

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 19.08.2016

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Petition No.29032 of 2016
and
W.M.P.No.25085 of 2016

M/s.Ampa Housing Development Pvt. Ltd. ... Petitioner
Rep by its M.D. Mr.Ampa Palaniappan
No. 48 Raman Street T.Nagar
Chennai 17

Vs

- 1 The Joint Commissioner of Labour
Labour Welfare Department 6th Floor
Teynampet Chennai 6
- 2 The Assistant Commissioner of Labour
Labour Welfare Department
6th Floor Teynampet Chennai 6
- 3 Murugaiah ... Respondents

Prayer: Petition has been filed under Article 226 of the Constitution of India seeking Writ of Certiorarified mandamus calling for the records of the 1st respondent proceedings appeal dismissal order dt 24.2.2016 in PGA. 45/2015 and quash the same as illegal and consequently direct the 2nd respondent to refund the deposit amount of Rs.1, 87, 331/- collected.

For Petitioner : Mr. S.S.Cheran
For Respondents 1&2 Mr. M.Elumalai,
Govt.Advocate

O R D E R

Heard Mr.S.S.Cheran, learned Counsel for the petitioner and Mr.Elumalai, learned Government Advocate for the respondents 1 and 2.

2. The petitioner has come before this court challenging the dismissal order of the 1st respondent dated 24.2.2016 and consequently direct the 2nd respondent to refund the deposit amount of Rs.1,87,331/- collected.

3. The petitioner is aggrieved over the order passed by the 2nd respondent in the petition filed by the 3rd respondent, as confirmed by the 1st respondent.

4.1 The 3rd respondent, filed an application under Section 4 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act), against the petitioner before the 2nd respondent in P.G.No.232 of 2013, stating that he joined the services of M/s Hotel Arun Private Limited as a storekeeper from 11.10.1968 for the monthly salary of Rs.350/-; he worked in various family owned companies of the petitioner; that after 43 years of service, he was terminated from service; however, the petitioner had failed to pay and settle the gratuity amount to the 3rd respondent, which compelled him to approach the 2nd respondent under Section 4 of the Act.

4.2 The 2nd respondent, allowed the application filed by the 3rd respondent on contest ordering payment of Rs.1,36,442/- with 10% interest from the date of retirement on 15.06.2015.

4.3 Aggrieved over the order passed by the 2nd respondent, an appeal was preferred by the petitioner before the 1st respondent in PGA No.45/15, which was dismissed on 24.02.2016.

As against the said order dated 24.02.2016, the present writ petition has been filed.

5. The learned counsel appearing for the petitioner would submit that the 3rd respondent was only an Attender and in fact, the 3rd respondent was paid a sum of Rs.90,000/- being the reasonable final settlement at the time of his termination from service. According to him the termination was due to the mal practice committed by the 3rd respondent and therefore, he seeks to set aside the order passed by the lower authorities.

6. A perusal of the records would show that the claim of the 3rd respondent was that he has joined the services of M/s Hotel Arun Private Limited as a Store Keeper on 11.10.1968; worked in various family owned companies of the petitioner for 43 years and he resigned as Assistant Manager from the petitioner's Company and his last drawn monthly wages was Rs.5,500/- and since the petitioner failed to pay the gratuity amount, proceedings were initiated. However, in the counter affidavit filed before the 2nd respondent, the petitioner has stated that the 3rd respondent has not joined the services of any of the Companies and he acted only as an Attender to the Managing Director. But, the 3rd respondent had produced the following 18 documents in support of his case before the 2nd respondent:

"(i) Ex.P.1 - petitioner's medical report

(ii) Ex.P.2 Experience Certificate dated 23.04.1971 issued by the Management of M/s Hotel Arun

(iii) Ex.P.3 Experience Certificate dated 23.07.1983 issued by the Management of M/s A.M.P. Arunachalam & Sons

(iv) Ex.P.4 dated 17.03.1986 Income Tax Notice

(v) Ex.P.5 Authorisation letter dated 18.03.1997 given by AMPA Palaniappa Management

(vi) Ex.P.6 Authorisation letter given by Hotel Arun (P) Limited to the petitioner.

(vii) Ex.P.7 Authorisation letter dated 29.12.1997 given by ACE Industrial Marketing Services (P) Limited.

(viii) Ex.P.8 Authorisation letter dated 05.06.2000 given by Hotel Arun (Pvt.) Limited

(ix) Ex.P.9 Authorisation letter dated 15.06.2001 given by Subbu & Co. (Pvt.) Limited

(x) Ex.P.10 xerox copy of the order 29.06.2001 in respect of insurance for the welfare of the employees.

(xi) Ex.P.11 dated 01.10.2002 Xerox copy of the Power of Attorney

(xii) Ex.P.12 dated 28.12.2004 Authorisation letter given by Ampa Palaniappan Company

(xiii) Ex.P.13 letter dated 29.09.2005 given by Ampa Palaniappan Company increasing the salary of the petitioner

(xiv) Ex.P.14 letter dated 02.07.2006 given by Ampa Palaniappan Company

increasing the salary of the petitioner

(xv) Ex.P.15 Authorisation letter dated 20.12.2010 given by the Management of the respondent.

(xvi) Ex.P.16 Identity card of the petitioner

(xvii) Ex.P.17. Bank Pass book original from 31.08.2010 to 22.03.2013

(xviii) Ex.P.18 dated 02.03.2013 representation of the petitioner".

