

THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.09.2019
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.Nos.13579 to 13587 of 2004
and
W.M.P.Nos.15931 to 15939 of 2004

W.P.No.13579 of 2004

The District Manager,
Food Corporation of India,
Tuticorin - 628 001

..Petitioner's in all WP's

vs

- 1.A.Shanmugakani Respondent in WP. 13579/04
1)P.Arumugavadivoo First Respondent in WP. 13580/04
1)C.Shanmugavadivu First Respondent in WP. 13581/04
1)G.Veeranagammal First Respondent in WP. 13582/04
1)P.Ponnammal First Respondent in WP. 13583/04
1)T.Annamalai Ammal First Respondent in WP. 13584/04
1)P.Muthammal First Respondent in WP. 13585/04
1)A.Parvathy First Respondent in WP. 13586/04
1)A.Thangakani First Respondent in WP. 13587/04

2.The Appellate Authority,
Under the Payment of Gratuity Act and
Regional Labour Commissioner(Central)
Chennai.

3.The Controlling Authority,
Under the Payment of Gratuity Act and
Assistant Labour Commissioner(Central)
Madurai. ...Respondents 2 & 3 in all WP's

Common Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the second respondent relating to order dated 08.03.2004 made in Gratuity Appeal No.284, 285, 286, 287, 288, 289, 290, 291 & 292 of 2003, confirming the Order of the 3rd Respondent dated 28.02.2003/07.04.2003 made in G.A.No.1,

2, 3, 4, 5, 6, 7, 8 & 9 of 2002 and to quash the same.

For Petitioner : Mr.A.S.Thambuswamy
(in all W.Ps)

For Respondents : R1 - Mr.S.Arunachalam
(in all W.Ps)
No appearance for R2 & R3
(in all W.Ps)

C O M M O N O R D E R

The orders impugned passed by the 2nd respondent dated 08.03.2004 passed in Gratuity Appeal Nos.284, 285, 286, 287, 288, 289, 290, 291 & 292 of 2003, confirming the order of the 3rd respondent dated 28.02.2003/7.4.2003 made in G.A.Nos.1, 2, 3, 4, 5, 6, 7, 8 & 9 of 2002 respectively are sought to be quashed in the present writ petitions.

2. The writ petitioner is the Food Corporation of India. The learned counsel for the writ petitioner states that the respondent workman in all the writ petitions were initially engaged by the Labour Cooperative Society, which is a Cooperative Society registered under the provisions of the Tamil Nadu Cooperative Societies Act, the administration of the Cooperative Society is no way connected with the administration of the Food Corporation of India. The society was a separate legal entity and registered under the Tamil Nadu Cooperative Societies Act and therefore, the engagement of a Labour Cooperative Society is only a contract employment and no way connected with the employment of the Food Corporation of India. In other words, when the respondent workman were engaged by the Labour Cooperative Society, there was no employer-employee relationship existed between the Food Corporation of India as well as the respondent workman.

3. Thus, the contract labourers engaged by the Cooperative Society were subsequently considered for payment under the Direct Payment System by the Food Corporation of India. These contract labourers were performing the ancillary duties for the Food Corporation of India through the Cooperative society, the Food Corporation of India brought them under the Direct Payment System and thereafter, they are entitled for gratuity under the provisions of the Gratuity Act, 1972.

4. In this regard, the fact remains that the remains that the respondent workman were brought under the Direct Payment

System by the Food Corporation of India in the year 1997 and they worked for three years and relieved from service in the year 2000. In view of the fact that these workman were completed the minimum requirement period of five years, they are not entitled for gratuity under the provisions of the Gratuity Act and accordingly, the writ petitioner not paid the gratuity under the scheme. However, the respondent workman approached the Controlling Authority under the Payment of Gratuity Act and the Controlling authority allowed the claim, stating that the reckoning of the qualifying service is to be taken into account from the date of appointment made by the Labour Cooperative Society. Based on the services rendered in the Cooperative Society, the Controlling authority directed the Food Corporation of India to settle the gratuity under the Gratuity Act. The writ petitioner preferred an appeal before the Appellate authority, who in turn, confirmed the order of the Controlling Authority, against which, the present writ petition is filed.

5. The learned counsel for the writ petitioner reiterated that these workmen were not the employees of the Food Corporation of India and they were engaged by the Labour Cooperative Society, which is a separate society registered under the Tamil Nadu Cooperative Societies Act and the Food Corporation of India is a Principal employer. The Principal employer is not liable in respect of the service benefits and the Principal employer has settled the wages as per the terms and conditions of the agreement with the Cooperative society. Thus, the services of the contract labourers engaged by the Labour Cooperative society cannot be taken into account for the purpose of calculating the services rendered by such contract labourers as a direct payment employees under the Food Corporation of India.

6. This being the principles to be followed, this Court is of an opinion that the services rendered as a casual labourers with the Cooperative society cannot be counted for the purpose of calculating the minimum required service with reference to Section 4(1) of the Payment of Gratuity Act, 1972. As per Section 4(1) of the Payment of Gratuity Act, the minimum service of five years is the qualification for the purpose of granting payment of gratuity under the Act. The respondent workman had served about three years with the Food Corporation of India as direct payment employees and therefore, the services rendered by them with the Labour Cooperative society cannot be reckoned as a qualifying services for the purpose of settling gratuity with reference to Section 4(1) of the Act.

