

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI

W.P.No.35982 of 2003

The Tiruchengode Agricultural
Producers Co-operative Marketing Society,
represented by the Special Officer,
Tiruchengode-637 211.

.. Petitioner

Vs.

1. The Appellate Authority under the
Payment of Gratuity Act,
(Joint Commissioner of Labour)
Coimbatore.
2. The Controlling Authority under the
Payment of Gratuity Act,
(Assistant Commissioner of Labour)
Salem-636 007.
3. Tmt. Pappu

.. Respondents

Writ Petition is filed under Article 226 of The Constitution of India praying for the issuance of a writ of Certiorari, calling for the records relating to the order dated 11.8.2003, passed in A.G.A.No.2/2002, on the file of the Appellate Authority under the Payment of Gratuity Act (Joint Commissioner of Labour), Coimbatore, the 1st Respondent herein, confirming the order dated 12.6.2001 in P.G.No. 84/2000 passed by the Controlling Authority under the Payment of Gratuity Act (Assistant Commissioner of Labour), Salem, the 2nd respondent herein to quash the same as ultra vires.

For Petitioner : Mr.K.Ramanraj

For Respondents : Mr.R.Srinivasamoorthy
for M/s.Row & Reddy

ORDER

The petitioner has filed this Writ Petition challenging the order dated 11.8.2003, passed in A.G.A.No.2/2002, on the file of the Appellate Authority under the Payment of Gratuity Act (Joint Commissioner of Labour), Coimbatore, the 1st Respondent herein, confirming the order dated 12.6.2001 in P.G.No. 84/2000 passed by the Controlling Authority under the Payment of Gratuity Act (Assistant Commissioner of Labour), Salem, the 2nd respondent herein to quash the same as ultra vires.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. The petitioner society has filed this Writ Petition challenging the order of the 1st respondent appellate authority under the Payment of Gratuity Act (Joint Commissioner of Labour), Coimbatore, confirming the order dated 12.6.2001 in P.G.No. 84/2000 passed by the Controlling Authority under the Payment of Gratuity Act wherein both the authorities granted gratuity in favour of the 3rd respondent's deceased husband.

4. The learned counsel appearing for the petitioner would submit that the deceased employee never worked continuously for 240 days in a year. Hence, not continuously working for 240 days except for two years is not under the definition of Section 2(e) of the Payment of Gratuity Act. Hence the order passed by both the authorities under the Act is bad.

5. Per contra, the learned counsel appearing for the respondent would submit that the said person continuously worked for 240 days in a year in the petitioner society and 240 days was already decided by the authorities as well as interfering the factual findings rendered by the authorities did not permissible under Article 226 of the Constitution of India and he relied upon the judgment of this Court dated 23.06.2000 in W.P.No.15976 of 1993 wherein this Court in paragraph 9, 10 and 11 held as follows:

" 9. The factual conclusion arrived by both the Authorities makes it clear that the deceased Muthu Gounder had worked throughout the year continuously and for a period of 20 years as Kalasi. In such circumstances and in the light of the definition 2(e), I am in agreement with the conclusion arrived by both the Authorities.

10. Learned counsel for the petitioner by drawing my attention to the decision of the Supreme Court, reported in 1991 I LLN 963 (MATHURA REFINERY . SANGH V. I.O.C., LTD) would

contend that contract worker is not entitled to gratuity under the Payment of Gratuity Act. After going through the entire decision of the Supreme Court, I am of the view that the said decision is not helpful to the petitioner's case. In this regard the following factual conclusion made by their Lordships is relevant. In para 6, it is held thus:

"Those casual workers were under the employment of the State and the State came out with a scheme for phased absorption and a graded financial responsibility. In the instant case before us, the contract labourers are not, and have also not been found to be, having a direct connection with the refinery, eventhough it is a State for the purpose of enforcement of fundamental rights".

"I have already extracted the factual conclusion arrived by the Controlling and Appellate Authorities in our case. In such circumstances, as stated earlier, the said decision is not helpful to the petitioner's case. For same reasons, I hold that the other decision of the Kerala High Court reported in 1989 I LLJ 452 (COMINCO BINANI SINC LTD. V. PAPPACHAN) is also not helpful to the petitioner's case. As a matter of fact, even home workers employed by Beedi Industries for working in their home without any supervision and control of the management are eligible for gratuity under the payment of Gratuity Act. When such is the case, in the light of the factual conclusion arrived by both Authorities regarding the employment of the deceased Muthu Gounder, I hold that the deceased employee Muthu Gounder was an employee under the petitioner's Society and rendered continuous service to become eligible for gratuity under the Payment of Gratuity Act.

11. Under these circumstances, I do not find any error or infirmity in the impugned orders. Consequently, the writ petition fails and the same is dismissed. No costs".

6. Applying the ratio laid down by this Hon'ble Court as stated supra is also squarely applicable to the present case on hand. Since the factual conclusion arrived by both the authorities makes it very clear that the 3rd respondent is seasoned employee and the petitioner did not establish his contention that the 3rd respondent was not continuously working for 240 days except for two years by way of relevant documents. The petitioner has reiterated the same contentions as made before the lower court, but he has not established that the lower court has passed erroneous order by way of relevant documents. Normally, the Labour Court or Industrial Tribunal as the case may be is the final Court of facts. In the present case, the Controlling Authority and the Appellate Authority

rendered its finding after elaborate discussion that unless the petitioner demonstrate the finding of the authority is perverse or if the same is not based on legal evidence. The Hon'ble High Court exercising its power under Article 226 of Constitution of India cannot go into the question of facts decided by the Labour Court or Tribunal. But before going into such an exercise, it is necessary that the Writ Court must record reasons, why it intends reconsidering a finding of fact in the absence of any such defect in the order of the authorities the Writ Court will not enter into the realm of facts of disputes and finding given thereon. For the reasons stated above, it is not necessary to reject the the order passed by the Controlling Authority and I am not inclined to interfere with the orders passed by the fact findings authorities.

7. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

uma

To

1. The Appellate Authority under the Payment of Gratuity Act,
(Joint Commissioner of Labour)
Coimbatore.
2. The Controlling Authority under the Payment of Gratuity Act,
(Assistant Commissioner of Labour)
Salem-636 007.

+1cc to M/s.Row Reddy, Advocate, S.R.No.50290
+1cc to M/s.K.Ramanraj, Advocate, S.R.No.50204

W.P.No.35982 of 2003

SV(CO)
CU(17/08/2017)