

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.10.2018
CORAM:
THE HONOURABLE Dr. JUSTICE S.VIMALA
W.P.No.15528 of 2016
and W.M.P.Nos.13502 and 13503 of 2016

Brecks Memorial Anglo Indian
Higher Secondary School,
Rep. by its Head Master & Correspondent,
Ootacamund - 643 001.

... Petitioner

versus

1. State Rep. by
The Joint Commissioner
Appellate Authority
Payment of Gratuity Act
Coimbatore - 18.

2. Deputy Commissioner
Payment of Gratuity Act,
Coimbatore - 18.

3. B.Jaya

4. B.Selvi Nithya

5. B.Manivannan

... Respondents

Petition filed under Article 226 of the Constitution of India, seeking for the issuance of writ of certiorari, to call for the records pertaining to the order dated 23.04.2014 in AGA 77/2913 on the file of the 1st respondent and quash the same as arbitrary and ultra vires.

For Petitioner : Mr.M.Velmurugan
For Respondents : Mr.N.Srinivasan,
Additional Govt. Pleader for R1 and R2

ORDER

M.Bheeman, Librarian of the petitioner School, retired on 31.05.2007, after having put in about 31 years of service from 16.11.1976. Later, he passed away on 01.01.2010.

2. The respondents 3 to 5 as legal heirs of the deceased Bheeman, claimed gratuity by submitting Form-K, claiming a sum of Rs.2,61,276/-. Since the writ petitioner did not pay the

amount, they filed G.A.No.298 of 2011, claiming the said amount with interest.

3. The Management contested the case on two grounds. (i) The post of Librarian held by Bheeman was not approved by the Government. (ii) The deceased himself relinquished his claim by letter dated 22.12.1980, that he will not insist upon payment of gratuity.

4. However, the controlling authority allowed the claim of the legal representatives of the deceased Bheeman, by relying upon Section 14 of the Payment of Gratuity Act and also relying on the judgment reported in 2011 (III) LLJ 747.

5. The Management filed P.G.A.No.77 of 2013, which was dismissed by the appellate authority on 23.04.2014. Challenging the same, the Management is before this Court.

6. The main ground raised by the writ petitioner/Management in the writ petition is that the deceased accepted the post of Librarian knowing fully well that the post was not recognized by the Board of School Education and that the deceased had given an undertaking that he will not claim any benefit like gratuity for his service. Whether these contentions are justified, is the issue to be considered.

7. The learned counsel appearing for the respondents 3 to 5 submitted that irrespective of the post of Librarian being not approved by the Government, it is not open to the Management to deprive the employee of his gratuity and therefore, the defence taken by the Management to decline gratuity is unsustainable. It is also pointed out that the defence is hit by Section 14 of the Payment of Gratuity Act.

8. Section 14 of the Payment of Gratuity Act reads as under:

"Section 14 in The Payment of Gratuity Act, 1972

14. Act to override other enactments, etc.—The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

9. Whether a contract giving an undertaking not to claim the gratuity as submitted above could override the provisions of the Act, is the question that falls for consideration.

10. The learned counsel for the workman relied upon the decision of this Court reported in 2011 (3) LLJ 747, in which, the decision of the Supreme Court in 2011 (4) SCT 464 has been relied upon. For better clarity, the relevant portion is quoted hereunder.

"10. In the case of Allahabad bank and another vs. All India Allahabad Bank Retired Employees Association, reported in (2010) 2 SCC 44, the Supreme court in paragraph 36 had observed as follows:

"36. The appellant being an establishment is under the statutory obligation to pay gratuity as provided for under Section 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act. The provisions of the Act prevail over all other enactments or instruments or contracts so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract."

11. From the ratio laid down above, it is clear that it is not open to the Management to contend that the workman agreed not to claim gratuity or that the post of the workman was not recognized. Therefore, the defence raised by the Management is not sustainable and accordingly, the writ petition fails and the same is liable to be dismissed.

12. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Joint Commissioner
Appellate Authority
Payment of Gratuity Act
Coimbatore - 18.

WEB COPY

2. Deputy Commissioner
Payment of Gratuity Act,
Coimbatore - 18.

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.70951

W.P.No.15528 of 2016

MG (CO)
GSP (20/12/2018)



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