



IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 25.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

W.P.No.23898 of 2022
and W.M.P.Nos.22904 & 22905 of 2022

The Regional Manager,
Tamil Nadu Civil Supplies Corporation
Behind District Collector Office,
Siluvampatty P.O.,
Namakkal – 637 003.

... Petitioner

Vs

1.The Additional Commissioner of Labour/
Appellate Authority,
under the Payment of Gratuity Act, 1972,
Dr.Balasundaram Road,
Coimbatore – 641 018.

2.The Deputy Commissioner of Labour /
Controlling Authority under the Payment
of Gratuity Act, 1972,
Yercaud Main Road, Korimedu,
Salem – 636 008.

3.I.Mookian

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the second respondent in P.G. Case No.07/2020 dated 21.09.2020 and confirmed by the second respondent in P.G. Appeal No.11/2021 dated 13.08.2021 and quash the same.



WEB COPY



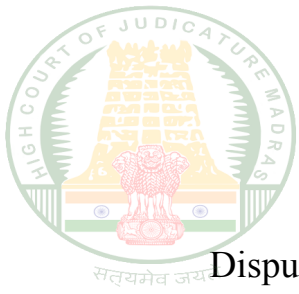
For Petitioner : Mr.C.Selvaraj

For Respondents : Mr.E.P.Senniyangiri, G.A for R1 & R2
Mr.V.Ajoy Khose for R3

ORDER

This writ petition has been filed by the petitioner to quash the order passed by the first respondent in P.G. Appeal No.11/2021 dated 13.08.2021 by confirming the order of the second respondent in P.G. Case No.07/2020 dated 21.09.2020.

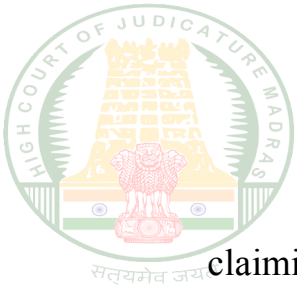
2. The learned counsel appearing for the petitioner would submit that the third respondent namely I.Mookaian was working as a Seasonal watchman in Direct Purchase Centres in the Thanjavur Region during the Kuruvai and Samba harvest seasons from 1984 to 1997, with intermittent breaks on consolidated pay, and thereafter as per minimum rates of wages fixed by the Government of Tamil Nadu. At that time, the nature of work performed by the D.P.C employees (i.e., Seasonal Bill Clerk, Helper and watchman) is basically seasonal in character and intermittent in nature. Based on the demands from various trade unions functioning in the petitioner corporation, Settlements under Section 12(3) of Industrial



WEB COPY

Dispute Act, were entered int, on 19.09.1991 and 30.01.1997, wherein it was agreed by the unions that these D.P.C. employees are seasonal employees and will be given preference in regular employment before resorting to direct recruitment in class III and IV in T.N.C.S.C. Based on the settlement, the third respondent was appointed as a packer on 16.10.1997 in Namakkal Region. Thereafter, he retired from service on 30.09.2012 on attaining the age of superannuation.

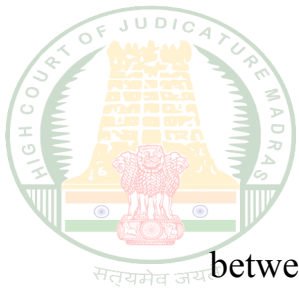
3. The third respondent had put in 14 season service as a seasonal employee and to get eligible gratuity out of 28 seasons and 15 years of service as a regular employee for the period from 16.12.1997 to 30.09.2012. The Head Office of the petitioner corporation issued a circular in R.C. No.AGR2/32911/06 dated 26.11.2007, and based on the same, eligible gratuity was sanctioned and paid to the erstwhile seasonal employees by taking into account their seasonal service and later for the regular service rendered by him. The third respondent was sanctioned and paid the gratuity for the eligible seasonal service and regular service, calculating a sum of Rs.1,43,841/- that was paid to him on 06.08.2013. While so, the third respondent filed an application before the second respondent in P.G. Case No.07/2020, after a delay of 7 years before the first respondent,



WEB COPY

claiming a sum of Rs.1,25,508/- towards differential gratuity by including the seasonal employment. The second respondent, without considering the objection made by the petitioner that the seasonal work cannot be computed for full gratuity, passed an award to pay the differential gratuity amount of Rs.1,25,508/-. The petitioner preferred an appeal in P.G. Appeal No.11 of 2021 before the first respondent, and the first respondent, also without considering the case of the petitioner, erroneously dismissed the appeal on 13.08.2021. The petitioner had already deposited the amount at the time of preferring the appeal and the Appellate Authority directed the petitioner to release the amount already deposited. The petitioner himself admitted that he is a seasonal employee and thereby entered to settlement under Section 12(3) of I.D. Act but he filed an application claiming gratuity for the period seasonal employee and the same has not been considered by the respondents, and therefore the order passed by the respondents are liable to be set aside.

