IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.27527 of 2017

V.P.Sreedharan .. 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

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for all the records of the proceedings in PGA No.129 of 2017 dated 11.9.2017 before the Appellate Authority 1st Respondent under the Payment of Gratuity Act 1972, the first 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 Petitioner :: Mr.V.P.Sreedharan
Party-in-Person

For Respondents :: Mr.V.Jayaprakash Narayanan
Special Government Pleader
for R1 & 2
Ms.SunitaKumari for R3

ORDER

This writ petition is directed against the two impugned orders passed by the two authorities under the Payment of Gratuity Act, 1972, namely, the order passed by the Controlling Authority in P.G.No.64 of 2016 dated 20.1.2017, the second respondent herein, which was confirmed by the Appellate Authority in P.G.A.No.129 of 2017 dated 11.9.2017, the first respondent herein, to quash the same and to issue such other direction as deemed fit.

2. Mr.V.P.Sreedharan, the petitioner/appearing in person, assailing the concurrent findings rendered by both the authorities, the respondents 2 & 1 herein in arriving at the gratuity to which he is legally entitled to, complained before this Court that both the respondents 1 & 2 have completely overlooked his case and there is a miserable failure on their part to ascertain the petitioner's gratuity amount payable for the period of 22 years and 4 months of service. Adding further, he submitted that he joined the service in Sree Gokulam Chit and Finance Company Private Limited at Mumbai Fort branch on 26.12.89 and after working there, he was transferred to the Chennai Parrys Branch on 16.9.99. Accepting the transfer, he worked in the Parrys branch till he was again transferred to Annanagar Branch on 1.4.2011. While working there till 11.5.2012, he resigned his job humiliated by the further transfer order dated 11.5.2012 to the corporate office with the promotion as Divisional Manager (Admn.). At the time of his resignation, it is stated that he had rendered 22 years, 4 months, 22 days of service, leaving 10 years of his further service and he was also receiving as sum of Rs.31,000/- as his monthly salary at the time of tendering his resignation. Since his salary were credited into his bank account maintained with ING Vysya Bank Limited after deducting the provident fund contribution of Rs.780/-, the salary slip issued by the employer clearly shows that his last drawn salary was Rs.31,000/-. While his last drawn salary as deposited by his employer in his account is a sum of Rs.31,000/-, it goes without saying that the said amount has to be taken for all purposes as his monthly salary including for the purpose of calculating the gratuity for the entire period of 22 years, 4 months and 22 days. Moreover, as per the Payment of Gratuity Act 1972, gratuity has to be calculated by taking into account the salary divided by 26 days and multiplied by 15 and further multiplied by 22 representing the number of years of service. If that criteria is followed, the petitioner is still entitled to get Rs.2,29,096/-, whereas he has been paid with only a sum of Rs.1,64,365/- under the head of gratuity. Therefore, a direction be issued setting aside the orders passed by the respondents 2 & 1. Adding further, he submitted that the petitioner is very well aware of the meaning

of salary as basic and DA only and no perquisites will be shown in a salary slip, whereas the respondent company has split the actual salary illegally into fake components of perquisites. Moreover, there is a prescribed format for salary slip, which must be in format XI only. While so, the salary slip issued by the company is not as prescribed by the Minimum Wages Act (Central Rules) 1950. Again going to the salary slip which has been enclosed at page 33 of the typedset as P-4, the petitioner submitted that the salary slip issued by Sree Gokulam Chit and Finance Company Private Limited, Annanagar for the month of April, 2012 clearly shows that the petitioner was paid with the salary of Rs.31,000/- towards basic, DA, HRA, TA & CCA. Therefore, the Controlling Authority under the Payment of Gratuity Act, the second respondent herein, without even appreciating the case of the petitioner, has wrongly calculated the gratuity and the same was also erroneously confirmed by the Appellate Authority, the first respondent herein, which are required to be reversed by giving a suitable direction to the third respondent to pay the balance amount.

3. In reply, the learned counsel for the third respondent company submitted that it is not in dispute that the petitioner, who resigned from the post of Senior Manager (Admn.) on 17.5.2012, had put in a long service of 22 years, 4 months and 22 days. Therefore, the third respondent, calculating the gratuity to which he is entitled to as ordered by the authorities, has issued the cheque for Rs.1,64,365/-. This was received by the petitioner. When he has accepted the salary slip marked before the authorities as P-4, which is also enclosed at page 33 of the typedset showing the split up at Rs.6800/- towards basic, Rs.6150/- as DA, Rs.8000/- as HRA, Rs.5900/- as TA & Rs.4150/- as CCA, which no doubt comes to Rs.31,000/-, for the simple reason that this entire amount is credited into his bank account no.434010087338 with the bank code A0374, the contention of the petitioner that the entire amount of Rs.31,000/- should be taken into account for calculating the gratuity is thoroughly misconceived, since Section 2(s) of the Payment of Gratuity Act clearly defines "wages" as follows:-

> "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."

As per the definition given under Section 2(s) of the Payment of Gratuity Act, the petitioner's gratuity has been rightly worked out excluding the HRA, CCA, TA. Hence the petitioner cannot have any grievance over the same.

4. I also find merits in the said submissions. When Section 2(s) of the Payment of Gratuity Act as mentioned above defines wages as all emoluments which are earned by an employee while on duty 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, in my considered opinion, the Controlling Authority, appreciating the case of the petitioner, has rightly passed an order, which has been confirmed by the Appellate Authority. Therefore, this Court is not inclined to interfere with the impugned orders. Accordingly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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Chennai 600 006.

+1cc to Mr.L.Rajasekar, Advocate, S.R.No.12856
+1cc to Mr.V.P.Sreedharan, Advocate, S.R.No.13010
+1cc to the Government Pleader, S.R.No.14013

W.P.No.27527 of 2017

SV(CO)
RRK(14/03/2018)