

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2018

CORAM

The Hon'ble Mr.Justice M.DHANDAPANI

W.P.No.41974 of 2006

Management,
Coimbatore District Consumer,
Co-operative Wholesale Stores Ltd.,
P.B.No.1098, R.S.Puram,
Coimbatore 641 002.

.. Petitioner

Vs

1. The Joint Commissioner of Labour,
Appellate Authority,
under the Payment of Gratuity Act,
Coimbatore 600 018.

2.The Assistant Commissioner of Labour,
Controlling Authority,
Coimbatore 600 018.

3.E.M.Palanisamy

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorari to calling for the records of the second respondent in relation to his order in GA.No.393/04, dated 09.06.2005 and of the first respondent in regard to his order dated 26.07.2006, in AGA.No.94 of 2005 and quash the same.

For Petitioner : Mr.P.Anbarasan

For Respondents 1 & 2: Mr. R. Govindasamy, Spl.G.P.

For R1 & R2

For Respondent-3 : Mr. Govardhan

for M/s. Row & Reddy

O R D E R

This writ petition has been filed by the petitioner management challenging the order of the second respondent dated 09.06.2015 as confirmed by the first respondent dated 26.07.2006

wherein the authorities granted payment of gratuity in favour of the third respondent.

2. The case of the petitioner management is that the third respondent/employee of the petitioner's society caused loss to the tune of Rs.72,29,023.32 by misappropriation during the period from 1984-1989. After due enquiry, the third respondent was dismissed from service on 28.08.1991. The third respondent raised industrial dispute before the Labour Court in I.D.No.222 of 1992 wherein the Labour Court had set aside the punishment and directed the petitioner management to reinstate the third respondent without backwages with continuity of service. Thereafter, on 26.02.1996, the petitioner was reinstated and subsequently, he retired on 31.07.2003. After retirement the third respondent raised the claim before the Controlling Authority namely, the second respondent for payment of gratuity from 14.06.1972 to 31.07.2003 for a sum of Rs.1,07,433/- with interest. After enquiry, the third respondent allowed the petition and sanctioned the gratuity for a sum of Rs.1,00,172/- on 09.06.2005. As against the said order, the petitioner management filed a further appeal before the first respondent and the said appeal was dismissed by the first respondent. Aggrieved over the said dismissal order, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner would submit that the third respondent was reinstated in the year 1996 and thereafter, the third respondent was absent from 29.09.1997 to 11.06.2002 i.e., for a period of five years. Hence, the third respondent is not entitled for payment of gratuity for the period of his absence from duty i.e., from 29.09.1997 to 11.06.2002.

4. Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent.

5. The admitted fact is that the third respondent was initially dismissed from service in the year 1991. However, based on the Order of the Labour Court, he was reinstated in service without any backwages and with continuity of service. In compliance of the said order, the third respondent was reinstated into service however on medical ground, he had taken leave from 29.09.1996 to 11.06.2002. Though the petitioner management denied the leave on medical grounds has not taken any disciplinary action for his unauthorised absence. Accordingly, the payment of gratuity authority proceeded the matter based on the order of the Labour Court and passed an order in favour of the workmen.

6. I do not find any error or infirmity in the order passed by the Labour Court and hence, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed. The third respondent/workmen is at liberty to withdraw the amount lying in deposit by following the due procedure before the Labour Court and in accordance with law.

Sd/-

Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

To

1. The Joint Commissioner of Labour,
Appellate Authority,
under the Payment of Gratuity Act,
Coimbatore 600 018.

2. The Assistant Commissioner of Labour,
Controlling Authority,
Coimbatore 600 018.

+1cc to Mr.A.ANBARASAN, Advocate SR.No.43726

+1cc to M/S.ROW & REDDY, Advocate SR.No.43846

W.P.No.41974 of 2006

SPP (CO)
SMI/21.08.2018

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