4. The learned counsel appearing for the 3rd respondent would submit that the petitioner corporation is not a seasonal establishment, and thereby there is no question of seasonal employment. The first respondent is entitled to gratuity for the total period, though the settlement was arrived



WEB COPY

between the parties under Section 12(3) of I.D. Act, it has no over riding effect than the payment of the gratuity act. The above said issue was already considered by this Court, and the learned Single Judge rendered findings that the petitioner's establishment is not a seasonal establishment. Therefore, the D.P.C. persons are not seasonal employees and thereby the employees are entitled for gratuity at the rate of 15% based on the rate of wages last drawn by the employee concerned as per the second Proviso to Sub-Section(2) of Section 4 of the Payment of Gratuity Act. The second Proviso to Sub Section (2) of Section 4 of the payment of Gratuity Act, is not at all applicable to the employees of Tamil Nadu Civil Supplies Corporation who have worked in Direct Purchase Centres, and this was settled by the Hon'ble Single Bench of this Court in W.P.(MD)Nos.16007 to 16011 of 2013 and subsequently by the Hon'ble Division Bench of this Court in W.A.(MD) Nos.773 to 776 of 2018. Therefore, the issue in this case has already been covered by the judgment of this Court. Therefore, the order passed by the first and second respondents are in order and the writ petition is liable to be dismissed.

5. This Court heard both sides and perused the materials available on record.



WEB COPY

6. In this case, the main contention of the petitioner is that the third respondent was appointed as a seasonal employee and thereafter he was appointed on regular basis. While so, he is not entitled to gratuity for the entire period, and the first and second respondents ordered the petitioner to pay the differential amount by holding that the third respondent is entitled to full gratuity. The period worked as a seasonal employee was also taken into account for calculating the gratuity, which is considered wrong. According to the third respondent, the petitioner corporation is not a seasonal establishment, and the second proviso to Sub-Section(2) of Section 4 of the payment of gratuity Act is not applicable to the third respondent. Once it is established that the petitioner is not a seasonal establishment, the petitioner cannot claim that the third respondent is a seasonal employee.

7. The learned counsel appearing for the 3rd respondent relied on the judgment of this Court in W.P.No.16007 of 2013 batch case, wherein this Court, while dealing with similar nature of cases held that the petitioner establishment cannot be stated to be seasonal, even though it may be the case that the employees did not work throughout the year. Therefore, the second Proviso to Sub Section(2) of Section 4 of the Act, is not at all



WEB COPY

applicable to the employees of Tamil Nadu Civil Supplies Corporation, who have worked in the Direct Purchase Centres. The Hon'ble Division Bench of this Court in W.A.(MD).Nos.773 to 776 of 2018 batch case, wherein this Court held as follows:

4. The relevant portion of the judgment passed by the Division Bench of this Court reads as follows:

“3.The legal issue involved in these writ petitions is squarely covered by the decision of this Court in W.P.No.4371 of 1998, dated 30.07.2008, which was confirmed by the Hon'ble Division Bench in W.A.No.1282 of 2008, dated 19.07.2010. The operative portion of the order, dated 30.07.2008, passed in W.P.No.4371 of 1998, reads as follows:

“15.But in the present case, all the workers covered by the impugned order were all Assistant Quality Inspectors, Watchmen, Packer, Helper, Bill Clerk, etc. The procurement, storage and distribution are all on going process and if they are really seasonal, there is no question of the workmen being covered by the settlement or the Award as referred to by the Management. On the contrary, in the present case, even as per the admission of the learned counsel for the Management, who has given a tabular statement showing that the number of the workmen taken against the regular vacancy was 70.

16.Further, in the letter dated 02.4.1991 sent by the Chairman cum Managing Director of the petitioner Management to the Joint Commissioner of Labour over which a



WEB COPY



reference was made in the impugned order. The Managing Director had written in page 3 as follows:

"Regarding payment of retaining allowance to the D.P.C. staff, this cannot be compared to the seasonal industries like sugar industry. This is not a seasonal industry and the Government have not declared it so. We need not retain them when there is no procurement and as such no retaining allowance need be paid."Even as per the provisions of Permanent Status Act, if the petitioner wants, they can move the Government to declare the DPC as seasonal and they have not done so.

*17.The argument that the settlement and the Award is binding cannot be accepted because of the non-obstante clause found in Section 3(1) of the I.D. Act. Originally, it did not cover a Settlement or an Award. Therefore, if there was any settlement or Award between the employer and the workmen, then the provisions of Tamil Nadu Act 46 of 1981 will have no application. This was noticed by a Division Bench of this Court in its judgment in **Metal Powder Co. Ltd., Thirumangalam and another v. The State of Tamil Nadu and another [1985 (2) L.L.J. 376]** and after referring to the similar provisions in other Labour enactments in paragraph 27, it was observed as follows:*

Para 27: "... We are bound to take notice of the legislative practice that where the intention of the legislature is that a law is to have effect notwithstanding any award, agreement or



contract of service, such an intention is expressed in clear and unambiguous words. Consequently, in the absence of reference to an award, an agreement or a contract of service in S.3(1) and restricting the operation of the non-obstante clause in S.3(1) only to "anything contained in any law for the time being in force", we must accept the contention of the learned counsel for the petitioner that S.3 will not supersede a settlement between the employer and the employees in so far as the subject matter of the settlement is conferment of permanent status to the workmen...."

