

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.Nos.904 and 905 of 2015
and
M.P.Nos.1 and 1 and 2 of 2015

The Tamilnadu Cooperative Milk Producers
Federation Limited
rep. By its Joint Managing Director,
Ambattur,
Chennai - 600 098 ... Appellant in both the Appeals

Vs.

1. Joint Commissioner of Labour
(Appellate Authority Under the
Payment of Gratuity Act, 1972),
Teynampet,
Chennai - 600 006 ... 1st Respondent in both the Appeals
2. K.Jayavaradan ... 2nd Respondent in W.A.No.904 of 2015
3. A.Daniel Thomas ... 2nd Respondent in W.A.No.905 of 2015

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent Appeal to set aside the Judgment passed by the Learned Single Judge dated 05.12.2014 in Common Order made in W.P.Nos.7325 and 7326 of 2006 and allow the same, consequently the order passed by the 1st Respondent/Appellate Authority dated 31.08.2005 in Common Order made in P.G.A.Nos.34 of 2005 and 35 of 2005 respectively.

For Appellant : Mr.D.Rajagopal
for M/s O.S.Vijayasarathi

COMMON JUDGMENT

[Judgment of the Court was Delivered By M.VENUGOPAL, J.]

The Appellant / the Tamil Nadu Cooperative Milk Producers Federation Limited, Chennai has preferred the present two Writ Appeals as against the Common Order dated 05.12.2014 in W.P.No.7325 and 7326 of 2006 passed by the Learned Single Judge.

2.The Learned Single Judge while dismissing the Writ Petition Nos.7325 and 7326 of 2006 on 05.12.2014 had issued a direction to the Appellant/Federation (Petitioner in both the Writ Petitions) to pay Gratuity with interest as per the Payment of Gratuity Act from the date of retirement till the date of payment, to the 2nd Respondent in both the Writ Appeals in addition to the amount, as ordered by the authorities under the Payment of Gratuity Act, 1972 within a period of six weeks from the date of receipt of copy of this Order, by taking into account the notional fixation of pay on their reinstatement on 10.03.1997 and accordingly, fixing the last drawn wages at the time of their retirement. Also, the Learned Single Judge, had permitted the 2nd Respondent (in both the Writ Petitions) to withdraw the amount, ie., kept in deposit with the Controlling Authority as a condition for filing a Appeal before the 1st Respondent.

3.According to the Learned Counsel for the Appellant / Federation the Learned Single Judge should have allowed the Writ Petitions on the simple ground that the 2nd Respondent in both the Writ Appeals had entered into an Individual Settlement dated 10.03.1997 under Section 18(1) of Industrial Dispute Act, 1947 agreeing to be employed as a 'Fresh Employment' . As such, the Workman was not entitled for Gratuity for the period prior to 10.03.1997.

4.It is represented on behalf of the Appellant that the Learned Single Judge had committed an error in holding that the reading of Section 18(1) Settlement under the Industrial Disputes Act discloses that the Workman had not given up their past service for the purpose of Gratuity and in fact, they have only back wages and attendance benefits.

5.The Learned Counsel for the Appellant urges before this Court that the Learned Single Judge should have considered the fact that the Authorities under the payment of Gratuity Act, 1972 have no jurisdiction to decide the validity and fairness of the individual settlements signed by the Workman under Section 18(1) of the Industrial Disputes Act, 1947.

6.The Learned Counsel for the Appellant forcefully submits that in 18(1) Settlement dated 10.03.1997, it was mentioned that the Workman (Daniel Thomas Petitioner in W.P.No.7326 of 2006) had clearly stated that there was no claim for back wages and other benefits prior to 1980 and hence the 'Gratuity' also comes under the purview of other benefits, and when that be the fact situation, the Learned Single Judge had not considered this aspect but dismissed the Writ Petitions by taking an erroneous view.

7.It comes to be known that the Appellant/ Federation in the two Writ Petitions had challenged the Common Order dated 31.08.2005 in PGA Nos.34 and 35 of 2005 passed by the 1st Respondent / Joint Commissioner of Labour, Chennai (Appellate Authority under the Payment of Gratuity). The Appellant in W.P.No.7325 of 2006 (relating to W.A.No.904 of 2015) had averred that pursuant to the Settlement dated 10.03.1997, the 2nd Respondent (K.Jayavaradan) had put in six years of service and retired from service with effect from 28.02.2003 and they were willing to pay gratuity for that period to which alone he was entitled to.

8.Further that, the Appellant/Federation had deposited a sum of Rs.52,918/- and Rs.43,555/- before the 1st Respondent. That apart, it is the main stand of the Appellant / Federation that when the 2nd Respondent/Employees had signed the Settlement dated 10.03.1997 agreeing to be taken back as a fresh entrant, the 1st Respondent/Authority had committed error in holding that the employees were entitled to the benefits of the Common Award dated 17.02.1997 in I.D.Nos.31 of 1985 and 70 of 1986 and on that basis committed a mistake in granting gratuity for the entire service.

