



W.P.Nos.18554 & 18268 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :	020625
Pronounced on :	021925

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THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

Writ Petition Nos. 18554 & 18268 of 2020
and
W.M.P.Nos.23001, 22649 & 22650 of 2020

In W.P.No. 18554 of 2020

The Management of
C.S.I Rainy Hospital Employees,
Co operative Thrift and Credit Society Ltd.,
XC - 169, Rep. by its President,
No.45, G.A.Road, Old Washermenpet,
Chennai - 600021.Petitioner

Vs.

1. T.Rajeswari,
W/o R.Vasu,
No.3, Bannariamman Street,
Thumurar Nagar, Rajajipuram,
Thiruvallur – 602 001.
2. The Joint Commissioner of Labour-I ,
Chennai – 600 006.
3. Appellate Authority /
Additional Commissioner of Labour,
Payment of Gratuity Act,
Teynampet, Chennai - 600006. Respondents

Prayer in W.P.No. 18554 of 2020: To issue a Writ of Certiorari



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or any writ, order or direction to call for the records of the order of the Additional Commissioner of Labour, Teynampet, Chennai Appellate Authority, (Under the Payment of Gratuity Act, 1972) 3rd respondent herein made in P.G.A.No. 49/2019, dated 18.02.2020 confirming the order made in P.G.No.93/2017 dated 28.12.2018 on the file of the 2nd respondent herein and quash the same and pass such further or other suitable orders.

Prayer in W.M.P.No. 23001 of 2020: This Writ Miscellaneous petition is filed to pass an order of interim stay staying the operation of the order passed by the Additional Commissioner of Labour, Teynampet, Chennai Appellate Authority, Under the Payment of Gratuity Act, 1972, herein made in P.G.A.No.49/2019, dated 18.02.2020, pending disposal of the main writ petition.

For Petitioner : Mr.L.P.Shanmuga Sundaram

For R1 : Mr.Ravi Bharathi & D.Gopinathan

In W.P.No. 18268 of 2020

The Management of
C.S.I. Rainy Hospital Employees,
Co operative Thrift and Credit Society Ltd.,XC-169
Rep. by its President,
No. 45, G.A. Road,
Old Washermenpet,
Chennai – 600 021.

....Petitioner

Vs.

T.Rajeswari,
W/o. R.Vasu,



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No.3, Bannariamman Street,
Thumurar Nagar, Rajajipuram,
Thiruvallur – 602 001.

... Respondent

Prayer in W.P.No. 18268 of 2020: To issue a Writ of Certiorarified or any other appropriate writ, order or direction in the nature of a writ, calling for the records of the II Additional Labour Court, Chennai dated 28.02.2019 in C.P.No.08 of 2019 quash the same and allow the writ petition and pass such other or further orders.

Prayer in W.M.P.No. 22649 of 2020: This Writ Miscellaneous petition is filed to dispense with the production of original impugned order passed by the II Additional Labour Court, Chennai in order in C.P.No.08 of 2019 dated 28.02.2020.

Prayer in W.M.P.No. 22650 of 2020: This Writ Miscellaneous petition is filed to stay all further proceedings pursuant to order passed by the II Additional Labour Court, Chennai dated 28.02.2019 in C.P.No.08 of 2019 pending disposal of the above writ petition.

For Petitioner : Mr.L.P.Shanmuga Sundaram

For Respondent : Mr.Ravi Bharathi & D.Gopinathan

COMMON JUDGMENT



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issued a notice of motion. While the notice was pending, the Management was directed to deposit Rs. 3 lakhs into the credit of the Labour court in C.P. No. 08.2019. Following the issuance of the notice, the 1st Respondent submitted a counter affidavit dated Nil, November 2021.

5. The facts leading to the first writ petition are as follows:

The 1st respondent joined the management as an Assistant on 1.1.1999. She was paid a consolidated salary until 31.7.2008, after which a service register was established, and she was subsequently placed on a time scale of pay. On 30.11.2016, she resigned from her position and was relieved on the same day. She subsequently filed a claim for gratuity with the controlling authority, which registered the case as P.G. Case No. 93/2017. On notice, the management submitted a counter-statement on 28.11.2018. On hearing both parties, the 2nd Respondent allowed the claim of the workman and calculated her service as 18 years. Based on her last drawn salary, she computed the gratuity at Rs. 2,57,954, and the same was directed to be paid within 30 days; it was also ordered that failure to do so would incur an additional



interest of 10%.

