016 dated 04.09.2018 received on 11.12.2018, pending filing of an appeal against the order.

After discussions, the Board has resolved that a retired employee of the Trust receiving pension under the scheme operated by the management cannot receive the 'double benefit' of pension as well as Gratuity. Taking into account the payment of Pension to the extent of Rs.5,60,110/- upto 31.12.2018 and deposit a sum of Rs.8,79,585/- (Gratuity Rs.5,33,082/- plus interest Rs.3,46,503/-), pending filing of an appeal, the Board has resolved to stop payment of further 'Pension' to Mr.A.M.Sundar w.e.f. 01.01.2019.

The Board directed the Managing Trustee and Correspondence to communicate the decision of the Board to Mr.A.M.Sundar.”

8. The Appellate Authority took up the appeal as P.G. Appeal No. 17 of 2019 and, after hearing both sides, dismissed the appeal by order dated 22.01.2020. The Authority observed that the Petitioner Trust's contention regarding the payment of higher benefits through pension had already been rejected in three earlier gratuity appeals, namely P.G. Appeal Nos. 120/1, 120/2, and 120/3 of 2015, by order dated 11.03.2018. It further held that mere payment of pension does not exempt an employer from complying with the provisions of the Payment of Gratuity Act, 1972, unless specific exemption is obtained from the appropriate Government under Section 5 of the Act.



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Accordingly, it concluded that no grounds were made out to interfere with the order passed by the Controlling Authority.

9. Aggrieved by the said order, the present writ petition was filed and admitted on 10.11.2020. Pending the writ petition, this Court also granted an order of stay, restraining the disbursement of the amount lying with the 2nd Respondent, by allowing W.M.P. No. 17828 of 2020 on the same date. During the pendency of the writ petition, the contesting 3rd Respondent unfortunately passed away on 21.06.2021. Consequently, his wife, four sons, and one daughter filed W.M.P. No. 9921 of 2022 seeking to be impleaded as his legal representatives, and they were duly brought on record by order dated 04.03.2025.

10. The learned counsel for the Petitioner reiterated the argument that a sum of Rs. 4,32,490/- had already been paid towards pension up to 30.6.2017. It was contended that since the Trust had made substantial payments towards pension, the differential amount now claimed towards gratuity would only be Rs. 1,00,592/-. Further, it was submitted that the 3rd Respondent had opted for the pension scheme and, therefore, was not entitled to gratuity. In any event, the authorities ought to have adjusted the pension amount already paid



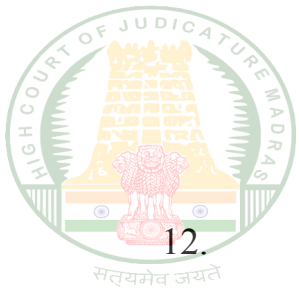
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and directed payment only of the balance amount, if any.

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11. The learned counsel for the Petitioner placed reliance on the judgment of the Supreme Court in **Beed District Central Co-operative Bank Ltd. v. State of Maharashtra**, reported in (2006) 8 SCC 514, and drew attention to the following passage found in paragraph 14, which reads as follows: –

“Applying the ‘Golden Rule of Interpretation of Statute’, to us it appears that the question should be considered from the point of view of the nature of the scheme as also the fact that the parties agreed to the terms thereof. When better terms are offered, a workman takes it as a part of the package. He may volunteer therefor, he may not. Sub-Section (5) of [Section 4](#) of the 1972 Act provides for a right in favour of the workman. Such a right may be exercised by the workman concerned. He need not necessarily do it. It is the right of individual workman and not all the workmen. When the expression “terms” has been used, ordinarily it must mean “all the terms of the contract”. While interpreting even a beneficent statute, like, [Payment of Gratuity Act](#), we are of the opinion that either contract has to be given effect to or the statute. The provisions of the Act envisage for one scheme. It could not be segregated. Sub-Section (5) of [Section 4](#) of the 1972 Act does not contemplate that the workman would be at liberty to opt for better terms of the contract, while keeping the option open in respect of a part of the statute. While-reserving his right to opt for the beneficent provisions of the statute or the agreement, he has to opt for either of them and not the best of the terms of the statute as well as those of the contract. He cannot have both.”



