

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal Nos 4505-4506 of 2013, Civil Appeal Nos. 4507-4508 of 2013 and Special Leave Petition (Civil ) Nos 12679-12682 of 2014

**WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANTS**

**FACTS IN CIVIL APPEAL NOS. 4505 – 4506 of 2013**

The mother of the First Respondent moved an Application before the Third Respondent (The Assistant Commissioner of Labour/ (Controlling Authority under the Payment of Gratuity Act) Tirunelveli, Tamil Nadu seeking issuance of directions to the Applicant to pay her gratuity under the Payment of Gratuity Act. The Applicant, being a Temple resisted the claim and pleaded that the Temple was not engaged in any business, trade or profession and was not carrying on any commercial activity and that in any event by virtue of the proviso to Rule 26 of the Tamil Nadu Hindu Religious Institutions (Officers & Servants) Service Rules, the Applicant was not obliged to pay gratuity in view of the Contributory Provident Fund Scheme being available. The Third Respondent (The Assistant Commissioner of Labour/ (Controlling Authority under the Payment of Gratuity Act) Tirunelveli, Tamil Nadu held that the Appellant was liable to pay the provident fund, which was ultimately confirmed by the Second Respondent (The Deputy Commissioner of Labour /Appellate Authority (under the Payment of Gratuity Act), Madurai, Tamil Nadu. The Appellant filed a Writ Petition in W.P, No. 15497 of 2002 on the file of the Hon'ble High Court, Madras praying for issuance of a Writ of Certiorari to call for the records in the respect of the Order Dated 31.12.2001 passed by the Second Respondent confirming the Order Dated 07.08.1991 passed by the Third

Respondent and to quash the same. Pending the said Writ Petition, the Applicant sought for Stay of all further proceeding pursuant to the Orders passed by Respondents 2 and 3. The Hon'ble High Court, Madras proceeded to pass an interim order of Stay subject to Respondents 2 and 3 permitting the First Respondent to withdraw half of the amount deposited while directing the remaining half to be kept in fixed deposit. The said Interim Order was made absolute by order Dated 06.10.2003 made in W.M.P. No. 20762 of 2002 in W.P. No. 15497 of 2002. Aggrieved by the conditional Order of Stay, the Appellant preferred a Writ Appeal in W.A. No. 2040 of 2004. The Hon'ble Division Bench doubted the correctness of another Division Bench; the matter was referred to a Full Bench. The Hon'ble Full Bench answered the reference by concluding that a Temple would be an Establishment to which the Payment of Gratuity Act would apply. Questioning the said decision, the Appellant has preferred the above Civil Appeal. The Appellant being a Temple is a place of public worship and the Appellant is carrying on no business or trade or any commercial activity. Incidental activities which are meant to facilitate the worshipers or the religious services, when rendered by any person employed on payment of wages cannot convert the said Temple into an Establishment to attract the provisions of the Payment of Gratuity Act.

#### SUBMISSIONS

- The Appellant is a Temple governed by the provisions contained in the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The said Act extends to the whole State of Tamil Nadu and applies to all Hindu public religious institutions and Endowments in terms of Section 1(2) and (3) of said Act.

- Section 6(18) of said Act defines a religious institution mean a Muth, Temple or Specific Endowment. Section 6(20) in the said Act Temple as being a place of public religious worship and dedicated to for the benefit of or use as a right by the Hindu Community as a place of public religious worship.
- In the cases of Temple “Pranprathista” is to be performed to the Idal installed therein (AIR 1957 SC 133 = 1957SCJ75)
- Requirements to be fulfilled for a place to be called as a Temple (1994(1) Mad Law Weekly 438=1994(2) MLJ67)
- A Religious Institution to be a Temple has to satisfy two conditions namely that it should be a place of religious worship and the other is that it should be dedicated to or of the benefit or used as of right by the Hindu community.

(AIR1963SC410=1962 supp (2) SCR 2767 +AIR 1963SC1638=1964(1) SCR 383.)

- The origins of the Temple Management of its affair, nature of gifts received rights exercised by devotees in regard to worship. As per Sections 47, 47A, 49, 54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act the authorities have been empowered to appoint trustees. Under Section 53, the authorities have been empowered to suspend, remove or dismiss a trustee. In religious institution, the office holder or servants are appointed by the trustees as per Section 55 of the said Act.
- Disciplinary Action can be taken against office holder and servants by the trustee as per Section 56 of said Act read with the Punishment of Office Holder and Servants of

Religious Institutions (Other Than Maths and Specific Endowments Attached Thereto) Rules.

