

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 18.03.2019

Delivered on : 21.03.2019

C O R A M

The Honourable Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.34309 of 2006

in

WPMP.No.2 of 2006

M/s.Gopi Engineering Works

Rep. by its Proprietor,

Madanur, Vaniyambadi Taluk,

Vellore District.

... Petitioner

Vs.

1.The Joint Commissioner of Labour

Appellate Authority under the

Payment of Gratuity Act,

Labour Welfare Board Building, 6th Floor,

Teynampet, Chennai - 600 006.

2.The Assistant Commissioner of Labour - I

(Under Payment of Gratuity Act)

O/O.The Deputy Coomissioner of Labour - I

Teynampet, Chennai - 600 006.

3.R.Gopal

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the redcords on the files of the Second Respondent bearing P. G. No.86 of 2003 dated 04.03.2004 and the consequential order of the First Respondent in PGA No.76/2004 dated 28.02.2005 and quash the same and all further proceedings pertaining thereto.

For Petitioner : Mrs.A.V.Bharathi

For Respondents : M/s.E.Srinivasan for R-3

N.A. for R1 & R2

O R D E R

This Writ Petition has been filed for a writ of certiorari to call for the records on the files of the Second Respondent bearing P.G.NO.86 of 2003 dated 04.03.2004 and the consequential order of the First Respondent in PGA No.76/2004 dated 28.02.2005 and quash the same and all further proceedings pertaining thereto.

2. The salient facts relating to this Writ Petition are set out in this and the next paragraph. The Petitioner is a proprietary concern engaged in the manufacture of machines for use in the tannery business. According to the Petitioner, only seven or eight persons are employed at a given point of time in the Petitioner unit. The Third Respondent herein was engaged as a moulder. The Petitioner further states that the Third Respondent stopped coming to work on and from 31.07.2001 and at that point of time, the Third Respondent was drawing a monthly salary of Rs.3,200/-.

3.The Third Respondent claimed gratuity from the Petitioner after the lapse of about 15 months from the date when he quit the services of the Petitioner. According to the Petitioner, the Factories Act, 1948(the Factories Act) and the Tamil Nadu Shops and Establishments Act do not apply to the Petitioner because the Petitioner did not engage 10 or more persons at its factory. In connection with the claim for gratuity, the Third Respondent filed a petition before the Second Respondent and the said petition was allowed on 04.03.2004 whereby the Petitioner was directed to pay a sum of Rs.46,154/- to the Third Respondent. Aggrieved by the aforesaid order, the Petitioner filed P.G. Appeal No.76 of 2004 before the First Respondent. However, the First Respondent dismissed the appeal by Order dated 28.02.2005. The order of the First Respondent is the impugned order in this writ petition.

4.The learned counsel for the Petitioner submits that the First Respondent did not take into consideration the muster roll and wage register and instead relied upon photographs filed by the Third Respondent. The learned counsel further submitted that the First Respondent assumed that the persons in the photograph were employees of the Petitioner whereas they were apprentices. Accordingly, the learned counsel for the Petitioner contended that the Payment of Gratuity Act,1972(the Payment of Gratuity Act) did not apply to the Petitioner because it did not employ 10 or more persons during the time when the Third

Respondent was employed there.

5. On the contrary, the learned counsel for the Third Respondent submitted that the Petitioner is a factory as evidenced by the factory license issued to the Petitioner. In this regard, he invited the attention of this Court to Section 1 (3) of the Payment of Gratuity Act, which reads as under:

"(3) It shall apply to__

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf."

Therefore, according to the learned counsel for the Third Respondent, the Petitioner comes within the ambit of the Payment of Gratuity Act even if the number of employees is below 10. In addition, the learned counsel for the Respondents submitted that the fact that the Petitioner had obtained a license under the Factories Act itself shows that the Petitioner employed 10 or more persons at a time. Hence, the Third Respondent is entitled to gratuity because he worked for the Petitioner from the year 1975 until 31.07.2001. He further submitted that another employee of the Petitioner, namely, Mr. Balogam, received gratuity from the Petitioner. Finally, he submitted that the Payment of Gratuity Act is a legislation intended to benefit employees and that, therefore, it should be interpreted liberally so as to subserve that object.

