BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2025

CORAM :

THE HON`BLE MR.JUSTICE B.PUGALENDHI

WP.(MD)Nos.5225, 5226, 5227, 5228, 5229 & 5230 of 2023
and
WMP.(MD)Nos.4919, 4920, 4928, 4921, 4926 & 4922 of 2023

The Commissioner,
Office of the Dindigul Corporation,
Dindigul District. ... Petitioner in all WPs.

Vs.

1.The Controlling Authority under
Payment of Gratuity Act, 1972/
Deputy Commissioner of Labour(P),
The Office of the Joint Commissioner of Labour,
Dindigul, Dindigul Town & District.
... 1st Respondent in all WPs.

2.P.Chinnamma ...2nd Respondent in WP.(MD)No.5225 of 2023

3.R.Arukani ... 2nd Respondent in WP.(MD)No.5226 of 2023

4.P.Kaliyammal ... 2nd Respondent in WP.(MD)No.5227 of 2023

5.T.Mariammal ... 2nd Respondent in WP.(MD)No.5228 of 2023

6.K.Subbbammal ... 2nd Respondent in WP.(MD)No.5229 of 2023

7.M.Lakshmi ... 2nd Respondent in WP.(MD)No.5230 of 2023

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records pertaining to the impugned orders made in P.G.Nos.4 of 2022, 19 of 2021, 1 of 2022, 5 of 2022, 2 of 2022 and 3 of 2022 on the file of the first respondent dated 19.01.2023 and quash the same.

For Petitioner (in all WPs.) : Mr.Lawrance

For R1 (in all WPs.) : Mr.C.Venkatesh Kumar, Special Government Pleader.

For R2 (in all WPs.) : Mr.s.Sarvagan Prabhu

COMMON ORDER

The Commissioner of Dindigul Corporation has filed these writ petitions as against the orders dated 19.01.2023 passed by the first respondent, authority under the Payment of Gratuity Act, 1972 [hereinafter referred as 'the Act'] in directing the petitioner/Corporation to pay the gratuity to the private respondents/employees in the writ petitions. Since the issue involved in all these writ petitions are one and the same, all these writ petitions are taken up together and disposed of by this common order.

2.The private respondents/employees have filed claim petitions before the Deputy Commissioner of Labour praying for gratuity for the period of service rendered by them in the petitioner /Corporation. The petitioner/Corporation was functioning as Municipality and they have engaged the private respondents as Sweepers and their service was regularised with effect from 01.07.2006. These employees have also retired from service and they have been settled with all the terminal benefits. However, they have approached the Deputy Commissioner of Labour for the payment of gratuity as per the Act. The Deputy Commissioner of Labour by his order dated 19.01.2023 has allowed those applications filed by the employees and directed the petitioner/Corporation to pay the gratuity amount due to the employees together with interest at the rate of 10%, within a period of 30 days.

3.When all these writ petitions were taken up for hearing on 10.03.2023, this Court has granted on order of interim stay on condition to deposit a sum of Rs.75,000/- each to the credit of the petition mentioned gratuity case before the first respondent, within a period of six weeks.

4.The learned counsel appearing for the petitioner / Corporation submits that all these employees have been regularised only in the year 2006. By that time, CPS scheme has been introduced and therefore, they are all covered under this CPS scheme and they are not entitled for the gratuity amount as per the old scheme. He further submits that these employees have been regularised only pursuant to an agreement arrived between the parties and now, they cannot claim for a gratuity after receiving all the retirement benefits, which were provided to these employees at the time of retirement. According to him, these employees have been engaged only as substitute sanitary workers, whenever the permanent employees of the corporation went on leave. Therefore, they will not come under the definition of an employee under the Act. He also submits that the petitioner/Corporation is a State Government undertaking and therefore, as per the definition under Section 2(e) of the Act, these employees are not eligible to be defined as an employee of a State organization and they are not entitled to claim for gratuity. The learned counsel for the petitioner/Corporation by relying on the Rule 7 of the Tamil Nadu Municipal Pension Rules, 1970, submits that as per the Rule, all these employees, who have been regularised on or after 2003, are not entitled for any pension, gratuity as per the Tamil Nadu Pension Rules.

5.The learned counsel appearing for the private respondents/ employees submits that all these employees have already approached the authority under the Industrial Establishments (Conferment of Permanent Status to Workmen Act) and the authority has also declared that they are entitled for permanent status. Though this order passed by the authority has been challenged by way of a writ petition, this Court has not set aside the same. However, it has been closed after recording the submission of the learned counsel for the petitioner/Corporation therein that all these employees have been regularised with effect from 2006. The learned counsel has also relied on the counter affidavit filed by the petitioner / Corporation before the first respondent authority under the Act that they have all retired from service on 30.06.2016 and therefore, there was no recovery under CPS scheme and no amount has been paid under the new pension scheme, while so, they cannot take a plea that they will be covered only under the CPS scheme and they are not entitled for gratuity amount. The learned counsel by relying on the judgment of the Division Bench in WA.(MD)No.3112 of 2024 dated 24.10.2024 submits that Municipal Corporations are also covered under the Act and there is no notification exempting these corporations and it has also been implemented to all other Corporations by way of a communication dated 19.08.2010 by the Director of Municipal Administration.

6.This Court has considered the submission made on either side and perused the available records.

7.These writ petitions have been filed by the Dindigul Municipal Corporation as against the order passed by the first respondent/authority under the Act dated 19.01.2023. Section 7(7) of the Act provides an appeal remedy before the Joint Commissioner of Labour. However, without invoking the statutory remedy, which is available under the Act, the Municipal Corporation has preferred these writ petitions.

