

**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. 8/2019
in
P.G. No. 278/2018

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. Mannangatty,
No.1, Thennanthoppu Mariamman Koil Street,
Manavelly,
Puducherry – 605 007.

... 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 exposted from the appeal filed by the appellant runs thus.

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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.278/2018.

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 31.03.2017, the date of her retirement and that her last drawn salary was Rs.20,696/- 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.1,43,280/- towards gratuity with interest @ 10% per annum from 31.03.2017 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.



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.278 of 2018.
- (ii) Dismiss the said G.A.No.278 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 submitted her reply statement dated 25.11.2019 through her representative, wherein, she has stated that on 19.09.1986, she joined in Puducherry Corporation for the Development of Women and Differently Abled Persons Ltd., as Multipurpose helper. Further, from 19.09.1986 to 18.09.1988 she received Rs.90/- as monthly salary and for every two years her salary was increased as Rs.110/-, Rs.170/-, Rs.225/-, Rs.310/-, Rs.425/- & Rs.500/-. Finally, on 01.05.2005, she became permanent employee and received Rs.14,000/- per month as salary. She retired on 31.03.2017 after completing 30 years of service and she received Rs.796/- per date which amounts to Rs.20,696/- per month and thereby she computed the gratuity amount as Rs.3,58,200/- for 30 years of service. Further, she retired on 31.03.2017 and she ought to have been received her gratuity amount within 30 days i.e. 30.04.2017. As the management failed to pay the gratuity amount, she filed an application before the Controlling Authority under the Payment of Gratuity Act, 1972.

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Wherein, the Controlling Authority instead of calculating her continuous years of service from 19.09.1986 (date of joining) she mistakenly mentioned 01.05.2005 the date on which she became permanent and hence due to her mistake the authority calculated the period from 01.05.2005 till retirement and arrived 12 years of service and on 26.07.2019 ordered Rs.1,43,280/- as gratuity. Hence, she requested the Hon'ble Authority to pardon her mistake of mentioning the date of joining as 01.05.2005 instead of 19.09.1986 and to calculate gratuity for her service from 19.09.1986 to 31.03.2017 and pass award in her favour and thus render justice.

4. Answering: On perusal of the records, it was found that as the appellant corporation failed to pay the gratuity amount, the respondent petitioner filed an application in Form-N dated 16.07.2018 before the Controlling Authority under the Payment of Gratuity Act, 1972 claiming gratuity amount of Rs.1,43,280/- from the appellant corporation M/s. Puducherry Corporation for the Development of Women & Differently Aabled Persons Limited, Puducherry. Accordingly, the Labour Officer-cum-Controlling Authority, Puducherry passed an order dated 26.7.2019, allowing the claim of the respondent/petitioner by giving a finding that the appellant corporation is an establishment covered by the Act and that the respondent/petitioner is an employee within the meaning of the Act and thereby directed the appellant corporation to pay the respondent/petitioner a sum of Rs.1,43,280/- towards gratuity with interest @ 10% per annum from 31.03.2017 on the said amount till the date of payment. Wherein, he has recorded that the respondent/petitioner claimed that she worked in the appellant corporation as Women Development Multipurpose Co-ordinator w.e.f. 01.05.2005 till 31.03.2017, the date of her retirement and that her last drawn salary was Rs.20,696/- and claimed that the appellant corporation has failed to settle her gratuity.

On the other hand, the appellant corporation contended that the respondent/petitioner who was Anganwadi helper was absorbed as Women Development Multipurpose Co-ordinator in the Puducherry Corporation for the Development of Women and Differently Aabled Persons Ltd., w.e.f. 01.05.2005 and joined in the Employees' Provident Fund Scheme, 1952 w.e.f. 01.06.2006.

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The respondent/petitioner retired from her service w.e.f. 31.03.2017 and she is entitled to get the benefits from the EPF Scheme, 1952. The respondent/petitioner is eligible to get the Provident Fund Final Settlement and Pension withdrawal benefits as per the Employees' Provident Fund Scheme, 1952 and the application for settlement of EPF amount was forwarded to the EPF Organization on 08.09.2017 and the respondent/petitioner also received the provident fund final settlement and pension withdrawal benefits from the EPF Organization. Hence, she is not entitled to get the payment of gratuity under section 4 of the Gratuity Act.

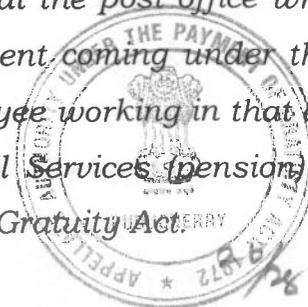
Thus, the dispute is whether the appellant corporation and the employees thereof are covered under the Payment of Gratuity Act, 1972.

In this context, it is stated that Section 1(3)(b) of the Payment of Gratuity Act outlined that it applies "to every shop or establishment within the meaning of any law for the time being in force in relation to shops or establishment in a state, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months".

To this it is relevant to state that in Jayben Suryakant Modi V. Welfare Commissioner of Gujarat Welfare Board, 1997 Lab IC 2581 (Guj HC), the Gujarat High Court held that Gujarat State Labour Welfare Board will be covered by the Act.

The High Court has observed that the word 'establishment' in section 1(3)(b) of the Act is not to be restricted as referring to 'commercial establishments' alone. The Act has been held to apply even to institutions which are exempted under Shops and Establishments Act. There is no doubt that a liberal construction has to be given to the expression and any institutions or organization where systematic activity is carried on by employing ten or more persons would fall within the ambit of the provision of the Act.

In Management of Good Samaritan Rural Development Project V. T.A.Ramaiah, 2003 LLR 151 (Mad HC), the Madras High Court held that a charitable hospital will be covered under the Payment of Gratuity Act even when it has no profit motive. Further, in Union of India V. Bhagat Ram, 2010 (127) FLR 685 (HP HC), the Division Bench held that the post office where the respondent was engaged is certainly an establishment coming under the provisions of the Payment of Gratuity Act. Since the employee working in that establishment is not covered or governed by the Central Civil Services (Pension) Rules, 1972, he is entitled to gratuity under the Payment of Gratuity Act.



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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.

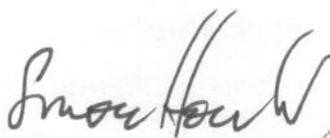
Thus, from the above discussion it is clear that the appellant corporation being an establishment under Employees' Provident Fund & Miscellaneous Provisions Act, 1952 is also an establishment under the payment of Gratuity Act by virtue of section 1(3)(b) thereof and consequently the applicant having 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.

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