



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.13601 of 2014
and
M.P.(MD) No.1 of 2014

M/s.N.N.P.Marketing Services,
11/D-2A, 2nd Street,
Muniyasampuram (West)
Extension, Tuticorin - 628 003

... Petitioner

Vs.

1.The Appellate Authority under the
Payment of Gratuity Act, 1972
Joint Commissioner of Labour,
Madurai.

2.The Controlling Authority under the
Payment of Gratuity Act, 1972
Assistant Commissioner of Labour,
106, Trivandram Road,
Tirunelveli.

3.S.Seyad Ibrahim Shaw

...Respondents

Prayer: This writ petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order dated 13.12.2013 (received on 25.06.2014) passed by the 1st respondent in P.G.(Appeal) No.10 of 2013 confirming the order dated 31.10.2012 passed by the 2nd respondent in P.G.No.75 of 2011 and quash the same as illegal.

For petitioner : Mr.M.E.Ilango

For Respondents : Ms.M.Maria Vinola for Ms.D.Geetha
for R3
Mr.K.Saravanan, G.A. For RR1 & 2

ORDER

The third respondent was an employee of the petitioner herein. The third respondent along with three other employees. allegedly indulged in misappropriation. In this regard, a police complaint was also given and the management claims that an undertaking was given by the third respondent before the Investigating Officer.



2.Be that as it may, even though the petitioner would claim that the third respondent's services were terminated, there is no written order to that effect. It appears to be a case of oral termination. Thereafter, the third respondent filed application under Payment of Gratuity Act before the Controlling Authority. The Controlling Authority directed the management to pay a sum of Rs.40,153/- with interest to the third respondent. The same was questioned by the management before the appellate authority. The appellate authority confirmed the order passed by the controlling authority. The same is questioned in this writ petition.

3.Under Section 4(6) of the Payment of Gratuity Act, 1972, in cases of employees whose services have been terminated for the reasons set out therein, gratuity shall be forfeited to the extent of the damage or loss so caused. But, in the present case, the management is not in a position to produce any order of termination, wherein the gratuity has been forfeited. Since the case of the management could not be brought within the four corners of Section 4 (6) of the Act, this Court must sustain the impugned orders passed by the authorities.

4.This writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1.The Joint Commissioner of Labour, Appellate Authority under the Payment of Gratuity Act, 1972, Madurai.
- 2.The Assistant Commissioner of Labour, Controlling Authority under the Payment of Gratuity Act, 1972, 106, Trivandram Road, Tirunelveli.

+1CC to Mr.M.E.Ilango,, Advocate, SR.No. 46280
+1CC to M/s.D.Geetha, Advocate, SR.No. 46671
+1CC to the Special Government Pleader SR.No.46547

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