IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.03.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.18438 of 2004

The Management of Addison & Co., Ltd.,
803, Anna Salai,
Chennai - 600 002. .. Petitioner

Vs

1.The Joint Commissioner of Labour
Appellate Authority under the
Payment of Gratuity Act, 1972
D.M.S., Compound, 6th Floor,
Teynampet, Chennai - 600 006.

2.The Assistant Commissioner of Labour
Controlling Authority under the Payment
of Gratuity Act, 1972
D.M.S., Compound, 6th Floor,
Teynampet, Chennai - 600 006.

3.N.Natarajan .. Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records on the file of the first respondents in P.G.A.No.4 of 2004 and to quash the order dated 13.05.2004 made in P.G.A.No.4 of 2004 and direct the respondents 1 and 2 to refund the sum of Rs.17,247/- deposited by the petitioner on 03.02.2004, with the second respondent in P.G.No.73 of 2000, along with accrued interest.

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For Petitioner .. Mr.M.Vijayan for
M/s.King & Patridge

For Respondents .. Mr.R.Rajeswaran Spl G.P., for RR1&2
Mr.S.T.varadharajulu for R3

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O R D E R

This Writ Petition has been filed by the Management and M/s.Addison & Co., Ltd., challenging the order passed by the second respondent, the Controlling Authority under the Payment of Gratuity Act, 1972, as confirmed by the first respondent, the appellate authority in respect of a claim for gratuity made by the third respondent, the employee of the petitioner Management.

2. The third respondent joined the services of the petitioner Management on 01.12.1962 and retired on 28.02.2001, on attaining the age of superannuation. The third respondent's gratuity was settled by computing the benefit by applying the terms of the settlement, dated 05.11.1995. According to the Management, the total salary drawn by the third respondent i.e., basic salary, special basic, service weightage, fix a Dearness Allowance and variable Dearness Allowance was totally Rs.5,379.85ps. Based on this salary structure, the Management paid Rs.1,17,943/- to the third respondent by way of gratuity. Thereafter, the third respondent filed an application before the second respondent which was taken on file as P.G.No.73 of 2000 and the second respondent after hearing the petitioner Management computed the gratuity as Rs.1,31,525.31ps and after adjusting the amount already paid i.e., Rs.1,17,943/- directed the Management to pay a sum of Rs.13,582/- with 10% interest. Aggrieved by such order, the petitioner preferred an appeal before the first respondent after complying with the condition of pre-deposit. The second respondent by order dated 13.05.2004 has dismissed the appeal. Challenging these orders, the present Writ Petition has been filed.

3. I have heard Mr.M.Vijayan, learned counsel for M/s.King & Patridge and Mr.R.Rajeswaran, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr. S.T.Varadharajulu, learned counsel appearing for the third respondent and carefully perused the material papers.

4. The third respondent filed the application before the second respondent, dated 05.02.2003, stating that he is an employee of the petitioner Management entitled to payment of gratuity under Section 4 of the Act on account of his superannuation on 28.02.2001. It was further stated that the petitioner Management/employer had not paid full gratuity to the third respondent and there is a dispute in the matter and requested the second respondent to determine the gratuity payable. Along with the application, the petitioner filed annexure setting out the details of his claim as Rs.13,582.31ps. The petitioner Management filed their response objecting to the claim vide their letter dated 28.04.2003, in which the petitioner stated that the last drawn wages applicable for arriving at gratuity under the provisions of the Act was Rs.5379.85ps and the split up details were given. It

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was further stated that the third respondent was paid gratuity of 1,17,943/-, for 38 years and two months, which was offered to the third respondent on the date of retirement, but refused to receive the same for reasons best known and the said amount was subsequently settled by cheque dated 27.02.2001, which was sent by post along with the covering letter, which is as per the statutory requirement. In fact, in the application filed by the third respondent before the second respondent, the exact particulars as to how and why the difference in gratuity had arisen, has not been specifically set out by the third respondent. Consequently, the counter/response filed by the petitioner Management has given details of the last drawn wages and stated how gratuity has been computed. Therefore, the second respondent was required to examine as to how the difference has arisen, as alleged by the third respondent. It appears that during the course of enquiry, it had come to light that the claim made by the third respondent was based on a settlement entered into under Section 18(1) of the Industrial Disputes Act. The settlement, which the second respondent relied upon, was not a settlement under Section 12(3) of the Act, but one under Section 18(1) of the Act, which admittedly, will bind such of those employees, who are parties to the settlement. It has been established by producing facts and not controverted that the third respondent was not a member of the Union, which entered into the said settlement with the Management under Section 18(1) of the Act, whereas it appears that the third respondent refused to accept the terms of the settlement, dated 28.04.2000 and therefore, the Management was justified in applying the terms of the settlement to the third respondent, who was not a party thereon. In fact, this contention raised by the Management before the original authority as well as the appellate authority, was not properly appreciated.

5. It may be true that the respondents 1 & 2 are exercising powers under the Payment of Gratuity Act, but however, if the interpretation is to be taken as a general proposition, then it may lead to other consequences as a Management could enter into a settlement with a minority group of workmen and raise a contention that it binds all workmen. Therefore, the interpretation given by the second respondent as well as the first respondent/appellate authority is incorrect and therefore, the impugned orders call for interference.

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6. The learned counsel for the petitioner on instructions from his clients submitted that the petitioner Management has already deposited the entire gratuity amount before the second respondent as ordered while preferring an appeal before the first respondent and the Management has given instructions that the third respondent may be permitted to take the entire amount deposited.

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7. The learned counsel for the third respondent contended that so far as the third respondent is concerned, he is particular that the monetary benefit should reach him and is not very seriously interested in contesting the merits of the matter.

8. For all the above reasons, the Writ Petition is allowed and the impugned orders are set aside. However, in the light of the concession made by the petitioner Management that the third respondent shall be entitled to withdraw the entire amount lying in deposit to the credit of P.G.A.No.4 of 2004, on the file of the second respondent, the third respondent is permitted to withdraw the said amount together with accrued interest, if any, by filing an application before the second respondent, and, if the said application is filed, the second respondent shall release the amount to the third respondent, without any reference to the petitioner management, within a period of two weeks thereafter. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

pbn

To

1.The Joint Commissioner of Labour
Appellate Authority under the
Payment of Gratuity Act, 1972
D.M.S., Compound, 6th Floor,
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2.The Assistant Commissioner of Labour
Controlling Authority under the Payment
of Gratuity Act, 1972
D.M.S., Compound, 6th Floor,
Teynampet, Chennai - 600 006.

3.The Section Officer,
VR Section,
High Court, Madras. [31/05/2016]

1 cc to Government Pleader, Sr. 17430
1 cc to M/s.King and Partridge, Advocate, Sr. 16902

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