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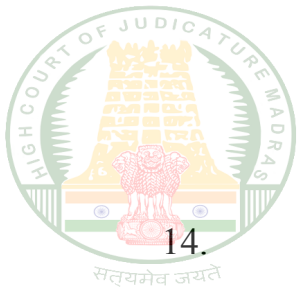
12.

The learned counsel relied upon the aforesaid judgment without

adverting to the specific question that arose for consideration in that case. In paragraph 5 of the judgment, the issue framed for determination is set out as follows:—

“The short question which arises for our consideration is as to whether, keeping in view the provisions contained in Sub-Section (5) of [Section 4](#) of 1972 Act, Respondents herein although would be entitled to the benefit of ceiling limit of 3.5 lakhs, the rate of gratuity should be calculated at the rate of 26 days' instead and in place of 15 days salary for every completed year of service in terms of the 1972 Act.”

13. By the Central Act 25 of 1984, Section 4A was inserted into the Payment of Gratuity Act, providing for compulsory insurance by employers for gratuity payments. Whether gratuity is covered under a scheme framed under Section 4A or paid directly under the Act, both contemplate a lump sum payment at the end of the employee's tenure; neither contemplates monthly disbursements in lieu of gratuity. If an employer provides a better scheme, such as a pension scheme, the Act permits the employer to seek exemption under Section 5, which is not the case here. On the contrary, the Petitioner Trust, without any justification, stopped payment of pension to the 3rd Respondent immediately after he succeeded in his gratuity claim before the 2nd Respondent.



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14.

The learned counsel also placed reliance on the judgment of the

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Supreme Court in **BCH Electric Limited v. Pradeep Mehra**, reported in 2020

SCC OnLine SC 424 = 2020 INSC 379. In paragraphs 18, 22, and 24 of the

judgment, the Supreme Court held as follows:—

“18. For [Section 4\(5\)](#) of the Act, to get attracted, there must be better terms of gratuity available and extendable to an employee “under any award or agreement or contract with the employer” as against what has been provided for under and in terms of the Act. In other words, as against what is made applicable by the Act, if better terms are available under any such arrangement with the employer, [Section 4\(5\)](#) stipulates that nothing in [Section 4](#) shall affect the right of any employee to receive such better terms. Thus, when two choices are available, one under provisions of the Act and one under such arrangement with the employer and if the latter offers better terms, the employee cannot be denied right to receive those higher benefits”.

“22. Rather than making available an alternative to the model and modalities of calculation of amount of gratuity, as placed on statute book by the provisions of the Act, the Trust Deed and the Scheme contemplates two kinds of employees. One, who are covered under the provisions of the Act and the other, who are not so covered. The historical background and the changes that the provisions of [Section 2\(e\)](#) and [Section 4](#) have undergone show that not all employees were initially sought to be covered under the Act. Those, who were in wage-brackets greater than what was stipulated in [Section 2\(e\)](#) till it was finally amended to do away with the wage-bracket, were not covered by the Act. The Trust Deed and the Scheme sought to devise an apparatus and make provision for those who were otherwise not covered by the Act and for this reason contemplated two kinds of employees. The Trust Deed and the Scheme were executed and formulated in the year 1979 when the wage-bracket was a definite



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parameter for an employee to be covered under the Act. The intent of the Trust Deed and the Scheme has to be understood in that perspective. The idea was not to afford to the employees who are covered by the provisions of the Act, a package better than what was made available by the Act, but Civil Appeal No.2379 of 2020 (arising out of SLP (C) NO.5269 of 2019) BCH Electric Limited Vs. Pradeep Mehra it was to extend similar benefit to those who would not be covered by the Act.”

“24. We have, therefore, no hesitation in holding that the Authorities under the Act and the High Court erred in accepting the claim preferred by the respondent. We hold that the appellant was right in going by the provisions of the Act in the present matter and by the ceiling prescribed under [Section 4\(3\)](#) of the Act. Any mistakes on its part in making some extra payments to some of the other employees would not create a right in favour of others in the face of the stipulations in the Trust Deed and the Scheme.”

