



W.P.(MD)No.4342 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.04.2025

CORAM

THE HON'BLE MR.JUSTICE **MUMMINENI SUDHEER KUMAR**

W.P.(MD)No.4342 of 2025

and

W.M.P.(MD)No.3115 of 2025

The Managing Director,
Tamilnadu Forest Plantation Corporation Limited,
(A Government of Tamilnadu Undertaking),
Karur Main Road, Mallachipuram,
Kambarasampettai Post,
Tiruchirappalli – 620 101. ... Petitioner

vs.

R.Mathan ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned order passed by the Assistant Commissioner of Labour (Additional), DCL, Trichy in P.G.77/2023, dated 10.01.2024 and quash the same.

For Petitioner :Mr.T.Amjed Khan



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ORDER

This Writ Petition has been filed by the petitioner Corporation aggrieved by an order, dated 10.01.2024 passed in P.G.No.77 of 2023 by the Assistant Commissioner of Labour (Additional), DCL, Trichy directing payment of gratuity to the respondent herein to the tune of Rs.2,25,112/-.

2.The brief facts, that are relevant for the disposal of this Writ Petition, are as follows:

3.The respondent herein was appointed as Company Secretary in the petitioner Corporation on 02.02.2015 and on completion of 4 years 8 months and 27 days, the respondent has voluntarily resigned from service on 31.10.2019. It was, thereafter, the respondent made a claim for payment of gratuity before the petitioner Corporation. As the said claim was declined by the petitioner Corporation, the respondent had approached the Controlling Authority under the Payment of Gratuity Act, 1972 (for short, Act) making a claim for payment of gratuity. The



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Controlling Authority having examined the claim made by the petitioner and having satisfied about the claim, awarded a sum of Rs.2,25,112/- together with interest from the date of resignation from service. It is aggrieved by the said order, dated 10.01.2024, the petitioner Corporation has approached this Court by filing the present Writ Petition.

4.As against the impugned order, dated 10.01.2024, the petitioner had an efficacious alternative remedy of appeal under Section 7(7) of the Payment of Gratuity Act before the appellate authority. But, for the reasons best known, the petitioner has not chosen to file any appeal and straightaway approached this Court by filing the present Writ Petition. On this ground alone, this Writ Petition is liable to be dismissed.

5.Be that as it may, the only contention raised in the present Writ Petition and argued by leaned Counsel is that the respondent has not put in the minimum five years of service, as required under Section 4(1) of the Payment of Gratuity Act, 1972, and therefore, the respondent is not entitled for payment of gratuity, but the Controlling Authority erroneously passed the impugned order.

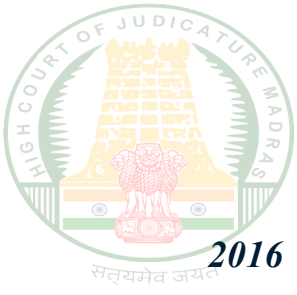


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6.The Controlling Authority having examined the said objection came to the conclusion that the respondent has rendered 4 years 8 months and 27 days of service and therefore, satisfied the requirement of rendering a continuous service for not less than five years, as on the date of his resignation from service.

7.As against the said conclusion arrived at by the Controlling Authority, the learned Counsel for the petitioner contended that the respondent, who resigned from the post of Company Secretary, cannot be said out to have been completed five years of continued service, as the resignation is not on any one of the exceptions provided under Section 2A(1) of the Act. In other words, it is contended that it is only on completion of uninterrupted continued service of five years, the respondent can claim gratuity from the petitioner Corporation, but the respondent has resigned from service even before completion of five years continuous service and therefore, the respondent is not entitled for payment of gratuity. He also placed reliance on a decision rendered by the learned Single Judge of Karnataka High Court in *W.P.No.11678 of*



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2016 (L-PG), dated 29.06.2022 in the case of ***M/s.BEML Limited vs***

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Appellate Authority under Payment of Gratuity Act and another. This

Court has carefully considered the said decision rendered by the Karnataka High Court.

8.In the decision rendered by the Karnataka High Court relied upon by the Counsel for the petitioner, the learned Single Judge of the Karnataka High Court, while considering the similar issue, came to the conclusion that the interruption in the continued service of the employee was because of the resignation and the resignation is not one of the circumstances contemplated under Section 2A(1) of the Payment of Gratuity Act and therefore, the employee was not entitled for the benefit of Section 2A(2) of the Payment of Gratuity Act, 1972.

9.No doubt, under Section 2A(1) of the Act only refers to the service interrupted on account of sickness, accident, leave, absence from duty without leave, etc., are mentioned. The resignation is not one of the circumstances contemplated under Sub Section (1) of Section 2A.



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10.In the considered view of this Court, the learned Single Judge of the Karnataka High Court totally misdirected in arriving at such a conclusion. The interruptions that were contemplated under Section 2A(1) was only the interruption caused while the employee was in service and those interruptions were mandated to be taken into consideration as continuous service in terms of sub-Section (2) of Section 2A.

11.In the instant case, the respondent herein has admittedly completed 4 years 8 months and 27 days continuous service. The date of his resignation was on 31.10.2019. In terms of Section 2A(2), where, an employee is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer, for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. In this connection, it is also relevant to notice the definition of “continuous service”, as per the Payment of Gratuity Act, 1972, which reads as under:



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“Section: 2A Continuous service.

For the purposes of this Act, -

*(1)an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order [***] treating the absence as break in service has been passed in accordance with the standing order, rules or regulations governing the employees of the establishment), lay off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.*

(2)where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer -

(a)for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i)one hundred and ninety days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii)two hundred and forty days, in any other case; (b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than -

(i)ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii)one hundred and twenty days, in any other case;

Explanation: For the purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which -

(i)he has been laid-off under an agreement or as permitted



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by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

(3) where an employee employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventyfive per cent of the number of days on which the establishment was in operation during such period."

12. In the instant case, it is to be seen whether the respondent herein has worked for 240 days during the period preceding the date of his resignation, ie., 31.10.2019 or not?. In the instant case, the respondent has admittedly completed 240 days during the period of twelve months preceding the date of resignation. Once it is established that the respondent has worked for a continuous service of 4 years and 240 days, the respondent is deemed to have been completed five years of service in the petitioner Corporation. The decision of the Karnataka High Court by placing reliance on Clause (1) of Section 2A is erroneous



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and result of failure to appreciate the correct legal position. Hence, this Court with due respect is not inclined to follow the said decision and unhesitant to declare that the said decision does not lay down correct law.

13.In the light of the above, this Court is of the firm view that the respondent herein has rendered a continuous service of five years and therefore, this Court does not find any error or illegality in the impugned order passed by the Controlling Authority. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No

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To

The Assistant Commissioner of Labour (Additional), DCL, Trichy.



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MUMMINENI SUDHEER KUMAR, J.

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