IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP. No.10048 of 2004

A.Ramalakshmi ..Petitioner

Vs.

1. The Joint Commissioner of Labour,
Appellate Authority
under the Payment of Gratuity Act,Madurai - 20.

2. The Management of Raja Company,
64, South Car Street,Thirunelveli.

3. S.Uthuman Mohideen,
Beedi Manufacturer,
9, Sappani Ajeen Mela Street,
Melapalayam, Thirunelveli District. ..Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 02.08.2002 passed by the first respondent in P.G. Appeal No.23/2001, dismissing the petitioner's claim for gratuity, to quash the same and consequently, direct the second respondent to pay the petitioner Rs.7,449/- along with interest as computed by the Controlling Authority in P.G. Case No.44/97, dated 04.08.2000.

For Petitioner : Mr.V.Ajay Khose
For Respondent-1 : No Appearance
For Respondent Nos.2 & 3 : Mr.S.Silambanan, Sr. Counsel for M.N.Umapathy

ORDER

This Writ Petition has been filed to quash the order dated 02.08.2002 passed by the first respondent in P.G. Appeal No.23/2001 dismissing the petitioner's claim for gratuity and consequently, to direct the second respondent to pay the petitioner Rs.7,449/- along with interest as computed by the Controlling Authority in P.G. Case No.44/97, dated 04.08.2000.

2. Heard Mr.V.Ajay Khose, learned counsel for the petitioner and Mr.S.Silambanan, learned Senior counsel for the respondents 2 and 3.

3. While the third respondent is the contractor, the second respondent herein is the manufacturer of Beedi in the name of Gaja Beedi. The petitioner herein joined the father of the third respondent contractor on contract basis for manufacturing Beedies for and on behalf of the second respondent on 01.04.1980. Subsequently, she resigned her job on 03.06.1997 and there was a shortfall on the payment of gratuity by the second respondent herein.

4. By an order dated 04.08.2000, the Controlling Authority allowed the petition by holding that the second respondent is the principal employer and directed him to pay the gratuity computed at Rs.7,449/-, together with interest at the rate of 8% from the date of default, against which, an appeal was filed by the second and third respondents herein. The Appellate Authority, in his order dated 02.08.2002, held that the petitioner herein is not entitled for gratuity, since she had not been continuously working under the Contractor for a period of five years. He had further held that as the agreement was entered into between the second and third respondents herein, the Contractor alone is the principal employer and therefore, the liability cast on the second respondent by the Controlling Authority was negatived. As against the same, the present Writ Petition has been filed.

5. The learned counsel for the petitioner, by relying upon Section 40 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 submitted that the Clause in the agreement between the respondents 2 and 3 will be excluded and in view of the definition clause in Section 2 (d) (e) and (g), the second respondent herein is deemed to be the principal employer and the third respondent is the Contractor. In view of the provisions of the said Act, the Appellate Authority is not justified in reversing the findings of the Controlling Authority.

6. The learned counsel for the petitioner further placed reliance on Exs.P6 and R3 and submitted that since the provident funds records evidences her employment from 01.12.1985 onwards and the petitioner herein was employed under the third respondent's father earlier, the observations of the Appellate Authority that the third respondent commenced his contract service from 10.01.1994 only, is incorrect.

7. The learned Senior Counsel appearing for the respondent 2 and 3 on the other hand, opposed the said submission and stated that the second respondent herein cannot be deemed to be the principal employer. It is his submission that the third respondent's licence evidences that he had commenced the

contract service from 04.01.1994 onwards and as such, the petitioner herein had not put in 5 years of continuous service and therefore, there was no infirmity in the finding of the Appellate Authority that the petitioner is not entitled for the benefit of gratuity.

8. The learned Senior Counsel would further submit that since the third respondent himself admitted to be the principal employer, the liability need not be cast upon the second respondent herein, in case this Court finds that the petitioner eligible for gratuity.

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

10. The core question that arises in the present Writ Petition is as to whether the second respondent herein, who is the manufacturer can be termed to be the "Principal Employer" of the petitioner on the strength of the evidences before the authorities, in particular, Ex.P6 and Ex.R3. It is seen that the petitioner had been in employment from 01.12.1985 onwards with the third respondent's father and subsequently with the third respondent after the demise of his father. The petitioner had also resigned her job on 30.06.1997. The Controlling Authority had held that the second respondent is the principal employer and ordered payment of gratuity in favour of the petitioner together with interest. The Appellate Authority however was of the view that the contractor alone is the principal employer and thereby negatived the Controlling Authority's order. The question as to whether the second respondent would be the principal employer or not is no more *Res Integra* in view of the decision of the Constitutional Bench of the Hon'ble Apex Court in *Mangalore Ganesh Beedi Works and others V. Union of India and others* reported in *1974 (4) SCC 43*, wherein the provisions of the Beedi and Cigar Workers Act, 1966 was challenged and while upholding the constitutional validity, it was held that the manufacturer becomes the principal employer though he engages contract labour through the contractor. The relevant portion of the decision reads as follows:

