

The Superintending Engineer Vs The Controlling Authority Under

The Superintending Engineer Vs The Controlling Authority Under

SooperKanoon Citation : sooperkanoon.com/1805309

Court : Chennai

Decided On : May-29-2025

Judge : Honourable Dr.Justice a.D.Maria Clete

Appeal No. : WP/7229/2021

Appellant : The Superintending Engineer

Respondent : The Controlling Authority Under

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction) RESERVED ON : 09.04.2025

PRONOUNCED ON : 29.05.2025

PRESENT: THE HONBLE DR. JUSTICE A.D. MARIA CLETE W.P. No. 7229 of 2021 and W.M.P. No. 7733 of 2021 The Superintending Engineer, Salem Electricity Distribution Circle, Tami Nadu Generation & Distribution Corporation (TANGEDCO) Salem - 14. Petitioner Vs. 1.The Controlling Authority Under The Payment of Gratuity Act, 1972, (Deputy Commissioner of Labour) Office of the Deputy Commissioner of Labour, Yercaud Main Road, Korimedu, Salem - 636 008.

2. S.Palaniappan (PPO. No.81953) Junior Engineer II Gr. / TNEB / Rtd 70 E, Konangipalayam Road, Kalipatty Post, Alayampatty Via, Namakkal District - 637 501. Respondents Prayer in W.P.

To issue a Writ of Certiorari calling for the records of the First respondent in P.G.I.A. No.41 of 2020, quash the order dated 19.01.2021, hold the petition of the 2nd Respondent as not maintainable and pass further or other orders as this Honble Court may deem fit in the circumstances of the case. Prayer in WMP To stay the operation of the order of the 1st Respondent in P.G.I.A.No41 of 2020, dated 19.01.2021, pending disposal of the writ petition.

Appearance of Parties: For Petitioner : Mr.Anand Gopalan, Advocate For T.S.Gopalan & Co., Advocates For Respondent 1 : Mr.R.Kumaraval AGP For Respondent 2 : Mr.V.Stalin, Advocate For Navaneetha Krishnan, Advocate

JUDGMENT

Heard. 2.The present writ petition has been filed by the petitioner-TANGEDCO challenging the interim order dated 19.01.2021 passed by the first respondent-Controlling Authority under the Payment of Gratuity Act, 1972, in P.G.I.A. No. 41 of 2020. By the said order, the Controlling Authority rejected the petitioners objection regarding the maintainability of the gratuity claim against TANGEDCO and directed the matter to be posted for further hearing on 03.03.2021. The writ petition was admitted on 19.03.2021, and an interim stay of further proceedings was granted on the same day. Upon service of notice, the contesting second respondent entered appearance through counsel. 3.The petitioners case is that the erstwhile Madras Electricity Board was constituted under the Electricity (Supply) Act, 1948 with effect from 01.07.1957. The 2nd respondent was engaged as a temporary casual labourer in the year 1971. The Payment of Gratuity Act, 1972 came into force on 01.09.1972. According to the petitioner, employees of the Tamil Nadu Electricity Board whose services were provincialized were not extended the benefits under the P.G. Act, as they were governed by the General Provident Fund (GPF) scheme and entitled to death-cum-retirement gratuity. Subsequently, members of the non-provincialized staff (i.e., those in the regular

work establishment) began demanding extension of the pension scheme that was applicable to provincialized employees. 4.The 2nd respondent was subsequently made a permanent employee of the Electricity Board, which was later reconstituted as TANGEDCO. By G.O. Ms. No. 699, dated 16.03.1983, the Government of Tamil Nadu exempted the Electricity Board from the applicability of the Payment of Gratuity Act, 1972 with effect from that date. Pursuant thereto, the Board issued Proceedings No. 5 dated 26.06.1986, whereby it was resolved that Regular Work Establishment

