



W.P(MD)No.19046 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.19046 of 2018

and

W.M.P(MD)No.16883 of 2018

The Management,
Tuticorin Thermal Power Station,
Tamil Nadu Electricity Board,
Port Building Salai,
Tuticorin-628 004,
Represented by the Superintending Engineer (P&A)

... Petitioner

Vs.

- 1.The Assistant Commissioner of Labour,
(Controlling Authority under the
Payment of Gratuity Act),
Office of Assistant Commissioner of Labour,
Tirunelveli.
- 2.The Additional Commissioner of Labour,
Appellate Authority under the Payment
of Gratuity Act,
Office of Additional Commissioner of Labour,
Madurai.

3.K.Karuppasamy

... Respondents



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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 of the second respondent in Case No.Gratitude Appeal 10 of 2017 and quash its order, dated 05.10.2017, confirming the order of the first respondent, dated 09.07.2016 in Case No.PG.161/2013 and pass such further or other orders as this Court.

For Petitioner : Mr.Anand Gopalan
for M/s.Agam Legal

For R-1 & R-2 : M/s.D.Farjana Ghoushia
Special Government Pleader

For R-3 : No appearance

ORDER

The present writ petition has been filed by the Management of Tuticorin Thermal Power Station, Tamil Nadu Electricity Board challenging the order passed by the second respondent herein confirming the order of the first respondent under the Payment of Gratuity Act, 1972.

2. The third respondent herein, who was employed as a contract labourer in the petitioner Electricity Board from 01.04.1995 onwards, was absorbed as a regular employee on 01.05.1999. The third respondent attained superannuation on 30.06.2007. The petitioner Board has already paid the Death-cum-



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Retirement Gratuity amount for the period between 01.05.1999 and 30.06.2007.

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This is acknowledged by the third respondent in his application before the Controlling Authority under the Payment of Gratuity Act. However, the grievance of the third respondent is that, the period which he had worked as a contract labourer between 01.04.1995 and 30.04.1999 has not been taken into account. At least 50% of the said services should have been taken into account for payment of gratuity. With the said prayer, he has approached the first respondent herein.

3. The first respondent has passed an order on 09.07.2016 directing the Electricity Board to pay a sum of Rs.28,159/- along with 10% interest. The Electricity Board has filed an appeal before the second respondent which was dismissed on 15.03.2018. Challenging the said orders, the present writ petition has been filed by the Electricity Board.

4. The learned Counsel appearing for the petitioner submitted that, by way of G.O(Ms)No.699, Labour Employment Department, dated 16.03.1983, the Tamil Nadu Electricity Board has been granted exemption from the purview of the Payment of Gratuity Act. As per Section 5 of the said Act, this has not



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been brought to the notice of the authorities under the Payment of Gratuity Act.

He further submitted that for the service rendered by the third respondent as a contract labourer, his claim has to be made only to the contractor. He also relied upon the Hon'ble Division Bench judgment of this Court in W.A.No.715 of 2018, dated 27.09.2018, wherein the Hon'ble Division Bench was pleased to hold that a Payment of Gratuity Act is not applicable to the Tamil Nadu Electricity Board.

5. There is no representation on the side of the third respondent, despite notice being served upon him. The name of the third respondent has also been printed in the cause-list. This Court proceeds to pass orders on merits on the basis of the submission made by the learned Counsel appearing for the petitioner.

6. The facts narrated above will clearly indicate that the Tamil Nadu Electricity Board has been granted exemption from the purview of the Payment of Gratuity Act under Section 5 of the said Act. This exemption was granted by G.O(Ms)No.699, Labour and Employment Department, dated 16.03.1983. The said aspect has not been brought to the notice of the authorities under the



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Payment of Gratuity Act. In such circumstances, the orders passed by the respondents 1 and 2 herein are without jurisdiction. Similarly placed employee had approached this Court seeking for calculating 50% of the services as a contract employee for the purposes of calculation of payment of gratuity. The said request was rejected by the Hon'ble Division Bench of this Court in W.A.No.715 of 2018, dated 27.09.2018, wherein, it was held that the claim of the employee has to be made only to the contractor and not to the Tamil Nadu Electricity Board.

7. In view of the above said categorical position, the orders impugned in the writ petition are set aside. The writ petition stands allowed. Any amount that is deposited by the petitioner Electricity Board shall be refunded by the authorities concerned, within a period of twelve (12) weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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



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 - 2.The Additional Commissioner of Labour,
Appellate Authority under the Payment
of Gratuity Act,
Office of Additional Commissioner of Labour,
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R.VIJAYAKUMAR, J.

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