> *"30.The validity of the Act was challenged on the principal ground that the Act imposed unreasonable restrictions on the manufacturers in their right to carry on trade and business in the manufacture of beedis and cigars. The unreasonable restriction was said to be the imposition of vicarious liability on the manufacturers for acts and omissions in case of independent contractors through whom they get*

beedis and cigars and over whose employees they do not have any control and with whom they do not come in contract. The. provisions of section 2 (g) (a) and 2(m) read with sections 2(e) and (f) of the Act are said to create a totally artificial and fictional definition of employer and thereby to cast vicarious liabilities upon a manufacturer of and trader in beedis in respect of diverse matters which entail civil and criminal liabilities. Liabilities are imposed on manufacturer or trader in beedis in respect of home workers whom it is said, they cannot control. The home workers are in thousands. It is impossible for a manufacturer to have any idea of the identity of the persons rolling beedis or the premises where they work. Raw materials are delivered to workers to do the work of rolling the beedis himself and not having done by any other person. It is, therefore, said there is no rational basis for imposing vicarious liability. Though liabilities and obligations are great in relation to contract labour there is said to be no corresponding creation of rights which normally exist in employer in respect of his employees. The cumulative effect and impact of the various provisions of the Act imposing liability on the manufacturer is said to render it impossible for the manufacturer or trader to carry on his business. From a commercial point of view, the restrictions are said to be drastic and unreasonable.

40.The present legislation is intended to achieve welfare benefits and amenities for the labour. That is why the manufacturer or trade marks holder becomes the principal employer though he engages contract labour through the contractor. He cannot escape liability imposed on him by the statute by stating that he has engaged the labour through a contractor to do the work and therefore he is not responsible for the labour. The Contractor in such a case employs the labour only for and on behalf of the principal employer. The contractor being an agent of the principal employer for manufacturing beedis is amenable to the control of principal employer. That is why the statute says that even if the contract engages labour without the knowledge of *the employer the principal employer is answerable for such labour because the labour is engaged for or on his behalf. The act and the Rules thereunder prescribe maintenance of log books and registers. Where the manufacturer or the trade mark holder engages labour directly, the manufacturer maintains registers and lo books. Where the manufacturer engages contract labour through a contractor the manufac- turer will require the contract or to maintain such log books of the contract labour and through such books and registers win keep control over not only the contractors but also the labour.*

41.The principal employer is the real master of the business. He has real control of the business. He is held liable because he exercises supervision and- control over the labour employed for and on his behalf by contractor. The benefits of the welfare measure reach the workmen only by direct responsibility of the principal employer. The basis of the welfare measure is in the interest of the workers with regard to their health, safety and wages including benefits of leave and family life. The Bombay High Court and the Kerala High Court struck down the provisions contained in sections 2(g)(a) and 2(m) of the Act in regard to the principal employer being liable for contract labour as an unreasonable restriction on the manufacurer's right to carry on business. This view proceeds on the basis that the principal employer is liable for acts of the independent contractor. The Act does not define an independent contractor, nor mention the independent contractor.' The Act speaks of the principal employer in relation to contract labour and employer in relation to other labour. When a contractor engages labour for or on behalf of another person that other person becomes the principal employer. The Attorney General rightly said that if it were established on the facts of any particular case that a person engaged labour for himself he would be the principal employer of contract labour. In such an instance there is no question of agency on behalf of another person."

11. In view of this settled proposition and also by taking into account that there were sufficient materials before the Controlling Authority, as well as the Appellate Authority evidencing that the petitioner was employed from 01.12.1985 onwards, it has necessarily to be held that the Appellate Authority was not correct in holding otherwise.

12. In view of this settled proposition, there can be no further doubt that the second respondent would be the principal employer of the petitioner, though she was engaged initially by the third respondent's father and thereafter with the third respondent.

13. In the result, the order of the Appellate Authority dated 02.08.2002 passed in P.G.Appeal No.23/2001 is set aside, confirming the order of the Original Authority dated 04.08.2000 in P.G.case No.44/1997 and the interest awarded by the Original Authority is modified from 8% to 8.5% per annum. Consequently, the second respondent shall pay the petitioner a sum of Rs.7,449/- towards gratuity together with interest at 8.5% from 01.08.1997 till the date of payment. As such, the above payment shall be made preferably within a period of 60 days from the date of receipt of a copy of this order. In case, the second respondent herein has made any deposit before the Controlling Authority, the petitioner shall be entitled to withdraw the same and claim for the balance gratuity from the second respondent.

14. With the above observations and direction, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Joint Commissioner of Labour, Appellate Authority
under the Payment of Gratuity Act, Madurai - 20.

+1 cc to M/s.V.Ajoy Khose,Advocate Sr.No. 14504
+1 cc to The Government Pleader Sr.No.15123

AKM/20.09.19/6P-4C /

WP. No.10048 of 2004