Taking note of the above judgment, the State Legislature amended Section 3(1) of the Tamil Nadu Act 46 of 1981 and the words 'settlement' and 'Award' have been included in the Explanation to Section 3(1) of the Act.

*18. In fact, when the amended provisions were challenged before the Supreme Court, the Act was held to be intravires of the Constitution by the **Supreme Court in State of Tamil Nadu and others v. Nellai Cotton Mills Ltd. and others [1990 (2) SCC 518]**. Therefore, the objections based on the Award and settlement by the learned counsel for the Management must necessarily fail.*

*19. Thereafter, Mr. Ajay Khose, learned counsel appearing for the workmen brought to the notice of this Court a judgment of this Court in **Tamil Nadu Civil Supplies Corporation Modern Rice Mill Engineering Section employees Union v. The Tamil Nadu Civil Supplies Corporation, rep. by its***



WEB COPY



Managing Director [1998 Writ L.R. 514] relating to the very same Corporation. In that case, the petitioner Corporation gave a circular regularising the casual workers working in the Modern Rice Mill and gave their own date of regularisation. **P.D. Dinakaran, J.**, in paragraphs 11 and 15 of the said judgment, held as follows:

Para 11: "Section 3(1), being a non-obstante provision, it prevails over any law for the time being in force which includes any service rules, Government Orders or government instructions. Therefore, want of sanctioned posts as required under General service rules cannot take away the rights conferred under Section 3(1) of the Act. Similarly, Government Orders which require that the appointments should be made only through Employment Exchange also cannot be a ground to refuse the right provided under section 3(1) of the to the petitioners if they comply the requirements prescribed under Section 3(1). Therefore, it is not open for the respondent to take shelter under any other law in force much less any Government Orders, Government Instructions to deny the benefits conferred under Section 3(1) of the Act, to the petitioners, if they satisfy the conditions prescribed therein, irrespective of the availability of sanctioned posts or sponsorship from Employment Exchange."

Para 15: "Therefore, the respondents are directed to modify the proceedings dated 24.2.1989 to confer the permanent status to individual workmen from the day on which they satisfy the condition namely completing the continuous service for period of 480 days in a period of 24 Calendar months in the respondent



WEB COPY



establishment. The respondent shall pass appropriate orders as directed above within 6 weeks from the date of receipt of a copy of this order."

20. In the light of the above, the contentions raised by the petitioner Management will have to be necessarily rejected. In fact, the petitioner Management themselves have regularised the workmen on a posterior date. In the light of the above judgments of this Court and the Supreme Court, such action cannot be countenanced by this Court. The impugned order of the first respondent will have to be necessarily upheld. Accordingly, the writ petition will stand dismissed. However, there will be no order as to costs".

4. In the light of the above, the issue is squarely covered by the above referred decisions and therefore, the writ appeals fail and accordingly, the same are dismissed, confirming the common order, dated 30.09.2013, made in W.P(MD)Nos.16007 to 16011 of 2013. No costs. Consequently, connected Miscellaneous Petitions are dismissed."

8. In view of the above said judgment, it is clear that the petitioner establishment is not a seasonal establishment and in view of Section 3(1) of Industrial Dispute Act, the settlement has no effect and the Controlling Authority as well as the Appellate Authority have correctly come to a



conclusion that the petitioner establishment is not a seasonal establishment and calculated entire period for denying the gratuity. Therefore, this Court hold that the Controlling Authority under the payment of Gratuity Act and the Appellate Authority had passed reasoned orders.

9. Since the matter has been covered under the judgments of this Court and as discussed above, the order passed by the first respondent in P.G. Case No.06/2020 and was confirmed by the second respondent in P.G. Appeal No.10/2021 are in order and warrants no interference.

10. In view of the above said discussion, this Court is of the opinion that this writ petition has no merits and deserves to be dismissed.

11. In the result, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

25.06.2025

drl

Speaking/Non Speaking

Index : Yes / No

Internet : Yes / No



WEB COPY

To

1.The Additional Commissioner of Labour/
Appellate Authority,
under the Payment of Gratuity Act, 1972,
Dr.Balasundaram Road,
Coimbatore – 641 018.

2.The Deputy Commissioner of Labour /
Controlling Authority under the Payment
of Gratuity Act, 1972,
Yercaud Main Road, Korimedu,
Salem – 636 008.



WEB COPY



14

P.DHANABAL, J.,

drl

W.P.No.23898 of 2022
and W.M.P.Nos.22904 & 22905 of 2022
(2/2)

25.06.2025