

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1237 of 2016

The Special Officer
Chennai Central Co-operative
Bank Limited,
215, Prakasam Salai,
Chennai - 600 108.

...Appellant/Petitioner

Vs

1.Controlling Authority
under the Payment of Gratuity Act, 1972
(Assistant Commissioner of Labour I/c)
O/o. The Deputy Commissioner of Labour -I
Chennai - 600 006.

2.M.Palaniyandi ...Respondents/Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.No.26104 of 2014 dated 05.01.2016.

W.P.No.26104 of 2014:-

Writ petition under Article 226 of the Constitution of India, praying for issuance a Writ of certiorari to call for the records in P.G.I.A.No.440 of 2013 in P.G.No.78 of 2013 on the file of he controlling authority under the payment of Gratuity Act 1972 (Assistant Commissioner of Labour (I/c) O/o. The Deputy Commissioner of Labour I Chennai-600 006 the 1st respondent herein quash the order dated 5.9.2014.

For Appellant : Mr.R.Raghavan

For Respondents : Mr.T.Sundaresan for R2

J U D G M E N T
(Judgment of the Court was delivered by
K.K.SASIDHARAN, J.)

The challenge in this intra court appeal is to the order dated 22 February 2016 in W.P.No.26104 of 2014, whereby and where under, the learned single Judge directed the appellant to pay interest to the second respondent on account of the delayed

payment of gratuity by confirming the order passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "Gratuity Act").

Brief Facts

2. The second respondent initiated proceedings before the first respondent claiming interest on account of the delayed payment. According to the second respondent, pursuant to the settlement arrived at between the workman and the Management under Section 18(1) of the Industrial Disputes Act (hereinafter referred to as the "I.D.Act"), the Management was bound to revise the wages and consequently, the gratuity. However, the gratuity amount was not paid within the statutory period of 30 days. Though the application was made on 30 August 2010, payment was made only after a period of 190 days. The second respondent raised a dispute before the Controlling Authority under the Gratuity Act on the ground that payment ought to have been made within a period of 30 days and the default thereof would give him a right to claim interest.

3. Before the Controlling Authority under the Gratuity Act, the appellant took up a preliminary objection to the effect that the authority has no jurisdiction to adjudicate the matter. The authority, by order dated 5 September 2014 rejected the preliminary objection and arrived at a conclusion that the Controlling Authority under the Gratuity Act is entitled to decide the question as to whether the payment of gratuity to the employee was delayed and as such, whether he is entitled for interest, notwithstanding the fact that the claim was not under the Gratuity Act, but on the basis of a settlement.

4. The appellant challenged the order dated 5 September 2014 before the Writ Court in W.P.No.26104 of 2014.

5. The learned single Judge confirmed the order passed by the Controlling Authority without deciding the moot question raised by the appellant as to whether the said authority has jurisdiction to entertain the dispute with regard to payment of interest. Feeling aggrieved, the appellant has come up with this intra court appeal.

Summary of Contentions in this appeal

6. The learned counsel for the appellant contended that the appeal is only for the purpose of deciding the question of law raised by the appellant. According to the learned counsel, the authority under the Gratuity Act has no jurisdiction to decide a question, which is outside the purview of the Gratuity Act. According to the learned counsel, the competent authority overstepped its jurisdiction by taking up the issue with regard to payment of interest based on a settlement under Section 18(1)

of the I.D.Act.

7. We have also heard the learned counsel for the second respondent.

The issue to be Resolved

8. The core question is as to whether the authority under the Gratuity Act is vested with the power to adjudicate a question with regard to the payment of interest on account of the delay in payment of the gratuity amount, pursuant to a settlement arrived at between the employer and the employee under Section 18 (1) of the I.D.Act.

Discussion and Resolution

9. The Payment of Gratuity Act is a self-contained code containing string of provisions with regard to the determination of amount payable to the employees and for payment of interest, in case of delay in making such payment. Section 6 of the Gratuity Act provides for invoking the jurisdiction of the authority by a person, who is eligible for payment of gratuity under the Gratuity Act. The very section provides that the competent authority would be in a position to entertain the petition only in case the claim is made under the provisions of the Gratuity Act.

10. In the subject case, the claim was not under the provisions of the Gratuity Act. It was a claim based on a settlement arrived at among the employer and employee under Section 18(1) of the I.D.Act. Such a settlement would not come within the purview of the Gratuity Act, giving jurisdiction to the authority under the Act to decide the lis.

11. The Competent Authority derives jurisdiction from the Payment of Gratuity Act. The authority itself was created only by the statute. The power is circumscribed by the statute. It would not be legally permissible to take up issues beyond the purview of the Act by the Competent Authority. The jurisdiction cannot be extended without the sanction of law.

12. We are therefore of the view that the competent authority was not correct in entertaining a dispute for payment of interest for delayed payment pursuant to a settlement under Section 18(1) of the I.D.Act. Since no attempt was made by the learned single Judge to address the legal issue raised by the appellant, we are constrained to set aside the order passed by the Writ Court. Accordingly, the order dated 22 February 2016 is set aside.

13. The further question that arises for consideration is

whether the second respondent is entitled to interest on account of the failure to pay the amount within a reasonable period.

14. While considering an issue of this nature, the Court has to look into the provisions of the Gratuity Act for the limited purpose of ascertaining the statutory period for payment. There is a statutory obligation on the part of the employer to pay the gratuity amount within a period of 30 days. If the said period of 30 days is taken as an outer time limit for payment of gratuity, it is clear that no such payment was made by the appellant to the second respondent. It is trite that a person who is liable to pay the amount, failed to pay and retained it, he is liable to pay interest for the delayed period. Such being the legal position, we are of the view that the appellant must pay interest to the second respondent for belated payment.

15. The parties have already calculated the interest. We direct the appellant to pay the interest amount of Rs.7,647/- within a period of two weeks from the date of receipt of a copy of this judgment.

16. The intra court appeal is allowed as indicated above. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. Controlling Authority
under the Payment of Gratuity Act, 1972
(Assistant Commissioner of Labour I/c)
O/o. The Deputy Commissioner of Labour -I
Chennai - 600 006.
2. The Special Officer
Chennai Central Co-operative
Bank Limited, 215, Prakasam Salai, Chennai - 600 108.

+2ccs to Mr.T.Sundaresan, Advocate, S.R.No.26077
+1cc to Mr.R.Raghavan, Advocate, S.R.No.25909

W.A.No.1237 of 2016

VGII(CO)
CS/04/06/18