6. This Court carefully considered the affidavit, documents on record and the oral submissions of both parties.

7. It is clear from the order dated 04.03.2004 of the Second Respondent that the Petitioner herein filed the application for the grant of a factory license and the factory license as exhibits before the said Second Respondent. On the basis of the factory license, the Second Respondent concluded that the Petitioner herein had obtained the factory license for a maximum of 20 employees and 250 HP. Therefore, the Second Respondent

held that entities that do not come within the purview of the above-mentioned requirements need not obtain a license under the Factories Act. The Second Respondent also took into account the renewal of the factories license which shows that ordinarily there are about 10 employees in the Petitioner. Eventually, the Second Respondent concluded that the documents filed by the Petitioner herein and the Third Respondent prove that the Payment of Gratuity Act applies to the Petitioner.

8. In the order dated 30.01.2006, the First Respondent concluded that it is customary for companies to make it appear as if there are fewer than 10 employees in their records so as to avoid liabilities under law. The First Respondent further concluded that it is because the Petitioner employed more than 10 persons that the Petitioner could obtain a license under the Factories Act. The First Respondent further concluded that if the persons in the photographs were apprentices and not employees, there was no necessity for the Petitioner to provide them uniforms of the Petitioner. More importantly, the First Respondent cited the Payment of Gratuity Act and concluded that there is no doubt that the Petitioner is a factory and is therefore liable to pay gratuity.

9. A perusal of Section 1(3) of the Payment of Gratuity Act makes it very clear that it applies to every factory. In this regard, it is relevant to state that, as per Section 2(8) of the Payment of Gratuity Act, the word factory has the same meaning as in Section 2(m) of the Factories Act. As per Section 2(m) of the Factories Act, any premises wherein ten or more persons are working or were working in the preceding twelve months is a factory if power is used in the manufacturing process. It is not disputed by the Petitioner that it is a factory engaged in the business of manufacturing machines for use in the tannery business. It is also not disputed that the Petitioner obtained a license under the Factories Act for a maximum of 20 persons and 250 HP and subsequently renewed the said license. It is also not disputed by the Petitioner that about 20 persons were seen in the photographs submitted to the First and Second Respondents by the Third respondent. However it is the Petitioner's case that these persons were apprentices and not employees. Unfortunately, the Petitioner has not submitted proof that these persons were apprentices and not employees. In any event, once it is admitted that the Petitioner is a factory, the Payment of Gratuity Act becomes applicable.

10. It is also not disputed that the Third Respondent joined the services of the Petitioner sometime in 1975 and continued to work for the Petitioner until 31.07.2001. Therefore, as per Section 4 of the Payment of Gratuity Act, the Third Respondent is entitled to gratuity. It was brought to the notice of the Court that the entire amount of gratuity was deposited with the

Second Respondent and that the Third Respondent withdrew 50% thereof based on order dated 20.09.2016 of this Court. On the basis of the foregoing discussion, it is evident that the impugned order does not suffer from any patent illegality. Accordingly, the impugned order is not liable to be interfered with in exercise of supervisory jurisdiction under Article 226 of the Constitution.

11. In fine, the Writ Petition is dismissed. Consequently, the Third Respondent is permitted to withdraw the remaining 50% of gratuity from the deposit made by the Petitioner with the Second Respondent, along with interest accruals thereon, if any. There shall be no order as to costs. Consequently, connected WMP is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

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+1 CC to Mr. A.V. Bharathi, Advocate sr 27142.

+1 CC to Govt. Pleader sr 27488.

W.P.No.34309 of 2006

SR(CO)

SP(22/04/2019)