

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.7.2016
Delivered on : 04.08.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Appeal Nos.178 to 180 of 2012
& M.P.No.1 of 2012 in W.A.No.178 of 2012
& M.P.Nos.2 of 2012 in W.A.Nos.179 and 180 of 2012

W.A.No.178 of 2012:

The General Manager
The Cannannore Spinning
and Weaving Mills
A unit of NTC (APKK & M) Ltd.,
Palloor
Mahe

... Appellant/Petitioner

Vs.

1. The Controlling Authority for Maha
under the Payment of Gratuity Act and
Labour Officer
Karaikal

2. N.K.Krishnan

... Respondents/Respondents

W.A.No.179 of 2012:

The Cannannore Spinning and Weaving Mills
A unit of NTC (APKK & M) Ltd.,
Palloor, Mahe
rep.by its Manager (Personnel)

... Appellant/Petitioner

Vs.

1. The Appellate Authority
under the Payment of Gratuity Act, 1972
Labour Department Complex (II) Floor
Vazhudavur Road
Gandhi Nagar
Puducherry

2. The Controlling Authority for Maha
under the Payment of Gratuity Act and
Labour Officer
Karaikal

3. E.V.Narayanan ... Respondents/Respondents

W.A.No.180 of 2012:

The Cannannore Spinning and Weaving Mills
A unit of NTC (APKK & M) Ltd.,
Palloor, Mahe
rep.by its Manager (Personnel) ... Appellant/Petitioner

Vs.

1. The Appellate Authority
under the Payment of Gratuity Act, 1972
Labour Department Complex (II) Floor
Vazhudavur Road
Gandhi Nagar
Puducherry

2. The Controlling Authority for Maha
under the Payment of Gratuity Act and
Labour Officer
Karaikal

3. K.K.Nanu ... Respondents/Respondents

Prayer in W.A.No.178 of 2012: WRIT APPEAL filed under Clause 15
of Letters Patent against the common order dated 1.2.2011 passed
in W.P.No.13655 of 2008.

W.P.No.13655 of 2008 : The Writ Petition filed under Article 226
of the Constitution of India, praying to issue a Writ of
Certiorari, to call for the records of the First Respondent and
quash its order, dated 07.05.2008, made in P.G.A.NO.9 of 2007.

Prayer in W.A.Nos.179 & 180 of 2012: WRIT APPEAL filed under
Clause 15 of Letters Patent against the common order dated
1.2.2011 passed in W.P.Nos.25050 & 25051 of 2009.

W.P.Nos.25050 & 25051 of 2009 : Both Writ Petitions are filed
under Article 226 of the Constitution of India, praying to issue
a Writ of Certiorari to call for the records of the 1st
Respondent and quash its order dated 30.12.2008 made in Appeal
Nos.1 & 2 of 2006 confirming the order of the 2nd Respondent

dated 15.12.2005 made in P.G.A.NOs.3/2005/A1 and A/2005/A1, in so far as the orders hold that the respondents have jurisdiction and that the 3rd Respondent is entitled to the difference in amounts.

For Appellant : Mr.Anand Gopalan for
M/s.T.S.Gopalan and Co.,

For Respondents : Mr.T.Dhanasekaran for R2
in W.A.No.178 of 2012 &
for R3 in W.As.179 and 180 of 2012
Mr.Syed Mustafa,
Government Pleader (Puducherry)
for R1 in W.A.No.178 and R1 & R2
in W.As.179 and 180 of 2012

COMMON JUDGMENT

(Judgment of the Court was delivered by A.SELVAM, J)

These Writ Appeals have been directed against the common order dated 1.2.2011 passed in W.P.Nos.13655/2008, 25050/2009 and 25051 of 2009 by the learned Single Judge of this Court.

2. The appellant herein, as petitioner, has filed W.P.No.13655 of 2008 on the file of this Court under Article 226 of the Constitution of India, praying to quash the order dated 7.5.2008 passed in P.G.A.No.9 of 2007 by the first respondent. Likewise, W.P.No.25050 of 2009 has been filed under Article 226 of the Constitution of India, praying to quash the order dated 15.12.2005 passed in P.G.A.NO.3/2005/A1 by the second respondent. Likewise, W.P.No.25051 of 2009 has also been filed under Article 226 of the Constitution of India, praying to quash the order dated 15.12.2005 passed in P.G.A.No.4/2005/A1 by the second respondent.

3. The learned Single Judge, after considering the rival submissions made on either side, has dismissed all the Writ Petitions by way of holding that the preliminary order passed by the first respondent is correct and the petitioners are not having jurisdiction to deal with payment of gratuity under the Payment of Gratuity Act, 1972. Against the common order passed by the learned Single Judge, these writ appeals have been filed.

4. The learned counsel appearing for the third respondent in both W.A.Nos.179 and 180 of 2012 has fairly conceded that the said respondents have received their gratuity and they are not having any objection in deciding the main point involved in the present writ appeals. Under such circumstances, the Court has to

look into the rival contentions raised on the side of the appellant/petitioner and respondents 1 and 2 in W.A.No.178 of 2012.

5. The short point that involves in the present Writ Appeals is as to whether the Central Government is having power to deal with payment of gratuity to the workers of Cannanore Spinning and Weaving Mills Limited, a Unit of NTC (APKK & M) Limited?

