
(2010) 02 MAD CK 0251

In the Madras High Court

Case No : Writ Petition No. 15412 of 2001

The Managing Director, Chennai Metropolitan Water Supply
and Sewerage Board

APPELLANT

Vs

Joint Commissioner of Labour, (Appellate Authority under
payment of Gratuity Act, 1972), Assistant Commissioner of
Labour, (Controlling Authority under payment of Gratuity Act,
1972) and L. Ramachandran

RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Payment of Gratuity Act, 1972 — Section 14, 2, 4, 5, 7(7)

Citation : (2010) 02 MAD CK 0251

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

**Advocate : M.R. Raghavan, for the Appellant; Hazan Faizal, Government
Advocate for Respondents 1 and 2 and G. Ethirajulu, for the Respondent**

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner is the Chennai Metropolitan Water Supply and Sewerage Board, Chennai 600002 (in short "Metro Water"). They have come forward to challenge the order of the first respondent appellate authority under the Payment of Gratuity Act, 1972 in PGA. No. 21/2001 dated 10.7.2001.

2. It is seen from the records that the third respondent who was working as Overseer in the Corporation of Chennai and whose services were absorbed by the petitioner Metro Water, claimed difference in gratuity. It was his claim that instead of paying the gratuity of Rs. 2,47,730/-, he was paid a sum of Rs. 1,47,790/-. Therefore, he moved the Controlling Authority under the Gratuity Act viz, the second respondent with P.G. Case. No. 254/2000. Before the Controlling authority, the Metro Water took a stand that the Act will not apply to them and secondly the relevant rules have been provided for Pension and DCRG and the petitioner, having got the amount, cannot stake his claim for further payment.

The authority rejected both the contentions which were raised by the Metro Water and held that the Metro water is governed by a Gratuity Act and the third respondent is employed within the meaning of Section 2(e) of the Payment of Gratuity Act. Therefore, the authority allowed the Gratuity application and directed the petitioner-Metro Water to pay Rs. 61,280/- to the third respondent.

3. Aggrieved by the said order, the Metro Water Preferred an appeal u/s 7(7) of the Payment Gratuity Act before the first respondent appellate authority. The first respondent appellate authority, after notice to the third respondent, passed a final order dated 10.7.2001 rejecting the case of the petitioner-Metro Water. He agreed with the conclusion reached by the Assistant Commissioner. He also added by saying that since the Metro Water is not exempted in terms of Section 5 of the PG Act, they are not entitled to contend that the Act will not apply also on the ground that having paid Death Cum Retirement Gratuity (in short DCRG), the workman is not eligible for double payment ,was also rejected. It is against this order, the petitioner has come forward to file the present writ petition.

4. The writ petition was admitted on 27.8.2001. Pending writ petition, this Court granted interim injunction restraining the respondents 1 & 2 from disbursing the amount to the third respondent. The said interim order came to be made absolute on 22.2.2007.

5. Today, when the matter was called, learned Counsel for the respondent informs this Court that the subject matter of writ petition is already covered by an order passed by this Court in W.P. Nos. 15114 and 15115 of 2000 dated 20.1.2000. In that view of the matter, he sought for dismissal of the writ petition.

6. Apart from the fact that the issue is already covered by this Court, subsequent to the passing of the above order, the Supreme Court in Allahabad Bank and Anr. v. All India Allahabad Bank Retired Employees" Association and Anr. reported in 2009 AIR SCW 7667 in paragraphs 14,16,21 and 23 held as follows:

14. Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on superannuation or retirement or resignation etc., being a statutory right cannot be taken away except in accordance with the provisions of the Act whereunder an exemption from such payment may be granted only by the appropriate Government u/s 5 of the Act which itself is a conditional power. No exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act.

16. In our considered opinion pensionary benefits or the retirement benefits as the case may be whether governed by a Scheme or Rules may be a package consisting of payment of pension and as well as gratuity. Pensionary benefits may include payment of pension as well as gratuity. One does not exclude the other. Only in cases, where the gratuity component in such pension schemes is in better terms in comparison to that of what an employee may get under the

Payment of Gratuity Act, the Government may grant an exemption and relieve the employer from the statutory obligation of payment of gratuity.

21. ...The appellant being an establishment is under the statutory obligation to pay gratuity as provided for u/s 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act. The provisions of the Act prevail over all other enactment or instrument or contract so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract.

23. ...In the circumstances, we find no merit in the submission made by the learned Counsel for the appellant in this regard. For the aforesaid reasons we find no merit in the appeal.

7. In view of the above said facts, the writ petition stands dismissed. In view of the disposal of the writ petition, there is no impediment for the third respondent to get the amount lying in deposit with the respondent authority. No costs.