9.In so far as the Writ Appeal No.905 of 2015 (relating to W.P.No.7326 of 2006) is concerned, the plea of the Appellant/Federation is that the 2nd Respondent (A.Daniel Thomas) had put in four years of service and retired from service on 03.01.2001.

10.It is not in dispute that all the workmen, whose cases were referred for determination in I.D.Nos.31 of 1985 and 70 of 1986 are members of the Employees Union for their participation in the illegal strike organised by the Union, they were dismissed from service. Therefore, any Individual Settlement arrived at may be dismissed workmen in terms of Section 18(1) of the Industrial Disputes Act could not bring an end to the Industrial Dispute raised by the Employees Union, in terms of Section 2(K) of the Industrial Disputes Act, 1947.

11. It transpires that the 1st Respondent/Competent authority in terms of Gratuity Act, 1972 took into consideration the terms of Section 18(1) Settlement of the Industrial Disputes Act dated 10.03.1997 providing employment to the 2nd Respondent (in both the Writ Appeals) and held that the 2nd Respondent (in both the Writ Appeals/Writ Petitions) had given up only back wages and attendant benefits. In fact they had not surrendered or given up their past service for claiming gratuity.

12. In this connection, this Court pertinently points out that in the Award passed in I.D.Nos.31 of 1985 and 70 of 1986 it was observed that the non-employment of 901 and 169 workmen was not justified that they were entitled for reinstatement, with continuity of service and 25% of the back wages from the respective dates of reference. After the Award passed in the aforesaid Industrial Disputes, Section 18(1) Settlement under the Industrial Disputes Act, 1947 was entered into on 10.03.1997 between the Appellant and 2nd Respondent in both the Writ Appeals. Nowhere in the Settlement it was mentioned that the 2nd Respondent in both the Writ Petitions would forgo their 'Gratuity' and 'Continuity of Service'.

13. It cannot be gainsaid that 'Payment of Gratuity' is a responsibility of an Employer. It is needless for this Court to point out that in respect of earlier period where an employee had earned wages that period should be taken into account for the purpose of Gratuity. Also, when there is no order or proceeding forfeiture of amount of gratuity, an employer cannot withhold the gratuity sum. There is no two opinion of the fact that Gratuity is payable at a time when the employment of an person comes to an end.

14. In case of dispute raised either by an Employee or an Employer pertaining to the fixation of amount of Gratuity as per payment of Gratuity Act, 1972, the Controlling Authority shall fix the amount due to be paid to an worker/employee under the Act. In this regard, Section 7 of the Gratuity Act confers power on the Controlling Authority to cause an enquiry and to determine the matter in dispute.

15. It is to be pointed out that period of five years of service is the minimum condition for entitlement of Gratuity under the payment of Gratuity Act, 1972. Also that, in the absence of specific order against an employee, his gratuity amount cannot be forfeited. Moreover, 'Gratuity' being a valuable right is not bounty and its disbursement has to be made without any delay whatsoever. Indeed, the Payment of Gratuity Act, 1972 would prevail over service regulations. In fact, 'Gratuity' of an employee can be withheld only in case of his dismissal and not

otherwise. That apart, right to receive 'Gratuity' is a statutory right. Added further, 'Gratuity' cannot be denied merely on undertaking that an employee will not claim for the service already rendered as per decision M.Selvadurai v. Director Personnel Block-I Corporation Office, Neyveli Lignite Corporation Limited reported in 2011 LLR 457 (Madras). At this stage, this Court aptly points out the decision Krishnaveni Textile Mills V. Assistant Labour Commissioner reported in (2002) 3 LLJ at page 607 wherein this Court has held that employees, absent from work during strike and closure of Mill are entitled to Gratuity on superannuation.

16.Be that as it may, on going through the Common Order dated 31.08.2005 in PGA Nos.34 and 35 of 2005 passed by the 1st Respondent/Joint Commissioner of Labour, Chennai and also the common Impugned Order passed by the Learned Single Judge dated 05.12.2014 in W.P.Nos.7325 and 7326 of 2006 (filed by the Appellant/Petitioner) in dismissing the Writ Petitions and issuing directions for the Payment of Gratuity with interest as per the Payment of Gratuity Act from the date of retirement till date of payment to the 2nd Respondent/Workman in both the Writ Appeals/Writ Petitions, etc., this Court comes to an inevitable conclusion that they do not suffer from any material infirmities, and patent illegalities in the Eye of Law. Consequently the Writ Appeal fails.

In the result the Writ Appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

ssd
To

Sub Assistant Registrar

Joint Commissioner of Labour
(Appellate Authority Under the
Payment of Gratuity Act, 1972),
Teynampet, Chennai - 600 006

+2cc's to M/s.O.S.Vijayasarithi, Advocate, S.R.No.38285

W.A.Nos.904 and 905 of 2015
and

M.P.Nos.1 and 1 and 2 of 2015

PVR(CO)
CA(20/08/2015)