

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.152 of 2012
and M.P.No.1 of 2012

The Management,
Rep. By its Director,
United Bleachers Limited,
Nellithurai Road,
Mettupalayam 641 301. .. Petitioner

Vs.

1.The Assistant Commissioner of Labour,
(Authority under the Payment of Gratuity Act)
Office of the Deputy Commissioner of Labour
Coimbatore 18.

2.The Joint Commissioner of Labour,
(Appellate Authority under the
Payment of Gratuity Act),
Coimbatore.

3.M.N.Natarajan .. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent in AGA No.15 of 2011 and quash its order dated 25.08.2011, confirming the order of the 1st respondent dated 12.11.2009 in Gratuity Application No.93 of 2008.

For Petitioner : Mrs.Haroon At. Rasheed
for M/s.T.S.Gopalan and Co.

For R1 & R2 : M/s.R.Janaki,
(Additional Government Pleader)

For R3 : Mr.R.M.D.Nasrullah
for M/s.K.V.Shanmuganathan

O R D E R

The present Writ Petition is filed for an issuance of a Writ of Certiorari, calling for the records of the 2nd respondent in PGA No.15 of 2011 and quash its order dated 25.08.2011, confirming the order of the 1st respondent dated 12.11.2009 in Gratuity Application No.93 of 2008.

2.The petitioner is respondent before the 1st respondent and appellant before the 2nd respondent. The 3rd respondent, the employee filed an application for payment of gratuity claiming that he joined services of the petitioner on 14.03.1964 and after 42 years of continuous service, he retired on 31.12.2005. The petitioner management paid gratuity only for 38 years on the ground that the 3rd respondent was an apprentice from 07.06.1964 to 31.03.1968. According to the 3rd respondent, he joined the services of the petitioner as Helper on 14.03.1964 and he was not appointed as apprentice from 14.03.1964 as alleged by the petitioner.

3.The petitioner filed counter statement before the 1st respondent and contended that the 3rd respondent was appointed only as an apprentice from 14.03.1964 to 31.03.1968. He has put up only 38 years of regular service. The 3rd respondent is not entitled to gratuity for his apprentice period. The petitioner also contended that the petitioner and 3rd respondent on 01.12.2006 entered into a settlement under Section 18(1) of the Industrial Disputes Act (hereinafter referred to as 'the Act') wherein the 3rd respondent has admitted that he was an apprentice from 07.09.1964 to 31.03.1968 and prayed for dismissal of the claim petition.

4.The 1st respondent considering the pleadings, oral and documentary evidence let in by the parties, held that the petitioner failed to prove that the 3rd respondent was apprentice for four years. The 3rd respondent has produced the documents issued by the petitioner, wherein his date of appointment was shown as 14.03.1964. On such finding, the 1st respondent held that the 3rd respondent is entitled to gratuity of Rs.1,23,480/- and the petitioner paid the gratuity of Rs.1,11,720/- on 29.11.2006 and therefore, the petitioner is liable to pay the interest at the rate of 10% per annum on Rs.1,23,480/- up to 01.12.2006 and on Rs.11,780/- from 02.12.2006 till the date of payment.

5.Aggrieved by the said order, the petitioner filed appeal in P.G.A.No.15 of 2011 before the 2nd respondent. The 2nd respondent considering the materials on record, including the orders of the 1st respondent, dismissed the appeal. Against the orders of respondents 1 and 2, the petitioner has come out with the present Writ Petition.

6.The learned counsel appearing for the petitioner reiterated the averments in the counter statement filed before the 1st respondent and further contended that the respondents 1 and 2 failed to consider the fact that the 3rd respondent has himself admitted in the settlement dated 01.12.2006 entered under Section 18(1) of the Act that he was an apprentice from 07.09.1964 to 31.03.1968. The issue of proving that the 3rd respondent was an apprentice from 07.09.1964 to 31.03.1968 did not arise before the 1st respondent and therefore no necessity arose for the petitioner to produce the document before the 1st respondent to prove that the 3rd respondent was an apprentice from 07.09.1964 to 31.03.1968. The respondents 1 and 2 failed to properly appreciate the pleadings, oral and documentary evidence and Section 2(e) of the Payment of Gratuity Act, 1972 and prayed to quash the order impugned.

7.Per contra, Mr.R.M.D.Nasrullah, learned counsel appearing for the 3rd respondent contended that it is the specific case of the 3rd respondent that he was appointed only as a Helper from 14.03.1964 and not as an apprentice. He has put in 42 years of regular service and proved the same by producing Ex.A2-Salary slip for the month of December, 2005 and Ex.A3- ESI Identity Card, wherein it has been mentioned that the date of appointment of the 3rd respondent is 14.03.1964. He further contended that the petitioner has taken signature of the 3rd respondent on various documents and due to poverty and requirement of money, the 3rd respondent has signed all the documents without knowing the contents. The respondents 1 and 2 have properly appreciated all the materials on record and passed orders which are valid and legal and there is no reason or circumstances warranting interference by this Court and prayed for dismissal of the Writ Petition.

8.Heard the learned counsel appearing for the petitioner as well as the respondents 1 & 2 and 3rd respondent and perused the materials available on record.

9.From the materials on record, it is seen that it is the specific case of the 3rd respondent that he was appointed as Helper from 14.03.1964 and he worked for 42 years as a regular employee till his superannuation. To substantiate his case, the 3rd respondent has produced Exs.A2 and A3 wherein his date of appointment was shown as 14.03.1964. On the other hand, it is the case of the petitioner that the 3rd respondent was appointed only as an apprentice on 14.03.1964 and worked only as an apprentice till 31.03.1968 and he was appointed to regular service as Helper only from 01.04.1968. Except marking Ex.B5- Settlement under Section 18 (1) of the Act, Ex.B4-the receipt dated 01.12.2006 for payment of gratuity amount, the petitioner has not produced appointment order either appointing the 3rd

respondent as apprentice with effect from 14.03.1964 or appointing the 3rd respondent as Helper with effect from 01.04.1968. The respondents 1 and 2 considering the failure on the part of the petitioner to produce the appointment order, held that the petitioner failed to prove that 3rd respondent was apprentice for 3 years from 14.03.1964 to 31.03.1968. The reasons given by the respondents 1 and 2 for holding that the 3rd respondent worked as regular employee for 42 years and directing the petitioner to pay the balance gratuity amount and interest for the belated payment is valid. There is no error in the said award warranting interference by this Court.

10. In the result, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (Insp. Cell)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Assistant Commissioner of Labour,
(Authority under the Payment of Gratuity Act)
Office of the Deputy Commissioner of Labour
Coimbatore 18.

2. The Joint Commissioner of Labour,
(Appellate Authority under the
Payment of Gratuity Act),
Coimbatore.

+1cc to Mr.K.V.Shanmuganathan, Advocate, S.R.No.47069

+1cc to the Government Pleader, S.R.No.47564

+1cc to M/s.T.S.Gopalan and Co, S.R.No.46060

W.P.No.152 of 2012

BP (CO)

RRS (19/07/2019)

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