- Under Section 55 the Trustees are empowered to fill up the vacancies amongst the Office Holders or Servants of the Religious Institution. In the Explanation it has been stated that the term "Office Holders" or "Servants" includes "Archaka or Pujari's".
- The term Trustee is defined in Section 6(22) to mean a person or a body of person in whom administration of the Religious Institution is vested.
- The Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 prescribes the Age and Qualification required. It also deals with seniority and its determination. The pay and emoluments Stand prescribed. Rules 26 to 30 deals with Gratuity.
- Rule 32- Provides for Provident Fund Scheme.
- Rule 32(B) - deals with Family Benefit Fund.
- Thus, the Said Rules Comprehensively provides for payment of Gratuity, Provident Find and Family Benefit Fund.
- The Payment of Gratuity Act had been made applicable to every Factory, Mine, Oil field, Plantation, Port, Railways, Shops and Establishments as defined in the local enactment by the State Government or other Establishment in which 10 or more employees are employed or were employed on any day of the preceding 12 Months.
- Based on the above the term Factory defined in Section 2 (g), Mine defined in Section. 2(j), Oil field defined in Section.2(l), Plantation defined in Section. 2(m), Port defined in Section

2(n), Railway Company defined in Section 2(p) of the Payment of Gratuity Act have commercial activities.

- A Temple is a place of a public worship dedicated to the benefit of the Hindu Community. Neither the payment of Gravity Act nor the Tamil Nadu Shops and Establishment Act is preferable to any particular Community much less Hindu Community.
- The term Employer makes reference to ownership of the Establishment or Factory or Mine or Oil Feld or Plantation or Port or Railway Company or Shops since the term "belonging to or under the Control of" has been used in Section 2(f) of the Payment of Gratuity Act.
- In the case of a Temple, the same does not belong to any specific person or Institution, Under the Tamil Nadu Shops and Establishments Act the term "Establishment" has been defined in Section 2(6) in the said Act to mean a Shop, Commercial Establishment, Restaurants, Eating House, Residential Hotel, Theatre, Place of Public Amusement and Entertainment.
- The Tamil Nadu Shops and Establishment Act has been made applicable in Chennai, Municipalities, constituted under District Municipalities Act, Major Panchayats constituted under the Tamil Nadu Panchayat Act.
- The term "Shop" defined in Section 2(16), Commercial Establishment defined in Section 2(3), Restaurants, Eating House defined in Section 2(15), Residential Hotels define in Section 2(14), Theatre defined in Section- 2(17) have been defined in the Tamil Nadu Shop and Establishment Act. The definition of the terms in both the Payment of Gratuity Act as

well as the Tamil Nadu Shops and Establishments Act indicate that the activities was to be commercial.

- The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 Act is a statute relating to administration and governance of Religious Institution irrespective of ownership.
- The Officers and Servants of temples are appointed by Trustees who are in turn appointed by the Authorities constituted under the Act. Thus, such Officers or Servants cannot claim that the Temple is their Employer as the Temple has no ownership in itself. Again, an Officer or Servant of a Temple do not satisfy the definition of the term "Employee" defined in Section-2(e) of the Payment of Gratuity Act and or Section 55 of Tamil Nadu Hindu Religious and Charitable Endowment Act read with Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964
- The term " Employee" defined under Section 2(e) the Payment of Gratuity Act. excludes those governed by the any other Act or Rules. The Service Rules of the Temple provides for payment of Gravity and thus the Officers and Servants of the Temple are excluded under the Payment of Gravity Act.
- The Tamil Nadu Shops and Establishment Act is an inclusive definition but one which not is specific and hence a Temple cannot be roped into the said definition,
- In (1978 (2) ICC 213), Charitable Institutions were held to be in Industries but a Temple is a Religious not a Charitable Institution and hence the dictum laid therein cannot be extended to a Temple.

- In Temples neither any goods nor service are produced or provided. No economic activity involving the Co-operation of the employer and employee resulting in production of goods or services arise in a Temple. The Temple is run on donation and charities by worshippers. The crucial, substantial and substantive aspect of a Religious Institutions is the performance of Religious Ceremonies or Duties and the worship by the Hindus Community. The Temple carries on no trade or business or profession. It is place facilitating Hindu worshippers to offer prayer, where profit is not the Motive.
- Under the new Industrial Relation Code 2020, the term “Industry” has been defined in Section 2(p) and spiritual and religious want have been excluded there from apart from Institutions engaged in Charities, Social and Philanthropic Services.
- Even in the Industrial Disputes (Amendment) Act,1982 the term “Industry” excluded spiritual and religious want of human apart from Institutions engaged in Charities, Social and Philanthropic Services.
- This Hon’ble Court affirmed the reasoning of the Labour Court wherein the Labour Court had held that Temple was neither an organisation carrying on Manufacturing activity nor a profit making institution to fall within the definition of the term “ industry” as defined under 2(j) of the Industrial Dispute Act and that there existed no object of earning profits in the decision reported in **2026 LIVE LAW (SC) 102-INDRAVADAN N. ADHVARYU PIPALA FALI MODHVADA Versus LAXMINARAYAN DEV TRUST.**

In the view the above factual and legal positions, the impugned Judgement dated 17.09.2012 pass by the Hon'ble High Court Madras in W.A. No 2040 of 2004 and W.P. No. 15497 of 2002 have to be set a side by allowing the Civil Appeal Nos 4505-4506 of 2013, Civil Appeal Nos. 4507-4508 of 2013 and Special Leave Petition (Civil) Nos 12679-12682 of 2014.

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