

**BEFORE THE APPELLATE AUTHORITY UNDER THE PAYMENT
OF GRATUITY ACT, 1972, PUDUCHERRY**

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Present: Thiru. S. MOUTTOULINGAM
Appellate Authority under the Payment of
Gratuity Act, 1972,
Labour Department Complex – II Floor,
Vazhudavur Road, Gandhi Nagar,
Puducherry – 605 009.

P.G. Appeal No. 7/2019

in

P.G. No. 277/2018

Between:

The Managing Director,
M/s. Puducherry Corporation for the Development of
Women & Differently Abled Persons Ltd.,
No.1, 2nd Main Road,
Natesan Nagar,
Puducherry – 605 005.

... Appellant

Vs.

1. Tmt. S. Parimala,
No.11, Bharathiar Salai,
Ashok Nagar, Lawspet,
Puducherry – 605 008.

... Respondent No. 1

2. The Controlling Authority under the Payment of Gratuity Act, 1972
-cum-Labour Officer (Enforcement), Puducherry Respondent No. 2

The appeal coming for final hearing before me on 24.02.2020 and during the course of proceedings, the Appellant Counsel and the Respondent No.1 representative called present. Upon giving an opportunity of hearing to both sides, this Authority pronounced the following:

O R D E R

1. This appeal has been preferred under sub-section (7) of Section 7 of the Payment of Gratuity Act, 1972 (Hereinafter referred to as the 'Gratuity Act') against the order of the Controlling Authority under the Act, dated 26.07.2019.
2. The factual matrix that stood exposed from the appeal filed by the appellant runs thus.

22/28

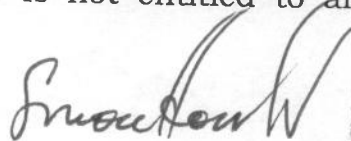
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The appellant corporation M/s. Puducherry Corporation for the Development of Women & Differently Abled Persons Limited, Puducherry had filed the Memorandum of Appeal under sub-section (7) of Section 7 of the Payment of Gratuity Act, 1972 against the Order dated 26.7.2019 passed by the Controlling Authority in P.G.No.277/2018.

The appellant corporation in their Memorandum of Appeal dated 1st October, 2019 has stated that the respondent/petitioner claimed that she was working in the appellant corporation as Women Development Multipurpose Coordinator w.e.f.01.05.2005 till 31.05.2017, the date of her retirement and that her last drawn salary was Rs.24,345/- and claimed that the appellant has failed to settle her gratuity. The appellant corporation contended that the application by the respondent/petitioner was not maintainable as the Act is not applicable to the appellant corporation. The respondent/petitioner was originally engaged as an Anganwadi worker under the ICDS Scheme in Puducherry. Subsequently, she was absorbed as per the order of the Development Commissioner and Secretary to Government of Puducherry through the Department of Women and Child Development. The transfer, disciplinary proceeding, work allocation, service book maintenance, leave particulars and preparation of salary bill to the absorbed Anganwadi workers were all done by the concerned Child Development Project Office (of the ICDS) Department of Women and Child Development only and the appellant was only a salary disbursing Authority. Whereas, the Hon'ble Controlling Authority has passed an order dated 26.07.2019 allowing the claim of the respondent/petitioner by giving a finding that the appellant is an establishment covered by the Act and that the respondent/petitioner is an employee within the meaning of the Act and directed the appellant to pay the respondent/petitioner a sum of Rs.1,68,541/- towards gratuity with interest @ 10% per annum from 31.05.2017 on the said amount till the date of payment. The appellant corporation further contended that the Controlling Authority has failed to see that the appellant is not an 'establishment' within the meaning of any law for the time being in force in the union territory of Puducherry. To treat the appellant as an establishment it should either fall within the definition of establishment under the statutes to deem the appellant Corporation as covered within the definition under section 1(3)(b) of the Act. But, the respondent/petitioner cannot be deemed to be an employee as defined under section 2(e) of the Act and therefore she is not entitled to any gratuity as prayed for by her.