6. The learned counsel appearing for the appellant has laconically contended that the mill mentioned in the writ petitions has become sick and subsequently has been taken over by the Central Government by virtue of the Act, known as the Sick Textile Undertakings (Nationalisation) Act, 1974 and as per section 3 of the said Act, the said Mill has been vested with the Central Government and therefore, the Central Government is having power to deal with payment of gratuity and the Union Territory of Puducherry has had no jurisdiction.

7. Learned counsel appearing for the first respondent in W.A.No.178 of 2012 and second respondent in W.A.Nos.179 and 180 of 2012 has also equally contended that even though the mill in question has been vested with the Central Government, as per the the Sick Textile Undertakings (Nationalisation) Act, 1974, payment of gratuity etc., does not vest with the contour of the Central Government and therefore, the preliminary point raised by the appellant/petitioner has been rightly decided and therefore, these writ petitions are liable to be dismissed.

8. For considering the rival submissions made on either side, the Court has to look into Section 3 of the said Act and the same reads as follows:

"3. Acquisition of rights of owners in respect of sick textile undertakings:- (1) On the appointed day, every sick textile undertaking and the right, title and interest of the owner in relation to every such sick textile undertaking shall stand transferred to and shall vest absolutely, in, the Central Government.

(2) Every sick textile undertaking which stands vested in the Central Government, by virtue of sub-section (1) shall immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation."

9. Even from a cursory look of the said section, it is made clear that sick textile mills are vested with the Central Government by virtue of the said Act.

10. The present Cannanore Spinning and Weaving Mills have been shown as Serial Nos.24 and 25 in the First Schedule of the said Act. Therefore, with regard to question 'vesting of sick textile mills', no dispute has arisen.

11. As adverted to earlier, the only point that has to be decided in the present writ appeals is as to whether, after passing of the Sick Textile Undertakings (Nationalisation) Act, 1974, payment of gratuity etc., would come within the purview of Central Government or Union Territory of Puducherry?

12. In fact, the High Court of Kerala has dealt with a similar question of law in W.P (C) No.3990 of 2004 (Y) (M/s.Parvathi Mills, a unit of National Textile Corporation (APKK & M) Ltd., Bangalore (a Government of India Undertaking, P.B.No.1, Kollam 691 001 Rep.by its General Manager) vs. Chandrasekharanpillai, vide order dated 5.12.2005, wherein at Paragraph No.5, it is observed as follows:

"5. However, by Ext.P5, the second respondent overrules the objections of Parvathi Mills, a unit of NTC, that the District Labour Officer does not have authority and is not the controlling authority under the Payment of Gratuity Act in relation to the establishment in question. The third respondent Assistant Labour Commissioner (Central) is the Controlling authority under the Payment of Gratuity Act, 1972 as regards the establishment is concerned."

13. From a mere perusal of the observation made by Kerala High Court, it is made clear that in the matter of Payment of Gratuity Act, 1972, in a case of sick textile mills, Assistant Labour Commissioner (Central) is the controlling authority.

14. In the instant case, as stated in many places, the only point that involves is as to whether, in payment of gratuity under the said Act, the Central Government is having power or the Union Territory of Puducherry? Since similar question has been dealt with by the High Court of Kerala referred to supra and ultimately found that the Assistant Labour Commissioner (Central) and the Controlling Authority under the Payment of Gratuity Act, 1972 is having power, this Court is of the considered view that preliminary objection raised by the appellant/petitioner is quite correct, but the authority concerned has erroneously rejected the preliminary objection. The learned Single Judge has also erred in dismissing the Writ Petition No.13655 of 2008.

15. It is seen from the records that W.P.Nos.25050/2009 and 25051/2009 are nothing but related to payment of gratuity and also deduction. It has already been pointed out that the concerned employees have already received their claims. Under such circumstances, relief sought in W.P.Nos.25050/2009 and 25051/2009 need not be decided and the same have become infructuous.

16. It has already been decided that in payment of gratuity under the said Act, only the Central Government is having power in case of sick textile mills by virtue of the said Act and therefore, the Writ Appeal No.178 of 2012 is liable to be allowed and the impugned order passed by the learned Single Judge in W.P.No.13655 of 2008 is liable to be set aside.

In fine, Writ Appeal No.178 of 2012 is allowed without cost and the impugned order passed in W.P.No.13655 of 2008 by the learned Single Judge is set aside and W.P.No.13655 of 2008 is allowed without cost and the order passed by the first respondent dated 7.5.2008 in P.G.A.No.9 of 2007 is quashed. W.A.Nos.179 and 180 of 2012 are dismissed without cost as infructuous. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ajr
To

1. The Controlling Authority for Maha
under the Payment of Gratuity Act and
Labour Officer,
Karaikal

2. The Appellate Authority
under the Payment of Gratuity Act, 1972
Labour Department Complex (II) Floor
Vazhudavur Road,
Gandhi Nagar, Puducherry.

+1cc to M/s.T.S.Gopalan and Co., Advocate, S.R.No.44279
+1cc to Mr.T.Dhanasekaran, Advocate, S.R.Nos.44909 to 44911
+1cc to the Government Pleader(Puducherry), S.R.No.44414

W.A. Nos.178 to 180 of 2012

SCD(CO)
CA(22/08/2016)