

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31-10-2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.3352 of 2015

And

M.P.Nos.1 and 2 of 2015

The Secretary,
Shri Saradha Bala Mandir Boys Matriculation
Higher Secondary School,
19, Rajaji Road,
Salem-7.

... Petitioner

vs.

1.The Appellate Authority
under Payment of Gratuity Act 1972,
(Joint Commissioner of Labour),
Coimbatore-641 018.

2.Controlling Authority,
under Payment of Gratuity Act 1972,
(Assistant Commissioner of Labour),
Salem-636 001.

3.M.Usharani

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records in A.G.A.No.47 of 2014 on the file of the Appellate Authority under the Payment of Gratuity Act 1972 (Joint Commissioner of Labour), Coimbatore-641 018 the first respondent herein, quash the order dated 07.11.2014 passed therein, confirming the order dated 10.05.2013 passed in P.G. Case No.65 of 2012 by the Controlling Authority under Payment of Gratuity Act 1972 (Assistant Commissioner of Labour, Salem-636 001, the second respondent herein.

For Petitioner : Mr.M.R.Raghavan

For Respondents-1&2 : Mr.J.Ramesh,
Additional Government Pleader.

For Respondent-3 : Mr.D.Sadhasivam

O R D E R

The Appellate Order passed by the first respondent in A.G.A. No.47 of 2014 dated 07.11.2014, confirming the order dated 10.05.2013 passed by the Controlling Authority in P.G. Case No.65 of 2012, is under challenge in the present writ petition.

2. The writ petitioner is Shri Saradha Bala Mandir Boys Matriculation Higher Secondary School. The third respondent was employed in the writ petitioner's School and the grievance of the third respondent was that the gratuity, as applicable under the provisions of the Gratuity Act, has not been settled in her favour and therefore, the third respondent-employee was constrained to approach the Controlling Authority initially, who in turn, allowed her claim and the appeal preferred by the writ petitioner-School was also rejected and the order of Controlling Authority was confirmed by the Appellate Authority. The Controlling Authority allowed the claim of the third respondent-employee on the ground that the Teachers are entitled to get gratuity from the date of appointment to the date of retirement and accordingly, the amount of gratuity was calculated and an order was passed under the provisions of the Gratuity Act by the Controlling Authority.

3. As per the terms and conditions of service of the third respondent-employee, she is eligible to get her gratuity from the year 1999 onwards. Thus, the order of Controlling Authority is perverse.

4. The learned counsel, appearing on behalf of the third respondent-employee, disputed the said contentions of the learned counsel for the writ petitioner, by stating that when the date of appointment was not disputed by the writ petitioner-Management, the Teachers are entitled to get gratuity from the date of appointment till the date of retirement and such being the provisions of the Payment of Gratuity Act, the right of gratuity under the Act, cannot be denied to the third respondent-employee.

5. The only question arose in the present writ petition is that whether the gratuity is to be calculated from the date of appointment or from the date which is considered by the writ petitioner-Management. Undoubtedly, the third respondent-employee had served in the institution and the services of the third respondent-employee was not disputed by the writ petitioner-Management. While-so, the gratuity, as applicable, is to be paid from the date of appointment and therefore, there is no infirmity, as such, in respect of the order passed by the Controlling Authority, which was confirmed

by the Appellate Authority.

6. This being the legal principles to be followed, the third respondent-employee is entitled to get gratuity from the date of her appointment till the date of retirement and under these circumstances, there is no error, as such, in respect of the order passed by the Controlling Authority, which was confirmed by the Appellate Authority.

7. Accordingly, the Appellate Order dated 07.11.2014 passed in A.G.A No.47 of 2014, confirming the order dated 10.05.2013 passed in P.G. Case No.65 of 2012 by the Controlling Authority under the Payment of Gratuity Act, 1972, is confirmed and consequently, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Appellate Authority
under Payment of Gratuity Act 1972,
(Joint Commissioner of Labour),
Coimbatore-641 018.

2.Controlling Authority,
under Payment of Gratuity Act 1972,
(Assistant Commissioner of Labour),
Salem-636 001.

+1cc to Mr.D.Sadhasivan, Advocate, S.R.No.90637
+1cc to Mr.M.R.Raghavan, Advocate, S.R.No. 90612
+1cc to the Government Pleader, S.R.No. 90688

WP 3352 of 2015

AD(CO)
GN(28/11/2019)