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6. Aggrieved with the decision, the management appealed under Section 7(7) of the Payment of Gratuity Act to the 3rd Respondent, which was registered as P.G. Appeal No. 49/2019. Upon hearing arguments from both sides, the 3rd Respondent Appellate Authority dismissed the appeal and upheld the order of the controlling authority, the 2nd Respondent. This led to the filing of W.P. No. 18554 of 2020, challenging the decision of the Appellate Authority.

7. The management contended that the Payment of Gratuity Act, 1972, does not apply to them as they never employed 10 or more persons at any given time. Consequently, the Petitioner Management argued that they were not covered by the provisions of the Gratuity Act. Although their special bylaws governing employee service conditions do provide for gratuity, it is stipulated that these apply only to employees who retire or are deceased. Moreover, they characterized the workman's employment as irregular, claiming she had entered the service through back door.



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8. In her order dated 28.12.2018, the controlling authority did not determine whether the Payment of Gratuity Act, specifically Section 2(3)(b), applied to the Petitioner Management. The management firmly maintained that at no point neither at the establishment's inception nor thereafter, including during the period when the workman was employed did they have 10 employees. The controlling authority based her decision solely on a document submitted by the Respondent (Ex.RS), which suggests that even irregular employees are eligible for gratuity upon reaching retirement age. However, there was no conclusive finding regarding the applicability of the Act to the management.

9. During the appeal, the management specifically raised the issue of the applicability of the Payment of Gratuity Act before the 3rd Respondent Appellate Authority. In her order, the Appellate Authority merely stated that steps were taken to get approval from the Deputy Registrar for incurring expenditure and the Deputy Registrar in his letter dt. 19.1.2017 informed that the finances do not provide for justification. These facts were not



mentioned in the management's counter statement. By a letter dated 2.3.2017, the President of the Society has informed the workman to collect all dues from the office , would show the present stand of the management is not expressed therein. Therefore, the Petitioner Management is not contradicting themselves. Given the same, the controlling authority's order does not call for any interference.

10. In the counter statement submitted by the workman, paragraph 10 referenced Section 3A of the Payment of Gratuity Act, thereby asserting the 1st Respondent's entitlement to gratuity. However, there was no claim made that at the time the Management Society was incorporated, or at any point thereafter, the establishment employed 10 or more individuals, which would bring it under the coverage of the Payment of Gratuity Act. The relevant portions of the Act, Section 1(3)(b) and Section 3A (introduced by the amending act 26 of 1984), are detailed below:

“Section 1 (3) It shall apply to

(a) omitted

*(b) every shop or establishment within the meaning of
any law for the time*



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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.

Section 3A

A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.”

11. The workman's reliance on Section 3A of the Payment of Gratuity Act to bolster her case is fundamentally flawed. Section 3A's saving provision is applicable only when the Act was initially applicable to an establishment, and subsequently, the number of employees decreased below the threshold necessary for the Act's application. It does not apply in situations where the Act was never applicable to the establishment from the start. The Petitioner Management has consistently asserted that they only had one employee, thereby rendering the provisions of the Gratuity Act inapplicable to them. This point was neither addressed by the controlling authority (R2) nor adequately



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considered by the appellate authority, which overlooked this critical fact. Additionally, the bodies established under the Payment of Gratuity Act are tasked solely with resolving disputes arising specifically under this Act and are not meant to adjudicate issues pertaining to other gratuity schemes available to employees outside of this legislative framework.

12. The question of whether gratuity is payable to an employee of the Petitioner Management, considering the adoption of special bylaws following a resignation, or whether the workman's employment was irregular and she was not eligible for regularization, should only arise in instances where the Gratuity Act initially applied to the establishment. This situation does not apply in this case. The orders passed by the 2nd and 3rd Respondents impugned in the writ petition is illegal and liable to be set aside.

13. Accordingly, W.P.No.18554 of 2020 will stand allowed and the order in P.G.A.No. 49/2019 dt. 18.02.2020 confirming the order made in P.G.A.No.93/2017 dt 28.12.2018 on the file of the



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2nd Respondent herein are set aside. No costs. Given that the writ petition has been allowed, the Petitioner Management it is open to the Petitioner Management to withdraw the amount of the predeposit currently held by the 2nd Respondent. No costs. Consequently, connected writ miscellaneous petition is closed.