Ex.P.2 Experience Certificate dated 23.04.1971 would prove that the 3rd respondent worked in M/s Hotel Arun Private Limited for the past 10 months. As per Ex.P.3 Experience Certificate dated 23.07.1983, he worked in M/s A.M.P. Arunachalam & Sons for 12 years. Ex.P.5 Authorisation letter dated 18.03.1997 would prove that AMPA Palaniappa Management has nominated the 3rd respondent to appear before the Land Ceiling Authorities. The said authorization was signed by the Managing Director of AMPA Housing Development (P) Limited and ACE Industrial Marketing Service (P) Limited, Director of Subbi & CO. (P) Limited and Hotel Arun (P) Limited. Therefore, the aforesaid Ex.P.5 would definitely prove that the said Palaniappan was the Managing Director of the Companies and he is also working in other Companies and he has nominated the 3rd respondent to appear before the Land Ceiling Authorities. Ex.P.6 is the Authorisation letter given by the Managing Director of Hotel Arun (P) Limited to the petitioner. Based on those documents, the 2nd respondent had come to the conclusion that the 3rd respondent was not personally appointed to Mr.Palaniappan and the 3rd respondent was appointed only in the Companies owned by the said Palaniappan. Further, the other documents viz., Ex.P.7 Authorisation letter dated 29.12.1997 given by ACE Industrial Marketing Services (P) Limited, Ex.P.8 Authorisation letter dated 05.06.2000 given by Hotel Arun (Pvt.) Limited and Ex.P.9 Authorisation letter dated 15.06.2001 given by Subbu & Co. (Pvt.) Limited were all given by Mr.Palaniappan in favour of the 3rd respondent. Similarly, Ex.P.10 xerox copy of the order 29.06.2001 was given to the 3rd respondent authorising him to give evidence in respect of Palaniappa Talkies. The Power of Attorney was given in favour of the 3rd respondent as per Ex.P.11 on behalf of Subbi & Co.(P) Ltd.. As per Ex.P.15, the designation of the 3rd respondent has been described as Assistant Manager in Ampa Housing (Development) Private Limited. The same designation is also given in Ex.P.16 - Identity card also. Relying on the above stated documents, the authorities below came to the conclusion that the 3rd

respondent was not the personal assistant and he was employed only in those companies. That apart, it is also to be deduced that the 3rd respondent joined as a Storekeeper and finally, he retired as the Managing Director M/s Hotel Arun (Pvt.) Limited, as evident from Exs.P.15 and P.16.

7. Though a defence was taken that the 3rd respondent was only an assistant to Mr.Palaniappan and he was paid Rs.50,000/- and Rs.40,000/- totalling Rs.90,000/- from the account of AMPA Palanippan and therefore, it is to be presumed that the 3rd respondent is only a personal assistant, the authorities below disbelieved the said version in the teeth of the documents filed by the 3rd respondent. Therefore, the finding arrived by the authorities below cannot be disturbed as the finding is based on the documents and evidence.

8. Further, though it is contended that the 3rd respondent was terminated for his misconduct and he did not resign, that will not take away the 3rd respondent's right in getting the gratuity amount. No details with regard to the misconduct and termination was produced before the authorities below.

9. In view of the uncontroverted evidence adduced by the 3rd respondent, the authorities below found that the 3rd respondent was in service from 11.10.1968 to 01.12.2011 and the last drawn salary as per Ex.P.14 was Rs.5,500/- per month. Therefore, the Assistant Commissioner of Labour has rightly determined Rs.1,36,442/- as the gratuity amount due to the 3rd respondent and directed the petitioner to pay the said amount. There is no perversity in the order passed by the 2nd respondent, as confirmed by the 1st respondent. The factual adjudication has been done by the authorities and this Court under Article 226 of the Constitution of India cannot act as an Appellate Authority. Further, the finding arrived at by the authorities is based on evidence. Therefore, the same cannot be disturbed. Hence, the writ petition is dismissed. The 2nd respondent is directed to pay the entire amount deposited by the petitioner to the 3rd respondent within a period of two weeks from the date of receipt of a copy of this order and report to this Court.

No costs. Connected miscellaneous petition is closed.

Call the matter after four weeks for reporting compliance.

19.08.2016

This matter having been posted on Thursday, the third day of November 2016 under the caption "For Reporting Compliance" in pursuant to the order dated 19/8/2016 and made herein and upon hearing the arguments of aforesaid counsels, the Court made the following order:

This matter is listed "For Reporting Compliance".

Since the Petitioner had already deposited the entire amount before the Appellate Authority (first respondent) while preferring the appeal, this Court directed the 2nd respondent to disburse the amount to the 3rd respondent at the time of disposal of the Writ Petition.

In the meanwhile, the 3rd respondent is said to have died.

Therefore, the 2nd Respondent is directed to disburse the amount, in accordance with law, to the legal heirs of the 3rd respondent on verification of necessary documents.

No further orders are necessary.

Sd/-

Asst.Registrar(CSIV)

/true copy/

Sub Asst. Registrar

To

1 The Joint Commissioner of Labour
Labour Welfare Department 6th Floor,
Teynampet Chennai 6

2 The Assistant Commissioner of Labour
Labour Welfare Department
6th Floor Teynampet Chennai 6

+ 1 cc to MR.S.S.CHERAN, ADVOCATE SR 47481

COPY TO:-THE SECTION WRIT POSTING
HIGH COURT, MADRAS

(WRIT POSTED AFTER FOUR WEEKS FOR REPORTING COMPLIANCE).

KR/1/9/16
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W.P.No.29032 of 2016