



W.P(MD)No.16251 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.16251 of 2018

and

W.M.P.(MD)Nos.14461 & 14462 of 2018

Anjalai Ammal Mahalingam Engineering College,
Kovilvenni, Tiruvarur District,
Rep. by its Principal,
K.Velmurugan

... Petitioner

Vs.

1.The Joint Commissioner of Labour /
The Appellate Authority,
(Under the Payment of Gratuity Act),
Tiruchirappalli, No.8, Kahjamian Street,
Khaja Nagar, Tiruchirappalli-620 020.

2.The Assistant Commissioner of Labour /
The Controlling Authority,
(Under the Payment of Gratuity Act),
Tiruchirappalli, No.26, Third Street,
Khaja Nagar, Tiruchirappalli-620 020.

3.K.Balathandayutham

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in P.G.A.No.52 of 2017, dated 21.12.2017 confirming the order passed by the 2nd respondent in P.G.No. 41 of 2013 dated 07.11.2016 and quash the same.



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W.P(MD)No.16251 of 2018

For Petitioner : Mr.V.K.Sathiamoorthy,
for Mr.G.Mohankumar
For R1 : Mr.P.Thambidurai,
Government Advocate
For R2 : No Appearance
For R3 : Mr.G.M.Xavier

ORDER

The order of the 1st respondent passed in P.G.A.No.52 of 2017, dated 21.12.2017 is under challenge in this Writ Petition.

2.It is the case of the petitioner that the 3rd respondent was appointed by the then Managing Trustee, namely, M.Namashivayam on 02.06.1999 in the Mechanical Department, where he had worked as Lecturer till 31.07.2004. Thereafter, he worked as a Senior Lecturer from 01.08.2004 to 30.11.2009 and thereafter, Assistant Professor from 01.12.2009 to 26.04.2012. In the meantime, he submitted his resignation to the Principal on 18.04.2012, stating that he is resigning his job due to personal reasons. The Principal recommended to the Managing Trustee on 23.04.2012. Further, the 3rd respondent also submitted a letter of resignation to the Managing Trustee on 21.04.2012 without disclosing the letter submitted to the Principal on 18.04.2012. In the said letter, he made reference about letter of TNPSC,



W.P(MD)No.16251 of 2018

Chennai dated 12.04.2012 and letter of the Director of Motor Vehicle Maintenance Department, Velacherry dated 19.04.2012 and stated that he is willing to pay in view of three months' notice. In the letter dated 18.04.2012, he stated that he wants to relieve at the end of three months period or at the end of the academic year, which would be on 31.05.2012.

3.It is the further case of the petitioner that due to the resignation of the 3rd respondent, shortage of vacancy arose, which did not fall in line with the faculty student ratio being 1:15 and staff strength was also reduced from 12 to 11 and the Management was compelled to search and fill up the vacancy and maintain the rule and the sanction granted by the Director of Technical Education. However, the said aspect was not considered either by the then Managing Trustees, who accepted the resignation letter submitted by the 3rd respondent or by the Principal. Without considering all these aspects, the 3rd respondent was relieved. Thereafter, the 3rd respondent filed a claim petition with 77 days delay before the 2nd respondent seeking for gratuity under the Payment of Gratuity Act. The said delay petition was numbered as P.G.I.A.No. 65/2012, which was numbered without issuing any notice to the petitioner herein. Subsequently, the main case was numbered as P.G.No.41 of 2013, where notice was served to the petitioner. After receipt of the notice, the



W.P(MD)No.16251 of 2018

petitioner filed affidavit and petition under Rule 11(5) of Tamil Nadu Payment of Gratuity Rules 1973 to set aside the *ex-parte* order passed in P.G.I.A.No.65 of 2012. He also filed counter statement and additional counter statement. However, without hearing the petitioner herein, the 2nd respondent passed an order on 07.11.2016, allowing the claim petition filed by the 3rd respondent. Aggrieved over the said order, the petitioner filed an appeal in P.G.A.No.52 of 2017 before the 1st respondent. The 1st respondent dismissed the said appeal vide order dated 21.12.2017. Aggrieved over the same, the present Writ Petition is filed.

4.The learned counsel appearing for the petitioner has mainly pressed upon that sufficient opportunity was not provided either to present the case or to oppose the condone delay application before the 2nd respondent. Further, though counter statement was filed before the 2nd respondent in the claim petition filed by the 3rd respondent, no personal hearing was provided to the petitioner and without hearing the petitioner, the 2nd respondent passed the order dated 07.11.2016. All those aspects though were canvassed before the 1st respondent in the appeal, the 1st respondent has not considered the same in the proper perspective. Therefore, he seeks indulgence of this Court to remit back the matter to the 2nd respondent for fresh consideration.