14. In the matter of W.P.No.18268 of 2020, the workman initiated a petition under Section 33C(2) of the Industrial Disputes Act before the II Additional Labour Court. She claimed accumulated Provident Fund totaling Rs.3,75,625/- with an interest rate of 12% from 1.12.2016, until the date of the order, as well as earned leave compensation for 240 days amounting to Rs.2,07,120/-. This petition was registered as C.P.No.08/2019, and a notice was subsequently issued to the Petitioner Management. The Petitioner Management filed a statement objecting to the workman's claims. During proceedings before the labour court, the workman examined herself as PW1 and was supported by her husband, Vasu, who appeared as PW2. She submitted 16 documents marked as Ex.P1 to Ex.P16. Conversely, the Petitioner Management examined the President of the Society



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as RW1, and submitted 8 documents, marked as Ex.R1 to Ex.R8.

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15. Based on the averments, and evidence (both documentary and oral), the labour court came to the conclusion that the Workman was eligible to get the amounts as claimed and accordingly ordered a sum of Rs.5 ,82, 745/- which was directed to be paid by the Management together with a cost of Rs.10,000/- The contentions raised by the Management was that the Society is not covered by the provisions of the PF Act and that the appointment of the workman was irregular and she was not eligible for any amount payable. The Management was also informed by the Deputy Registrar that the workman can receive only her contribution and that Management's contribution need not be paid.

16. The Labour Court after analysing the evidence of RW1 which was extracted in Para 9 of the impugned order held that at the time of audit the balance of the PF amount payable to employees will be shown and in the case of the workman, as per Ex.P7, a sum of Rs.3,66,518/- was shown against her account. It



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was also stated that Ex.P7 was signed by RWI and that the PF amount including the management's contribution as well as worker's contribution deposited with the Chennai District Co Operative Bank. The witness RW 1 also admitted that they passed a resolution recommending the payment of earn leave to the workman as per Ex.R 7 and the resolution was approved by the Deputy Registrar.

The Labour Court, after analysing the evidence of RW1 which was extracted in Para 9 of the impugned order, determined the following: During the audit, the balance of the Provident Fund (PF) payable to employees was recorded, and for the workman in question, a total of Rs. 3,66,518 was listed in her account as per Exhibit P7. This document, signed by RW1, confirmed that both the management's and the worker's contributions were deposited with the Chennai District Co-operative Bank. Additionally, RW1 admitted that a resolution was passed to authorize the payment of earned leave to the workman, as documented in Exhibit R7, which received approval from the Deputy Registrar.

17. Based on these admissions, the Labour Court rightly concluded that the workman was entitled to receive both her



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Provident Fund (PF), including the management's contribution, as well as earned leave compensation. The petitioner, who resigned from the management's service in 2016 at the age of 54, has been pursuing her PF and earned leave salary for the past eight years. The grounds raised by the Petitioner Management that her appointment was irregular does not affect her eligibility for terminal benefits. Deductions had been made from her salary for PF contributions, and along with the management's share, these funds were credited to her account and invested with the District Central Co-operative Bank. Moreover, the society itself endorsed the payment for earned leave, which received approval from the Deputy Registrar, a fact acknowledged by RW1.

18. It is too late in the day to deny the benefits claimed by the workman, and the impugned order of the Labour Court does not warrant any interference. Therefore, W.P.No. 18268 of 2020 will stand dismissed. Since the Labour Court has already imposed costs of Rs.10,000/- this court sees no reason to impose additional costs. Given the dismissal of the writ petition, the Petitioner is entitled to withdraw the amount of Rs.3 lakhs currently held in deposit under C.P.No.08/2019 at the II Additional Labour Court.



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Additionally, the management is directed to pay the remaining amount due to the 1st Respondent workman, along with the costs previously ordered by the Labour Court, without driving her to any other execution forums. No costs. Consequently, connected writ miscellaneous petitions are also dismissed.

19.02.2025

NCC: Yes No

Index: Yes No

Internet: Yes / No

Copy to:

1. The Joint Commissioner of Labour- I,
Chennai – 600 006.
2. Additional Commissioner of Labour,
Payment of Gratuity Act,
Teynampet, Chennai – 600 006.
3. The Presiding Officer.
II Additional Labour Court,
Chennai – 600 104.

DR. A.D.MARIA CLETE, J.

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Pre-delivery Judgment in
Writ Petition Nos. 18554 & 18268 of 2020
and
W.M.P.Nos.23001, 22649 & 22650 of 2020

19.02.2025