

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 13.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

WP.No.41064 of 2002

Tamil Nadu Co-operative
Marketing Federation Ltd.,
Rep. by its Secretary,
91, St.Mary's Road,
Chennai - 18.

...Petitioner

Vs

1. The Appellate Authority under
Payment of Gratuity Act, 1972,
The Joint Commissioner of Labour,
Chennai - 6.
2. The Assistant Commissioner of
Labour (Controlling Authority),
under the Payment of Gratuity
Act, 1972,
Chennai - 6.
3. Tamil Nadu Co-operative
Oilseeds Growers Federation Ltd.,
Rep. by its Chairman and
Managing Director,
No.55, Thiru-vi-ka Industrial
Estate, Ikkatuthangal,
Chennai - 97.

4. K.Subramanian

...Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, directing the respondents to quash the order in P.G.A.No.28 of 2002 dated 26.06.2002 on the file of the 1st respondent and confirm the order passed in P.G.No.171 of 2000 dated 08.08.2001 on the file of the 2nd respondent.

For Petitioner : Mr.Kamalesh Kannan

For Respondents: Ms.T.Girija, GA
for R1 to R3

M/s.Aiyar & Dolia
for R4

O R D E R

The 4th respondent herein was appointed as a Driver in the petitioner's Federation on 01.06.1969. While he was under the service of the petitioner, the Government of Tamil Nadu had taken a decision to absorb all the employees of the petitioner Federation to the services of the 3rd respondent herein in their two Oil Complexes at Thiruvannamalai and Virudachalam. Accordingly, the 4th respondent herein became an employee of the 3rd respondent with effect from 12.09.1985. Subsequently, on 31.05.1999, the 4th respondent reached the age of superannuation, when he was under the services of the 3rd respondent. When the gratuity was paid to the 4th respondent by the 3rd respondent, the period of his service taken into account was from 12.09.1985 to 31.05.1999 alone, when the 4th respondent had rendered his service under the 3rd respondent herein. Since the 4th respondent had been denied the gratuity from his date of joining the service i.e., 01.06.1969, he had filed a claim petition under the Payment of Gratuity Act, 1972, before the 2nd respondent herein for a sum of Rs.42,692/-, which was the gratuity arrears for the period from 01.06.1969 to 11.09.1985. The said application came to be allowed by the 2nd respondent by an order dated 03.02.2001, directing the 3rd respondent to pay the 4th respondent a sum of Rs.42,692/-. The said order was challenged by the 3rd respondent herein before the 1st respondent, which came to be allowed on 26.06.2002, whereby the petitioner herein was directed to pay the gratuity arrears from 01.06.1969 to 11.09.1985, to the 4th respondent herein. Aggrieved by the same, the present Writ Petition has been filed.

2. The learned counsel for the petitioner submitted that when the Government of Tamil Nadu had taken a decision on 04.07.1985 to transfer the services of all their employees to the services of the 3rd respondent herein, the terms and conditions was to the effect that the services rendered by the employees under the 4th respondent prior to 12.09.1985 was also transferred to the 3rd respondent herein. By referring to identical cases of similarly placed employees, who have earlier served the petitioner Federation and have retired under the 3rd respondent herein, the learned counsel submitted that the gratuity of such employees from the date of initial appointment with the petitioner Federation was also given effect to by the

3rd respondent and as such, the present order of the 1st respondent herein is improper.

3. The learned Additional Government Pleader appearing for the 3rd respondent on the other hand, submitted that there was no infirmity in the order of the 1st respondent, since in an identical case, when an employee who had been transferred from the petitioner Federation to the 3rd respondent had retired, the petitioner herein was directed to pay the gratuity arrears, which order came to be confirmed by this Court in WP.No.5661 of 1994 and in WA.No.915 of 2002. Since the 1st respondent herein had relied upon the decision of this Court and mulcted the petitioner herein, there is no infirmity in the order. The learned Additional Government Pleader would also submit that the period of service rendered by the 4th respondent under the 3rd respondent herein has been properly taken into account and the gratuity for the relief period has also been paid to the petitioner herein.

4. The learned counsel for the 4th respondent submitted that in view of the dispute with regard to the liability between the petitioner and the 3rd respondent, the 4th respondent, who is now aged about 72 years, is yet to receive a portion of the gratuity for the service rendered by him between 01.06.1969 to 11.09.1985. Since there was no mistake on his part for being denied the gratuity for the said period, the learned counsel submitted that he is entitled for payment of gratuity for that relevant period along with interest.

5. I have given careful consideration to the submissions made by the respective counsels.

6. It is rather an unfortunate case, where the 4th respondent, who had put in a valid service from 01.06.1969 to 11.09.1985 and whose service has not been found fault with either by the petitioner or by the 3rd respondent, has been deprived of his gratuity for almost 20 years.

7. Unfortunate, because the petitioner and the 3rd respondent being statutory bodies, ought to have atleast made the payment to the employee and thereafter sorted out their dispute with regard to the liability among themselves, instead of keeping the 4th respondent waiting for his gratuity for such a long period.

