

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.10.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.23087 of 2004
and
W.M.P.No.27919 of 2004

The Management of Saba Industries Pvt Ltd.,
(Erstwhile Management of Barani Enterprises (Madras) Pvt Ltd),
239/6, 7 & 8 Kalitheerthal Kuppam Village
Madagadipet Post,
Pondicherry 605 107,
rep by its Director Mr.S.K.Sabapathi ... Petitioner

..Vs..

1. Joint Commissioner of Labour
(Appellate Authority under the Payment of Gratuity Act),
DMS Complex, Teynampet,
Chennai - 600 006.
2. Assistant Commissioner of Labour,
(Controlling Authority under the Payment of Gratuity Act),
DMS Complex, Teynampet,
Chennai - 600 006.

3.H.Indra

4.M.Sudha

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent in PG Appeal Nos. 5 & 6 of 2004 and quash its order dated 14.07.2004 confirming the order of the 2nd respondent in PG Case Nos.96/03 & 56/03 in terms of its order dated 10.11.2003.

For Petitioner : Mr.Anand Gopalan
for T.S.Gopalan and Co.
For Respondents : Mr.J.Ramesh
Additional Government Pleader
for R1 & R2
No Appearance for R3 & R4

O R D E R

The writ on hand is filed to quash the order passed by the first respondent in PG Appeal Nos. 5 & 6 of 2004 confirming the order of the second respondent dated 10.11.2003 passed in PG Case Nos.96/2003 and 56/2003.

2. The petitioner is the Management of Saba Industries Private Limited. The learned counsel for the writ petitioner states that the third respondent workman was in employment of the Erstwhile Management for some period and thereafter she ceased to be in employment with effect from 30.06.2001. The petitioner Management states that the workman was in employment only from the year 1995 and therefore, the claim itself is not proper and accordingly, contested the case for the dismissal of the gratuity cases.

3. The learned counsel for the writ petitioner states that the Management is not denying the gratuity for the workmen. Contrarily, they are disputing the quantum of amount fixed by the Authorities / respondents 1 and 2. The error committed by the respondents 1 & 2 are regarding the consideration of last drawn basic wages paid to the workmen by the writ petitioner Management.

4. The learned counsel for the writ petitioner states that the gratuity is to be calculated strictly with reference to the last drawn basic wages and the principles in this regard are settled by the Hon'ble Supreme Court of India in the case of TI Cycles of India, Ambattur vs. M.K.Gurumani and others reported in (2001) 7 Supreme Court Cases 204 and the relevant paragraph is extracted hereunder:

"17.The authorities were carried away by considering that the bonus is payable on the basis of output equivalent to certain pieces per man day. But it is made clear in the Scheme that each payment will be made not on the basis of pieces of per man day nor is it a piece-rate work for which wages are paid but it is an additional incentive for payment of bonus in respect of extra work done. The measure of extra work done is indicated by pieces and not wages as such that are paid on that basis. It is not that in respect of each piece any wages are paid but altogether if certain number of pieces are produced, additional incentive will be payable at a particular rate.

Therefore, the authorities have completely missed the scope of the scheme and have incorrectly interpreted the same. Inasmuch as both the High Court and the authorities have incorrectly understood the position in law and have wrongly held that the concept of "wages" under the Act would include bonus and that even on facts the scheme would attract Section 4(2) of the Act. Proviso to Section 4(2) of the Act is to the effect that in case of a piece-rated employee, daily wages shall be computed in a particular manner but that is not the rate at which the wages are paid in the present case at all. Therefore, Section 4(2) of the Act is not attracted in the case of the present scheme with which we are concerned."

5. Now it is settled that the last drawn basic wages are to be taken into account for the purpose of calculating the gratuity to be payable to the workmen. Under these circumstances, the learned counsel for the writ petitioner Management submitted the following calculation sheet in respect of the gratuity to be paid to the workmen and the said calculation is extracted hereunder:

	Mrs.Sudha Madhavan	Mrs.Indhra Hariharan
Date of joining	1987	1980
Date of resignation	2001	2001
No.of years of service	15	21
Basic wages at the time of resignation	Rs.3600/-	Rs.5750/-
Gross Wages	Rs.5900/-	Rs.9829/-
Gratuity claimed in application	Rs.31,154/-	Rs.87,000/-
Gratuity computed by authority with interest	Rs.56,163/-	Rs.1,46,868/-
Gratuity as per Act	Rs.31,154/-	Rs.69,663/-

6. The workmen are not represented through any counsel and the adjournments were granted by this Court on 19.09.2019 and on 27.09.2019. However, there was no representation on behalf of the respondents 3 & 4 / workmen. Under these circumstances, the last drawn basic wages paid to these workmen is to be taken into

account for the purpose of calculation of gratuity.