(RWE) employees who retired on or after 01.07.1986 would also be brought

under the pension scheme. Subsequently, through Board Proceedings No. B.P. 28 dated 08.02.1988, it was clarified that the maximum qualifying service for computation of benefits under the contributory pension scheme would be capped at 33 years. The second respondent retired from service on 31.05.2011. 5.Nearly eight years after his retirement, the 2nd respondent filed a claim petition before the first respondent-Controlling Authority on 30.09.2019, seeking payment of gratuity. Along with the claim, he also filed an application to condone the delay. According to the 2nd respondent, he was entitled to receive a balance gratuity amount of Rs.2,80,864/-, which included both his period of service as a temporary casual labourer and his regular service. Upon receipt of notice on the claim petition, the petitioner-TANGEDCO filed an interim application contending that the erstwhile Tamil Nadu Electricity Board had been exempted from the provisions of the Payment of Gratuity Act by the Government of Tamil Nadu under Section 5 of the Act. It was therefore requested that the issue of maintainability be taken up as a preliminary issue. In response, the 2nd respondent filed an objection, contending that he was entitled to gratuity for his earlier period of service as a Temporary Casual Labourer (TCL), as no gratuity had been paid for that period. 6.The 1st respondent-Controlling Authority, while considering the preliminary objection, referred to the exemption granted under G.O. Ms. No. 699, Labour and Employment Department, dated 16.03.1983, which nevertheless reserved certain powers for the authority to adjudicate disputes arising out of the implementation of the exemption scheme. The authority also took note of Section 14 of the Payment of Gratuity Act and placed reliance on two judicial precedents-Municipal

Corporation of Delhi v. Dharam Prakash Sharma, (1998) 7 SCC 221, and Ship Ram Mahto v. Jharkhand State Electricity Board, 2004 (2) LLN 698 (Jharkhand High Court). Based on these considerations, the authority held that the petition filed by the 2nd respondent was maintainable and accordingly rejected the interim application filed by TANGEDCO. Aggrieved by this order, the present writ petition has been filed. 7. In response to the objection raised by the learned counsel for the 2nd

respondent-that this Court ought not to interfere with a preliminary order

passed by the Controlling Authority-the learned counsel for TANGEDCO relied on the judgment of the Supreme Court in V.G. Jadishan v. Indfos Industries Limited, reported in (2022) 6 SCC 167. In particular, he referred to the following passage from paragraph 15 of the judgment:

In the case of D.P. Maheshwari (supra) is pressed into service by learned Senior Advocate appearing on behalf of the appellant in support of the submission that the Labour Court ought not to have given the decision only on preliminary issue and ought to have disposed of all the issues, whether preliminary or otherwise at the same time. On facts the said decision is not applicable to the facts of the case on hand. In the aforesaid decision no absolute proposition of law was laid down by this Court that even the issue touching the jurisdiction of the court cannot be decided by the court as a preliminary issue and the court has to dispose of all the issues, whether preliminary or otherwise, at the same time. When the issue touches the question of territorial jurisdiction, as far as possible the same shall have to be decided first as preliminary issue. Therefore, in the present case, the Labour Court did not commit any error in deciding the issue with respect to the territorial jurisdiction as a preliminary issue in the first instance.

In the present case, the preliminary issue has already been adjudicated, and the writ petition has been admitted and posted for final hearing. Therefore, this Court

is not inclined to reject the writ petition on the ground of its interlocutory nature.

