

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2018

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.No.13600 of 2012
and M.P.No.1 of 2012

The Management,
Sri Ram Tutorial College,
624, Opanakarrar Street,
Coimbatore - 641 001.

... Petitioner

Vs.

1. S.Erudaiyaraj
2. The Joint Commissioner of Labour,
Additional Labour Commissioner Office,
Coimbatore - 18.
3. The Assistant Commissioner of Labour,
Additional Labour Commissioner Office,
Coimbatore - 18.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, to call for the entire records relating to A.G.A.No.6 of 2011 dated 25.08.2011 and the order passed in G.A.No.102 of 2008 dated 06.10.2010 by the 2nd and 3rd respondent respectively and to quash the same.

For Petitioner : No appearance

For Respondents : M/s.R.Nandha Kumar for R1
Mr.S.Soundhararajan for R2 and R3

O R D E R

As against the claim made by the first respondent/workman for a sum of Rs.12,000/- towards payment of gratuity, the Controlling Authority under the Payment of Gratuity Act, by an order dated 06.10.2010, in G.A.No.102 of 2008, ordered payment of gratuity of Rs.9,346/- along with interest at 10% p.a. This order was challenged by the Management in A.G.A.No.6 of 2011 before the Appellate Authority. The Appellate Authority, by an order dated 25.08.2011, confirmed the order passed by the Controlling Authority. Challenging the same, the Management has filed this writ petition.

2. It is the case of the first respondent/workman that he joined the services of the Management/writ petitioner herein on 28.02.2002 and as he sought for enhancement in wages, he was stopped from service on 30.12.2007. Claiming that last drawn wages was Rs.3,000/- and that he worked for a period of six years, the workman/employee claimed a sum of Rs.12,000/- towards gratuity. This claim was strongly opposed by the Management on several grounds.

3. The first contention raised by the management was that the first respondent/workman was only a trainee and part-time employee and hence, he is not an employee.

3.1. The Controlling Authority has looked into this issue and held that the terms and conditions of the appointment, duration of training, nature and scope of training was not placed before the Authority and therefore, the contention of the Management that the first respondent was a trainee was not accepted.

4. The second contention raised by the Management was that the first respondent/workman cannot be construed as an employee as he was not made permanent was also not accepted.

4.1. Relying upon the decision and Section 2(e) of the Payment of Gratuity Act, the Controlling authority has held that as per Section 2(e) of the Payment of Gratuity Act, any person (other than apprentice) employed on wages, in any establishment, factory, mine, oil-field, plantation, port, railway company or shop, to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work are also covered under the definition of 'employees' and therefore, the contention of the Management that the first respondent is not an employee also cannot be accepted.

5. The third contention raised by the Management is that the workman was not employed continuously and he was doing only intermittent duties and therefore, he is not eligible to claim any gratuity.

5.1. The Controlling Authority had looked into the evidence given on the side of the Management, wherein, the Management had admitted that they are maintaining the Staff Attendance Register as well as the Wages Register. The Management is the custodian of the documents, but, those documents were not produced before the authority concerned to show that the workman was not continuously employed for a period of 5 years. Therefore, the contention of the management that the first respondent was not eligible for gratuity, cannot be accepted.

6. The very same issue was also raised before the Appellate authority and the Appellate authority had considered each and every issue raised by the Management and had given a finding, supported by reasons. Even before this Court, the very same contentions are raised.

7. On a careful perusal of the order passed by the authorities below, this Court is of the considered view that the finding on facts arrived at by the authorities below cannot be said to be perverse. The contention of the Management seems to be that the first respondent would not stand covered under the definition of Employee. This Court has considered the view of the original authority as well as appellate authority. The status of the first respondent squarely falls under the definition of Employee and therefore, the contention of the Management is liable to be rejected.

8. For the reasons aforesaid, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Joint Commissioner of Labour,
Additional Labour Commissioner Office,
Coimbatore - 18.

2. The Assistant Commissioner of Labour,
Additional Labour Commissioner Office,
Coimbatore - 18.

+1cc to Mr.R.Nandakumar, Advocate SR.No.67274

+1cc to Government Pleader SR.No.68180

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GMY (11/12/2018)