IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1949 of 2018

V.P.Sreedharan
.. Appellant/Petitioner

Vs.

1.Appellate Authority
(Under Payment of Gratuity Act, 1972)
VI Floor, DMS Complex
Teynampet, Chennai - 600 006

2.Controlling Authority
(Under Payment of Gratuity Act, 1972)
First Floor, DMS Complex
Teynampet, Chennai - 600 006

3.A.M.Gopalan
Managing Director
M/s.Sree Gokulam Chit & Finance Co (P) Ltd
66, Arcot Road, Kodambakkam
Chennai - 600 024
.. Respondents/ Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order of the writ court dated 20.02.2018 made in W.P. No.27527 of 2017.

W.P. No.27527 of 2017

Writ of certiorarified Mandamus calling for all records of the proceedings in PGA.No.129 of 2017 dated 11/09/2017 before the Appellate Authority first respondent under payment of Gratuity Act 1972 the 1st respondent herein and quash the order passed by the Appellate Authority in confirmation of the order passed by the Controlling Authority under Payment of Gratuity Act 1972 in the application PG No.64 of 2016.

For Appellant : Mr.V.P.Sreedharan
Party-in-Person

JUDGMENT

SUBRAMONIUM PRASAD, J.

Instant writ appeal is directed against the order dated 20.02.2018 passed by a learned single Judge of this court in W.P. No.27527 of 2017. The learned single Judge, by the order impugned herein, has upheld the order passed by the Joint Commissioner of Labour, Chennai, which is the Appellate Authority under the Payment of Gratuity Act, 1972, which in turn, has confirmed the order passed by the Controlling Authority (Assistant Commissioner of Labour) under Payment of Gratuity Act, 1972.

2. Facts leading to the present appeal, are that the appellant, joined M/s.Sri Gokulam Chit & Finance Co (P) Ltd, having their Corporate Office at No.66, Arcot Road, Kodambakkam, Chennai - 600 024, on 26.12.1989. He resigned on 17.05.2012. He had put in about 22 years 4 months and 22 days service. His last drawn salary was Rs.31,000/-. The break-up figures of his salary are as under:

Basic	:	6,800/-
D.A.	:	6,150/-
H.R.A.	:	8,000/-
T.A.	:	5,900/-
C.C.A.	:	4,150/-
		31,000/-

3. On his resignation, the Management paid him Rs.1,64,365/- towards his gratuity. The amount was calculated as per Section 4 of the Payment of the Gratuity Act, 1972, as under:

$$\frac{\text{Rs.}12,950 \times 15 \times 22}{26} = \text{Rs.}1,64,365/-$$

4. The appellant challenged this calculation, contending that his salary was Rs.31,000/- and gratuity could not have been calculated on Rs.12,950/-. His contention is that if salary is taken as Rs.31,000/-, the Management has to pay him a gratuity amount of Rs.3,93,641/-.

5. The appellant herein, therefore, approached the Controlling Authority under the Payment of Gratuity Act, 1972, for correct determination of the amount of gratuity under Section 7(4) of the said Act. The submission of the petitioner was rejected.

6. Aggrieved by the order of the Controlling Authority, an appeal under Section 7(7) of the Payment of Gratuity Act, 1972, was preferred before the Joint Commissioner of Labour, Chennai, who also rejected the same. The matter was taken to this court, by filing writ petition No.27527 of 2017. The writ court, maintained the orders of the Authorities below.

7. As against the order of the writ court dated 20.02.2018 made in W.P. No.27527 of 2017, instant writ appeal has been filed.

8. We heard Mr.V.P.Sreedharan, party-in-person and perused the materials available on record.

9. Wages under the Payment of Gratuity Act, 1972, has been defined in Section 2(s), which reads as under:

> "(s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."

10. Section 4 of the Payment of Gratuity Act, 1972, mandates payment of gratuity to an employee on the termination of his employment, after he has rendered continuous service for not less than five years. Section 4 of Payment of Gratuity Act, 1972, reads as under:

> 4. Payment of Gratuity.- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-
>
> (a) on his superannuation, or
>
> (b) on his retirement or resignation,
>
> (c) on his death or disablement due to accident or disease:
>
> Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:
>
> [Provided further that in case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed,

until such minor attains majority].

Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of 2[an employee who is employed in a seasonal establishment, and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.

[Explanation.-In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.]

(3) The amount of gratuity payable to an employee shall not exceed ten lakh rupees.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (i),-

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited.

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

11. A combined reading of definition of "wages" defined in Section 2(s) and Section 4 of the Payment of Gratuity Act, 1972, which mandates payment of gratuity, shows that gratuity has to be calculated, in the manner provided for in Section 4 of the Payment of Gratuity Act on wages. "Wages" under the payment of Gratuity Act, 1972, only means the emoluments, which are earned by an employee, in accordance with the terms and conditions of the employment, including DA, but it does not include Bonus, Commission, House Rent Allowance, Overtime charges and any other allowances.

12. The salary slip, which sets out the basic salary, and the other allowances, drawn by the appellant, would indicate that the appellant is only entitled to gratuity, which has to be calculated on the basis of basic pay and DA, which comes to Rs.12,950/-. The other allowances, namely HRA, TA and CCA, have to be necessarily excluded from the definition of wages, under the Payment of Gratuity Act, 1972, for the purpose of calculating gratuity. The appellant, in person, has contended that salary slip, which has been given, is not in accordance with Rule 26(2) of the Minimum Wages (Central) Rules, 1950. The said rule reads as under:

(2) A wage slip in Form XI shall be issued by every employer to every person employed by him at least a day prior to the disbursement of wages.

13. Form XI, which is the format prescribed under the said rule for wage slip is as under:

FORM XI

[See rule 26(2)]

WAGE SLIP

Name of the establishment.................

Place...

1.Name of employee with father's/Husband's name

2.Designation

3.Wage-period

4.Rate of wages payable:

(a) Basic

(b) D.A.

5.Total attendance/units of work done
6.Overtime wages
7.Gross wages payable
8.Total deductions
9.Net wages paid
Pay-in-charge

Employee's signature/
thumb-impression

14. Contention of the petitioner is that, since the salary slip given by M/s.Sree Gokulam Chit and Finance Company (Pvt.) Ltd./respondent No.3, is not in accordance with the proforma as given in the Minimum Wages Act, 1948, his entire salary including HRA, TA and CCA, has to be taken into account, for calculating gratuity, and it cannot be truncated to include only the Basic pay and D.A. Submission is completely misconceived. The Minimum Wages Act, 1948, was enacted, to fix minimum rate of wages, and has no relevance for calculating gratuity. Just because the salary slip given to the appellant is not in accordance with the proforma under the Minimum Wages Act, 1948, it does not mean that the employer must take into account all the allowances, other than Basic and DA, for the purpose of calculating gratuity, which has to be calculated in a manner provided under the Payment of Gratuity Act, 1972. The submission of the appellant is completely contrary to the definition of wages, under the Payment of Gratuity Act, 1972, on which alone gratuity has to be calculated.

15. The third respondent has correctly calculated wages on the basis of the Basic Pay and DA, which is in accordance with the Payment of Gratuity Act. Other allowances have to be excluded from the definition of "wages" for the purpose of calculating gratuity under the Payment of Gratuity Act, 1972.

16. There is no infirmity in the order of the learned single Judge. The writ appeal is dismissed. However, there shall be no order as to cost.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

asr

To

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+1cc to Mr.V.P.Sreedharan, Advocate, S.R.No.62308

W.A.No.1949 of 2018

CA(CO)
GSP(03/10/2018)