

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.8775 OF 2004

ORDER

This writ petition is filed seeking the following relief:

“..to issue appropriate writ, order or direction more particularly one in the nature of writ of Certiorari calling for the records pertaining to the impugned order dated 26.02.2004 in Case No.PGA 2/2004 on the file of the respondent herein and quash the same by holding that the same as illegal, null and void, without jurisdiction and violative of Articles 14 & 19 of Constitution of India and as well as established principles of natural justice; and pass such other further order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Sri A.K.Jaya Prakash Rao, learned counsel appearing for the petitioner, learned Government Pleader appearing for respondents 1 and 2 and Smt K.Udaya Sri, learned counsel appearing for respondent No.3.

It is the case of the petitioner that the 3rd respondent was an individual workman, and he was not a regular employee in the petitioner establishment. He was appointed on piece rate basis for stitching clothes *vide* order dated 1.9.1968 and due to his ill health, he had resigned. The petitioner had settled all the benefits to the 3rd respondent. Subsequently, the 3rd respondent had approached the Authorities under Payment of Gratuity Act, 1972,(for short ‘the Act’) complaining that the petitioner has not paid gratuity amount to him. The Authority had entertained the complaint of the 3rd respondent in

P.G.Case No.15 of 2000 and passed an order on 26-12-2001 directing the petitioner to pay an amount of Rs.42,093/- to the 3rd respondent workman, without appreciating any of the contentions raised by it. Thereafter, the petitioner had preferred an appeal before the Appellate Authority and the Appellate Authority had mechanically dismissed the appeal preferred by the petitioner *vide* order dated 26-02-2004 holding that the petitioner is liable to pay the gratuity amount to the 3rd respondent-workman. Hence, the writ petition.

Learned counsel appearing for the petitioner contends that Section 4 (2) of the Act provides 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; that the Authority failed to see that the 3rd respondent was only a piece rate worker, and allowed the claim made by the 3rd respondent treating him that he was a regular employee; that appropriate orders be passed by setting aside the order passed by the appellate Authority and that the writ petition is liable to be allowed.

Learned counsel appearing for the 3rd respondent-workman contends that the authorities have rightly passed orders in favour of the 3rd respondent-workman; that the 3rd respondent-workman has specifically marked certain documents which clinches his entire case; that the 3rd respondent has filed appointment order, which is dated 1.9.1968; that no appointment order would be issued to a piece rate worker; that the 3rd respondent has rendered more than 35 years of service with the petitioner; that the contention of the petitioner that he paid only piece rate to the 3rd respondent, but not consolidated pay, is false and incorrect; that the authority has rightly passed the order by duly taking into consideration G.O.Ms.No.33, dated 06.03.91, which is applicable to tailors and tailoring establishments; that as per the said G.O, minimum wages have to be paid on monthly, on piece rate basis; that the authorities have rightly rejected the case of the petitioner by holding that the petitioner is a tailoring establishment and G.O.Ms.No.33, dated 06.03.91 is applicable to it; that no illegality has been committed by the authorities in passing the orders under the Act; and that the writ petition is liable to be dismissed

Having considered the rival submissions, made by the learned counsel on either side, this Court is of the considered

view that the authorities have rightly passed the orders in favour of the 3rd respondent by considering G.O.Ms.No.33, dated 6.3.1991 and also the appointment order issued by the petitioner way back in the year 1968 in favour of the 3rd respondent. There are no merits in the writ petition and the same is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

5th December, 2018
rkk



JUSTICE ABHINAND KUMAR SHAVILI