W.P(MD)No.16251 of 2018

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5.The learned counsel appearing for the 3rd respondent would submit that since the petitioner failed to make payment of gratuity after resignation, the 3rd respondent filed claim petition before the 2nd respondent. However, there was a delay of 77 days. In the said petition, notice was served to the petitioner. However, the petitioner failed to appear before the 2nd respondent. Therefore, the delay petition was considered on merits and the delay was condoned. After condonation of delay, the main claim petition was numbered and notice was served to the petitioner. After receipt of the notice, the petitioner filed counter as well as additional counter and though many chances have been provided to the petitioner, the petitioner failed to appear before the 2nd respondent. Therefore, taking into consideration all those aspects only, the 2nd respondent has passed an order dated 07.11.2016. Against which, the petitioner filed an appeal and after hearing both sides, the said appeal was rightly rejected by the 1st respondent.

6.He would further submit that the claim of the petitioner cannot be denied, citing the reason that the staff strength was reduced from 12 to 11, which is purely official affairs of the Management, for which, the 3rd respondent is no way responsible. Further, at the time of resignation, the



W.P(MD)No.16251 of 2018

petitioner Management has not put any condition and they have not brought to the knowledge of the petitioner anything about the loss said to have occurred as contended by the petitioner and there was no pre-condition also imposed for accepting the resignation letter. Further, the petitioner has not produced any documentary evidence for the loss occurred to the petitioner Management. Even if it is so, it is not only affairs of the Management but also it is the problem of the Management, for which, they cannot restrain the 3rd respondent. Therefore, there is no need for remanding the matter and he requested this Court to dismiss this Writ Petition with cost.

7.I have given due consideration to the submissions made on either side and perused the materials available on record.

8.Admittedly, the 3rd respondent was initially appointed on 02.06.1999 as Lecturer in the Mechanical Department and he worked till 31.07.2004. Thereafter, he worked as Senior Lecturer from 01.08.2004 to 30.11.2009 and thereafter, as Assistant Professor from 01.12.2009 to 26.04.2012. In the meantime, he submitted resignation letter on 18.04.2012 to the Principal. The Principal has referred the same to the Managing Trustee on 23.04.2012. Once again, the 3rd respondent submitted another resignation letter



W.P(MD)No.16251 of 2018

on 21.04.2012 to the Managing Trustee, where he has stated reason for resignation and he has stated that he is ready to pay in view of three months notice. Further, in the letter dated 18.04.2012, he has stated he wants to relieve him either at the end of the period of three months or at the end of the academic year. However, the petitioner Management relieved the 3rd respondent on 26.04.2012. Now, they turned against the 3rd respondent, finding fault on his resignation. However, this Court finds fault only on the Management on the ground that though the 3rd respondent was ready to work upto the end of the academic year, the Management relieved him well before his request ie., on 26.04.2012 itself. Further, if there is any loss occurred, the Management has to bear it and while accepting the resignation, they should have taken a conscious decision. Even assuming that the matter is remitted back for fresh consideration as requested by the petitioner, the petitioner has not produced any documentary evidence or raised any other ground to substantiate that they will make the 2nd respondent to change the decision.

9. Further, there is no dispute on the part of the petitioner about the entitlement of gratuity by the 3rd respondent. The petitioner wanted to adjust the said gratuity against the loss said to have incurred due to the resignation of the 3rd respondent. The learned counsel for the petitioner fairly submitted that



W.P(MD)No.16251 of 2018

by virtue of the notification dated 03.04.1997, the applicability of gratuity was extended to the Teachers as well as Professors.

10.Further, with regard to 77 days delay, it is a mistake on the part of the petitioner to pay gratuity to the 3rd respondent and the 3rd respondent would have reasonably expected the petitioner to settle the gratuity and under this course of time, it appears that there was delay of 77 days and for the interest of justice, the same has to be condoned. Therefore, the 2nd respondent has rightly condoned the delay.

11.In view of the above reasons, this Court is of the view that there is no necessity for remanding the matter as requested by the petitioner by setting aside the impugned order passed by the 1st respondent as well as the 2nd respondent. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

20.01.2025

NCC : Yes / No
Index : Yes / No

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W.P(MD)No.16251 of 2018

To

The Joint Commissioner of Labour /

The Appellate Authority,

(Under the Payment of Gratuity Act),

Tiruchirappalli, No.8, Kahjamian Street,

Khaja Nagar, Tiruchirappalli-620 020.



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W.P(MD)No.16251 of 2018

KRISHNAN RAMASAMY, J

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W.P(MD)No.16251 of 2018

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