213/26




Further, the Hon'ble Controlling Authority ought to have seen that the appellant corporation is acting only as an agent of the Government to promote women development and empowerment and to assist the handicapped and has not indulged in any profit making activity till date and that the appellant corporation is only a salary disbursing authority and that the appropriate Government in the matter of the application filed by the respondent/petitioner is only the Central Government and ought to have direct the respondent to implead the Central Government for a proper adjudication.

Therefore, the appellant corporation prays that this Hon'ble Appellate Authority may be pleased to

- (i) set aside the order dated 26.07.2019 passed by the Hon'ble Controlling Authority under the Payment of Gratuity Act, 1972 in G.A.No.277 of 2018.
- (ii) Dismiss the said G.A.No.277 of 2018 with directions to refund the amount deposited by the appellant corporation in compliance with 2nd proviso to section 7(7) of the Act and
- (iii) Pass such further or other order as this Hon'ble Appellate Authority deems fit and proper under the circumstances of the case in the interest of justice.

3. Per contra, the respondent/petitioner's representative in their counter reply has stated that the averments of the Appellant Corporation have all been raised by the appellant as Respondent before the Controlling Authority before passing the order by the Controlling authority and all have been well traversed through speaking order in the award passed in G.A.No.277 of 2018. The Respondent/petitioner further submits that the appellant corporation is paying gratuity to the other regular employee of the corporation through a scheme formed with the insurance corporation. This indisputable fact itself unambiguously establishes that the appellant corporation is an 'establishment' for the purpose of the Act. They have further submits that the Corporation is the employer as far as the respondent/petitioner concerned and was paying the salary to the respondent/petitioner and to other similarly placed Multipurpose Women Development Co-ordinators and helpers regularized from the Honourary ICDS service of the Department of Women and Child Development and therefore it is duty bound to pay the gratuity entitled to the respondent/petitioner under the act.

2A/28



In *Channan Lal V. Municipal Committee, Panipet*, 1986 Lab IC 638 (P&H HC), the Punjab and Haryana High Court held that the Payment of Gratuity Act is applicable to the Municipalities since the term 'establishment' covers Municipalities. Similar view has been taken by Delhi High Court. The Allahabad High Court has also held that Municipal Board is an establishment and the Payment of Gratuity Act will be applicable even though they participate in benefits of Provident Fund Act, since section 14 of the Payment of Gratuity Act overrides the U.P. Municipalities Act.

Thus, from the above discussion it is clear that the appellant corporation being an establishment under Employees' Provident Fund & Miscellaneous Provisions Act, 1952 is also an establishment under the payment of Gratuity Act by virtue of section 1(3)(b) thereof and consequently the applicant having been employed for wages by the appellant corporation is an employee within the meaning of section 2(e) of the Gratuity Act which reads as follows:

"employee" means *any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.*

A fair reading of the definition of 'employee' in section 2(e) would clearly show that an employee is the person who is engaged in or employed on services by an employer. Therefore, an employee is eligible to take benefit of gratuity for a period if (i) that period of service was continuous for not less than five years; (ii) he was not holding a post either Central Government or a State Government and he was not governed by any other Act or by any rules providing for payment of gratuity.

Moreover, it is admitted fact that the appointment order, relieving order has been issued by the appellant corporation and steps have been taken to settle the EPF benefits only by the appellant corporation. Accordingly, the appointing authority has to take the responsibility to settle the other benefits like gratuity.

27/28



[7]

Further, Section 4 of the Act casts an obligation on employer of an establishment to which the payment of Gratuity Act applies, to consider the case of each individual employee in the matter of payment of gratuity. This is a statutory duty or obligation cast on the employer by the Act and the factory, shop or establishment is thereunder bound.

5. In view of the above, this appeal is dismissed and the order of the Controlling Authority under the Payment of Gratuity Act, 1972 dated 26.07.2019 is hereby admitted.

6. No order as to costs.

Given under my hand and seal on this the 27.7, 2020.



(S. MOUTTOULINGAM)
APPELLATE AUTHORITY UNDER
THE PAYMENT OF GRATUITY ACT, 1972.



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