8.When a preliminary objection was raised by the learned counsel for the private respondents/employees, the learned counsel for the petitioner /Corporation substantiates the maintainability of the writ petition by relying on the judgment of the Hon'ble Supreme Court in ***Ravikumar Dhansukhlal Maheta and another Vs. High Court of Gujaraj and others*** reported in ***(2024) 11 SCC 424*** wherein the Hon'ble Supreme Court has stated that despite the available appeal remedy, the Court can also take up the writ petition considering the nature of issues. Since the Municipal Corporation is not inclined to avail the appeal remedy, which was also intimated by the learned counsel for the private respondents/employees, this Court proceeds with the available materials on these writ petitions.

9.The main contention of the petitioner/Corporation is that the private respondents are substitute employees, who were all engaged when permanent employees went on leave. However, they have regularised their service with effect from 01.07.2006. In fact, the private respondents/employees have already filed claim petitions before the authority under the Industrial Establishments (Conferment of Permanent Status to Workmen Act) in the year 2009 in CP.Nos.1 to 16 seeking a prayer to regularize their service on completion of 480 days. The authority under the Industrial Establishments (Conferment of Permanent Status to Workmen Act) has also allowed those applications by an order dated 28.12.2011 directing the petitioner/Corporation to regularize their service on completion of 480 days. Since this order has not been implemented, the private respondents/employees have approached this Court by way of writ petitions in WP.(MD)Nos.16443 & 16444 of 2012 praying a direction to implement the order dated 28.12.2011. The said writ petitions were allowed by an order dated 12.02.2015. In the meantime, the petitioner/Corporation, as against the order dated 28.12.2011, has filed writ petitions in WP.(MD)Nos.11892, 11891, 11881, 1884 & 11880 of 2015. However, pending these writ petitions, the service of the private respondents/employees has been regularised with effect from 01.07.2006. Therefore, this Court by its order dated 18.07.2022 has disposed of the said writ petitions by recording the submission that the service of the employees were regularised with effect from 01.07.2006. In the said writ petitions, the employees have also raised a plea that 50% of the temporary service shall be calculated for the purpose of pension benefits. With regard to that, this Court granted liberty to the employees to workout their remedy in the manner known to law. Accordingly, the employees have approached the authority under the Act and the authority has also passed the orders, which are all impugned in these writ petitions.

10.Though the order dated 28.12.2011 passed by the authority under the Industrial Establishments (Conferment of Permanent Status to the Workmen) Act has been challenged by the petitioner/Corporation in WP.(MD)Nos.11892, 11891, 11881, 1884 & 11880 of 2015, it has not been set aside by this Court. Therefore, the order dated 28.12.2011 is intact and a direction was also issued by this Court to implement the order dated 28.12.2011 in WP.(MD)Nos.16443 & 16444 of 2012. Therefore, this Court is not inclined to accept the contention of the learned counsel appearing for the petitioner/Corporation.

11.The learned counsel appearing for the petitioner/Corporation has attempted to project that the private respondents/employees are not employees as defined under the Act and they are not entitled for the payment of the gratuity. In this regard, he has also relied Section 2(e) of the Act, which is extracted hereunder:-

> *2(e) "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, [4] [and whether or not such person is employed in a managerial or administrative capacity, 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].*

No doubt, the employees of the State and Central Government have been exempted under Section 2(e) of the Act as per the definition. It has to be exempted as per Section 5 of the Act and the same is extracted hereunder:-

Section: 5 Power to exempt

(1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(2)The appropriate. Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. (3) A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date

not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially affect the interests of any person.

12.The issue involved in this case is no longer *res integra*, since it has already been considered by the Division Bench of this Court in the writ appeal in WA.(MD)No.3112 of 2024 dated 24.10.2024 as under:-

4.According to the appellants, the respondents 4 to 18 were received all the retired benefits and after getting the same, they approached the Commissioner of Labour seeking payment of Gratuity and obtained order in their favour, thereby, they got double benefits. Hence, it is sought to exempt the provisions of Gratuity Act as far as the employees of the Municipalities w.e.f. 1.10.1973. Before the learned Single Judge, the Additional Government Pleader appearing for the respondents informed that already the second respondent had addressed a letter dated 19.08.2010 to the Director of Municipality Administration and Water Supply, wherein, it was clearly envisaged that the Municipalities could not be granted exemption from the provisions of the Payment of Gratuity Act, 1972, and the same was already been informed to all the respective Municipalities and

Corporations. In this regard, a detailed counter was also filed by the respondents before the learned Single Judge.

5.At this juncture, it is useful to extract Section 5 of the Payment of Gratuity Act, which runs as follows:

Power to exempt:

(1) ..

(2) The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favoubable than the benefits conferred under this Act.

6.The said provision clearly says that exemption of such provision shall apply, only to the cases, in which the appropriate government had issued a notification, exempting any employee/ employees of the establishment, in the opinion that such employee/employees are in receipt of Gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Here in this case, no such notification was issued by the Government, whereas, the Government had already informed the

Director of Municipal Administration through its letter dated 19.08.2010 that exemption shall not be granted and the same was also informed to all the officers of the concerned Municipalities.

13.In view of the above observations and decision of the Division Bench, this Court is not inclined to entertain this writ petitions. Accordingly, all these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

17.11.2025

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

The Controlling Authority under
Payment of Gratuity Act, 1972/
Deputy Commissioner of Labour(P),
The Office of the Joint Commissioner of Labour,
Dindigul, Dindigul Town & District.

B.PUGALENDHI,J

gns

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