8. It is seen that the Appellate Authority had shifted the liability of payment of the gratuity from the period 01.06.1969 to 11.09.1985 to the petitioner herein, on the ground that in similar circumstances, this Court in an order dated 12.06.2001 in WP.No.5661 of 1994 had held that liability in these

circumstances would be on the petitioner herein. This order came to be confirmed by the Hon'ble Division Bench of this Court in an order dated 10.04.2002 in WA.No.915 of 2002. The observations made by the learned single Judge of this Court in the aforesaid order is as follows:

"4. A reading of the impugned order passed by the third respondent appellate authority shows that the appellate authority has passed such order after going through the merits of the case and after hearing the parties. The appellate authority in its orders has also observed that neither the first respondent therein nor the second respondent therein had adduced any evidence that existing terms and conditions include payment of gratuity only by the appellant viz. TANCOF even for the services of the first respondent under the second respondent and apportioned the payment of gratuity to the second respondent herein payable by the petitioner and the first respondent herein. I do not find any reason to interfere with the impugned order passed by the third respondent appellate authority. The writ petition is dismissed. No costs. Consequently WMP.No.8881 of 1994 is dismissed.

9. The 1st respondent herein, while imposing the liability on the petitioner herein had relied upon the decision of this Court and thereby taken a decision that the petitioner alone is liable to pay the gratuity for the period 01.06.1969 to 11.09.1985. Since the decision has been confirmed by this Court and has become final, it cannot be said that the 1st respondent herein had erred in fixing the liability on the petitioner herein.

10. Nevertheless, as rightly pointed by the learned counsel for the petitioner that since the retirement benefits of the other employees, whose services were transferred to the 3rd respondent along with the petitioner herein, were settled by the 3rd respondent alone, the impugned order would be discriminatory and as such, the liability would only be on the 3rd respondent to settle the petitioner's retirement benefits. The learned counsel also submitted that this aspect was not opened for consideration before this Court in the earlier decision as well as the Division Bench. His submission seems to be acceptable.

11. Though the dispute with regard to liability is between the petitioner and the 3rd respondent, and the 4th respondent has been made to suffer from these orders. In my view, the outstanding gratuity requires to be paid to him immediately and such a dispute could be resolved at a later stage. Since the

petitioner and the 3rd respondent had not resorted to make the payment to the 4th respondent, he would also be entitled to receive interest on the said sum.

12. The question as to whether the gratuity requires to be calculated on the total number of years of service put up by the 4th respondent before the petitioner Federation as well as the 3rd respondent herein is being opposed by both the petitioner as well as the 3rd respondent herein, in my view, taking into account that the 3rd respondent had chosen to settle the retirement benefits to all other employees, whose services were transferred to the 3rd respondent herein from the petitioner herein along with the 4th respondent herein, in normal circumstances, it is the 3rd respondent, who would be liable to pay the gratuity for the period of his service before the petitioner Federation.

13. Nevertheless, since the 3rd respondent has also erred in calculating the gratuity for the 4th respondent service before them alone, i.e., for the period 12.09.1985 to 31.05.1999, if the petitioner is directed to pay the gratuity for the 4th respondent service between 01.06.1969 to 11.09.1985 alone, it would amount to a gross injustice to the 4th respondent, since the total number of years of service calculated separately for his service before the petitioner and 3rd respondent could reduce the gratuity amount. As the learned counsel for the petitioner has rightly pointed out that it is the duty of the 3rd respondent to pay the gratuity for the petitioner's service rendered before them also, it is always open to him to seek for reimbursement of the amount which has been directed to be paid by the Appellate Authority to the 4th respondent herein.

14. In the light of the above observations, the order passed by the 1st respondent herein, insofar as fixing the liability of the petitioner Federation for the period from 01.06.1969 to 11.09.1985 alone, for the purpose of computing the gratuity, is quashed and the 1st respondent shall calculate the gratuity amount for the total number of years of service put up by the 4th respondent herein before the petitioner Federation as well as the 3rd respondent. While computing, the petitioner herein shall also pay interest on the gratuity arrears, at the rate of 6% per annum to the 4th respondent herein. Such an exercise shall be completed within a period of 8 weeks from the date of receipt of copy of this order. Consequently, the petitioner is granted liberty to seek for reimbursement of the gratuity amount payable to the 4th respondent herein from the 3rd respondent. While seeking for such reimbursement, the petitioner is also at liberty to raise all the grounds at that point of time.

15. Accordingly, the writ petition stands ordered. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Appellate Authority under
Payment of Gratuity Act, 1972,
The Joint Commissioner of Labour,
Chennai - 6.
2. The Assistant Commissioner of
Labour (Controlling Authority),
under the Payment of Gratuity Act, 1972,
Chennai - 6.
3. The Chairman and Managing Director,
Tamil Nadu Co-operative
Oilseeds Growers Federation Ltd.,
No.55, Thiru-vi-ka Industrial Estate,
Ikkatuthangal, Chennai - 97.
4. The Secretary,
Tamil Nadu Co-operative
Marketing Federation Ltd.,
91, St.Mary's Road,
Chennai - 18.

+1cc to Mr.R.Arumugam, Advocate, S.R.No.23676
+1cc to the Government Pleader, S.R.No.24699

VBA(CO)
CS/27/04/2019

WP.No.41064 of 2002

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