7. The learned counsel for the petitioner Management states that the amount of gratuity had already been deposited with the second respondent at the time of filing of the Gratuity Appeal before the first respondent. Thus, the amount now arrived by the writ petitioner Management shall be paid with accrued interest to the respondents 3 & 4.

8. This Court is of the considered opinion that keeping this writ petition pending further would not serve the purpose. The respondents 3 & 4 workmen are not represented either in person or through counsel for the last two hearings. Thus, this Court is inclined to accept the calculation sheet filed by the Management in the interest of the respondents 3 & 4. In the event of keeping this writ petition pending for an unspecified period, they cannot get the gratuity amount as already 15 years lapsed. Thus, the interest of the workmen is also to be protected and accordingly the following orders are passed:

1. The order passed by the first respondent in PG Appeal Nos.5 & 6 of 2004 dated 14.07.2004, confirming the order of the second respondent passed in PG Case Nos.96/03 & 56/03 in terms of its order dated 10.11.2003 are quashed.

2. The petitioner Management is directed to settle the gratuity amount of Rs.31,154/- to the 4th respondent and Rs.69,663/- to the third respondent respectively, as the amount has already been deposited before the second respondent. The respondents 3 & 4 are at liberty to file an appropriate application before the second respondent for the disbursement of the said amount and in the event of receiving any such application, the second respondent is directed to pay the above mentioned amount to the respondents 3 & 4 with accrued interest within a period of four weeks from the date of receipt of application from the respective workmen concerned. The balance amount, if any, to be repaid to the petitioner Management. The respondents 3 & 4 are at liberty to redress their grievances if any exist after receiving the gratuity amount.

9. Accordingly, the writ petition stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Pns

To

1. Joint Commissioner of Labour
(Appellate Authority under the Payment of Gratuity Act),
DMS Complex, Teynampet,
Chennai - 600 006.

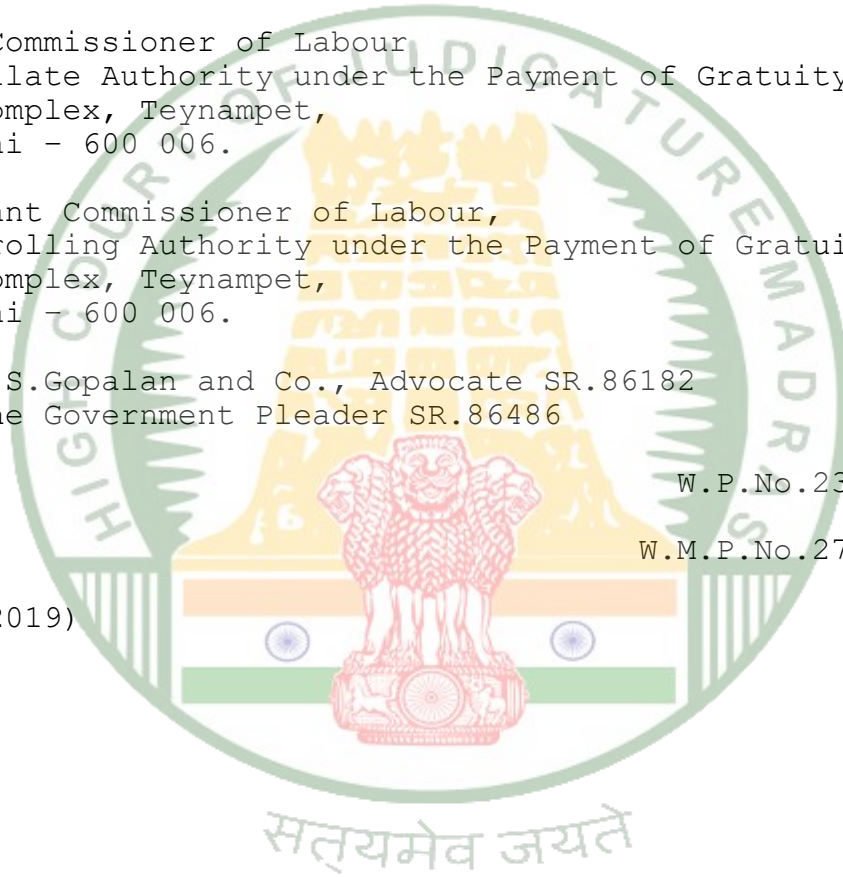
2. Assistant Commissioner of Labour,
(Controlling Authority under the Payment of Gratuity Act),
DMS Complex, Teynampet,
Chennai - 600 006.

+1cc to T.S.Gopalan and Co., Advocate SR.86182

+1cc to the Government Pleader SR.86486

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PA(CO)
CB(21/11/2019)



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