8. The learned counsel for the 2nd respondent, in support of the claim that his client is entitled to gratuity, placed reliance on the following three decisions of this Court:-

(a) M/s. Standard Chartered Global Business Services Private Ltd Vs. Special Joint Commissionerate of Labour, Chennai & anr. in W.P.No.5766 of 2020 dt. 17.3.2025

(b) S.Sivashanmugam Vs. Tamil Nadu Electricity Generation and Distribution Corporation, Cuddalore in W.P.No.26968 of 2012 dt. 29.2.2024 (c) Sri Muthukumaran Institute of Technology Vs. J.Rajalakshmi & Ors., in W.P.No. 3222 of 2019 dt. 1.10.2020

9. In the first case cited by the learned counsel for the workman, the issue of exemption from the provisions of the P.G. Act was not raised by the employer, and therefore, did not fall for consideration. In the second case, although TANGEDCO had raised the plea of exemption under the Act, the learned Judge did not address or adjudicate that issue in the order. The third decision pertained to a private establishment, where the question of exemption from the Act was not involved and thus did not arise for consideration. 10. However, an identical issue concerning the exemption granted to TANGEDCO under Section 5 of the Payment of Gratuity Act, and the consequent lack of entitlement for its employees to raise claims before the Controlling Authority, was considered by me in The Superintending Engineer, Tamil Nadu Generation & Distribution Corporation (TANGEDCO), Krishnagiri Electricity Distribution Circle v. The Assistant Commissioner of Labour, Salem, in W.P. Nos. 14381 of 2020 and 23255 of 2021, decided on 09.04.2025. In that case, similar contentions advanced by the workman were considered and expressly rejected. It was held as follows:-

45. The learned counsel for the petitioner placed reliance on three decisions of this Court-one rendered by a Division Bench and two by learned Single Judges. The details of the said decisions are as follows: a. The Tamil Nadu Electricity Board Vs. S.Jagadeesan, Writ Appeal No. 75 of 2018 dt. 27.9.2018 b. The Superintending Engineer Vs. Appellate Authority under the Payment of Gratuity Act, Coimbatore,

Writ Petition No. 45390 of 2006 dt. 16.10.2019 c.The Superintending Engineer Vs. The Assistant Commissioner of Labour, Salem, Writ Petition No.32532 of 2017 dt. 30.3.2021.

46. In all three cases cited, the respective Benches referred to the

exemption notification issued by the Government and uniformly held

that employees of TANGEDCO are not entitled to make claims under the Payment of Gratuity Act, 1972. In the first of those cases, the Division Bench, in paragraph 4 of its order, observed as follows:

It is pertinent to point out that the learned Single Judge while allowing the writ petition directed the respondents to calculate the gratuity of the 1st respondent herein/writ petitioner in accordance with the calculation provided under the Payment of Gratuity Act, 1972 and pay him the difference in Gratuity, with statutory interest as per the said Act, from the date of entitlement. However, the learned Counsel appearing for the appellants submitted that so far as the Tamil Nadu Electricity Board is concerned, as per G.O.(Ms.) No.699, Labour Employment Department, dated 16.3.1983, they are completely exempted from paying the gratuity amount. As such, according to the appellants, the question of payment of gratuity or any arrears thereof does not arise. Further, it is stated that instead of paying the Gratuity, DCRG is being paid. Accordingly, the DCRG amount was settled in favour of the 1st respondent.

47. In view of the fact that the provisions of the Payment of

Gratuity Act, 1972 do not apply to the employees of TANGEDCO by virtue of the exemption granted by the State Government, this Court is not inclined to compel the petitioner to exhaust the appellate remedy before approaching this Court, as contended by the learned counsel for the second respondent.

11.In light of the foregoing discussion, the writ petition is allowed. The impugned order passed by the first respondent in P.G.I.A. No. 41 of 2020 dated 19.01.2021 is hereby quashed. Consequently, the connected miscellaneous petition stands dismissed. There shall be no order as to costs. 29.05.2025 ay NCC : Yes / No
Index : Yes / No

Speaking Order / Non-speaking Order

DR. A.D. MARIA CLETE, J ay To The Controlling Authority Under The Payment of Gratuity Act, 1972, (Deputy Commissioner of Labour) Office of the Deputy Commissioner of Labour, Yercaud Main Road, Korimedu, Salem - 636 008. Pre-Delivery Judgment made in W.P. No. 7229 of 2021 and W.M.P. No. 7733 of 2021
29.05.2025

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com