7. The learned counsel for the respondent workman opposed the contention by stating that all along these employees are working with the Food Corporation of India. Though they were initially engaged by the Labour Cooperative Societies, they were performing the duties and responsibilities in the Food

Corporation of India and performed the ancillary jobs. Thus, the gratuity is to be paid by calculating the period of services rendered by them with the society.

8. The learned counsel for the 1st respondent made a submission that in the case of Management of D.C.Dewan Mohideen Sahib and Sonas Vs. Secretary, United Beedi Workers' Union Salem and another, reported in AIR 1966 SUPREME COURT 370, the Hon'ble Supreme Court of India held as follows:

"7. The question whether relationship of master and servant subsists between an employer and employee has been the subject of consideration by this Court in a number of cases. In Dharangadhara Chemical Works Limited v. State of Saurashtra [(1957) SCR 152] it was held that the question whether a person was a workman depended on whether he had been employed by the employer and the relationship of employer and employee or master and servant subsisted between them. It was well-settled that a prima facie test of such relationship was the existence of the right in the employee not merely to direct what work was to be done but also to control the manner in which it was to be done, the nature or extent of such control varying in different industries and being by its very nature incapable of being precisely defined. The correct approach therefore was to consider whether, having regard to the nature of the work there was due control and supervision by the employer. It was further held that the question whether the relation between the parties was one as between an employer and employee or master and servant was a pure question of fact, depending upon the circumstances of each case. In that case, the dispute was whether certain agarias who were a class of professional labourers, were workmen or independent contractors. The facts found in that case were that the agarias worked themselves with members of their families and were free to engage extra labour on their own account. No hours of work were prescribed. No muster rolls were maintained; nor were working hours controlled by the master. There were no rules as regards leave or holidays and the agarias were free to go out of the factory after making arrangements for the manufacture of salt. Even so, though certain features which were usually to be found in a contract of service were absent, the tribunal held that on the whole the status of agarias was that of workmen and not that of independent contractors, particularly as supervision and control was exercised by the master extending to all stages of manufacture from beginning to end. This Court upheld the view of the tribunal on a review of

the facts found in that case."

9. The learned counsel for the 1st respondent reiterated that as per the Hon'ble Supreme Court of India judgment, the employer-employee relationship exists between the 1st respondent and the writ petitioner and therefore, the writ petition is liable to be rejected.

10. However, this Court is of an opinion that the Hon'ble Supreme Court of India held that the nature of the work and the due control and supervision by the employer are to be taken into consideration for the purpose of deciding the employer-employee relationship.

11. In the present case on hand, the respondent workman had served about three years with the Food Corporation of India as direct payment employees. In respect of their earlier services, they were employed in the Labour Cooperative Society, which is a separate legal entity and the terms and conditions of the appointment in the cooperative societies is unconnected with the engagement of the workman under the Food Corporation of India. Therefore, this Court cannot come to the conclusion that the workman were under the direct control and supervision of the Food Corporation of India, so as to consider their services rendered with the Cooperative society. Thus, the facts are dissimilar and the judgment of the Hon'ble Supreme Court of India is of no avail to the 1st respondent workman.

12. This Court is of an opinion that such a contention is contrary to the settled principles of law as there was no employer-employee relationship existed between the Food Corporation of India as well as the respondent workman prior to their observation as direct payment employees. The services rendered by them in a Cooperative society cannot be reckoned as a qualifying services for the purpose of calculating minimum services as contemplated under Section 4(1) of the Gratuity Act.

13. This being the factum, the respondents have committed an error in considering the case of the workmen for payment of Gratuity under the Act. In respect of the services rendered by these workmen with the cooperative society, they may be eligible to claim gratuity with the society under the provisions of the Tamil Nadu Cooperative Societies Act or under the Payment of Gratuity Act, whichever is applicable. Thus, the respondent workman are at liberty to approach the competent authorities, claiming gratuity in respect of their services rendered with the Labour Cooperative Society and as far as the Food Corporation of India is concerned. The workmen, if at all completed five years of minimum services as contemplated under Section 4(1) of the Payment of Gratuity Act, they would be eligible and not otherwise.

14. Under these circumstances, the orders impugned passed by the 2nd respondent dated 08.03.2004 passed in Gratuity Appeal Nos.284, 285, 286, 287, 288, 289, 290, 291 & 292 of 2003, confirming the order of the 3rd respondent dated 28.02.2003/7.4.2003 made in G.A.Nos.1, 2, 3, 4, 5, 6, 7, 8 & 9 of 2002 respectively are quashed and accordingly, all the writ petitions stand allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

kak

To

- 1.The Appellate Authority,
Under the Payment of Gratuity Act and
Regional Labour Commissioner(Central)
Chennai.
- 2.The Controlling Authority,
Under the Payment of Gratuity Act and
Assistant Labour Commissioner(Central)
Madurai.

+1cc to Mr.A.S.Thambusamy, Advocate, S.R.No. 82777

W.P.Nos.13579 to 13587 of 2004

NR(CO)
GN(27/11/2019)

WEB COPY