15. The learned counsel for the Petitioner further relied on the judgment of the Supreme Court in **Union Bank of India v. C.G. Ajay Babu**, reported in (2018) 9 SCC 529, and contended that employees are entitled to receive better terms of gratuity if provided, and that the 3rd Respondent, having opted for the pension scheme, could not subsequently claim gratuity under the Act. In paragraphs 9 and 11 of the judgment, the Supreme Court made the following observations:—

“The subtle distinction between sub-Section (5) and sub- Section (6) is that the former is a non-obstante clause of the entire Section whereas the latter is only in respect of sub-Section (1). In other



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words, sub-Section (5) has an overriding effect on all other sub-Sections under [Section 4](#) of the Act. Thus, notwithstanding anything contained under [Section 4](#) of the Act, an employee is entitled to receive better terms of gratuity under any award or agreement or contract with the employer.

Learned Counsel for the appellant-Bank submits that sub- Section (5) of [Section 4](#), “while providing for better terms of gratuity under any award or agreement or contract”, deals only with the quantum of the gratuity and not with the entitlement under any award or agreement or contract as such. We are afraid, this submission cannot be appreciated. The statute provides for better terms of gratuity under any award or agreement or contract which means all terms of the contract. The choice is between the award or agreement or contract and the statute, but not partially of either.”

16. In the decision cited by the Petitioner, the issue that arose for consideration was the distinction between Sections 4(5) and 4(6) of the Payment of Gratuity Act, where the employee’s right to receive better terms of gratuity is protected. In the present case, however, there has been no evaluation of the pension scheme introduced by the Petitioner Trust, which is merely a welfare measure and does not envisage any lump sum payment upon the completion of service. On the contrary, for employees not covered under the pension scheme, the Trust had expressly promised payment of gratuity. Further, even in the case of the 3rd Respondent, the Petitioner Trust arbitrarily discontinued pension payments, thereby negating any comparison they now



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seek to draw between the pension scheme and gratuity. The real question for consideration is whether the Petitioner Trust had obtained an exemption under Section 5 of the Payment of Gratuity Act for having introduced such a scheme. In the absence of such exemption, Section 14 of the Act, which gives overriding effect to its provisions over any inconsistent arrangement, would squarely apply.

17. In this context, the learned counsel for the impleaded respondents 4 to 9 relied on the judgment of the Supreme Court in **Allahabad Bank v. A.C. Aggarwal**, reported in (2013) 4 SCC 141, and drew attention to the following passages which set out the correct position of law:—

“17. Reference may also be made to [Section 14](#) of the 1972 Act, which reads as under:

“[Section 14](#). Act to override other enactments, etc. – The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.”

18. In view of the plain language of the above reproduced provision, which contains a non-obstante clause, every eligible employee is, notwithstanding anything inconsistent contained in any other enactment or instrument or contract is entitled to gratuity. Therefore, even if the respondent had opted for pension, he could have legitimately claimed gratuity without being required to refund the amount of pension already received



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by him.”

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18. In view of the above, the writ petition in W.P. No. 14354 of 2020 stands dismissed as misconceived. Consequently, W.M.P. No. 17828 of 2020 is also dismissed. However, there shall be no order as to costs. In light of the dismissal of the writ petition, respondents 4 to 9 are permitted to withdraw the amount lying in deposit with the 2nd Respondent.

29.04.2025

ay

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

DR. A.D. MARIA CLETE, J

ay

To

1.The Joint Commissioner of Labour,
Appellate Authority
Under the Payment of Gratuity Act,
DMS Building, Chennai – 6.

2. Assistant Commissioner of Labour-I

14/15



W.P.No.14354 of 2020

Controlling Authority
Under the Payment of Gratuity Act,
DMS Building, Chennai – 6.
(with records)

W.P.No. 14354 of 2020
and
WMP No. 17828 of 2020

29.04.2025