

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-10-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.NO.33744 OF 2004

And

W.P.M.P.No.40804 of 2004

Coimbatore South Sarvodaya Sangam

Represented by its Secretary P.Velusamy

No.33, New Bheemar Agraharam,

Dharapuram, Erode District.

..Petitioner

vs.

1.Assistant Commissioner of Labour,
(Authority under the Payment of Gratuity
Act, 1972), Salem - 7.

2.P.Venkatachalam

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to order No.A4/2775/2004 dated 05.04.2004 of the first respondent herein and quash the same and further direct the first respondent to rehear P.G.No.66 of 2002 after giving reasonable opportunity for both sides.

For Petitioner : Mr.V.Suthakar

For Respondent-1: Mr.J.Ramesh,
Additional Government Pleader

For Respondent-2: Mr.V.P., Sengottuvel.

O R D E R

The order, dated 05.04.2004, issued by the first respondent, is sought to be quashed and a further direction is sought for to direct the first respondent to rehear P.G.No.66 of 2002 after providing opportunity to both sides.

2. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner is carrying on the business of promoting and selling Khadi Crafts at various places in Dharapuram. The writ petitioner-Sarvodaya Sangh is affiliated with the Tamil Nadu Sarvodaya Sangh and coming under the control of Khadi and Village Industries Commission, Mumbai.

3. The grievance of the writ petitioner, in short, is that the second respondent-employee filed a petition under the provisions of the Gratuity Act, claiming gratuity.

4. The contention of the writ petitioner is that they had already settled the gratuity and the goodwill amount alone is not paid to the second respondent-employee, as he was not found eligible for the said amount. Thus, the goodwill amount was not paid to the second respondent-employee on par with other employees. Thus, the claim of the second respondent-employee was not gratuity and he is attempting to convert the goodwill amount as gratuity amount by filing a petition under the provisions of the Gratuity Act. However, it is contended that the first respondent passed an ex parte order, stating that on the date of hearing, there was no representation on behalf of the writ petitioner-Sarvodaya Sangam and accordingly, passed an order.

5. The learned counsel appearing on behalf of the writ petitioner states that they are ready and willing to appear for re-hearing in the event of remanding the matter back to the first respondent.

6. The learned counsel appearing on behalf of the second respondent-employee disputed the said contention of the learned counsel for the writ petitioner by stating that the claim of the second respondent is about gratuity and the writ petitioner had not settled the gratuity on par with other similarly placed employees, which prompted the second respondent-employee to file a petition before the first respondent under the Gratuity Act. This apart, on account of the fault committed by the writ petitioner, the second respondent should not be made to suffer for a long time.

7. This Court is of the considered opinion that the issue raised by the writ petitioner is that the gratuity amount has already been settled and the goodwill amount, which was paid to the other employees, was not paid to the second respondent, as he was found not eligible for the said amount. Such an issue cannot be adjudicated in the present writ petition, as the disputed issues are to be adjudicated through documents and by adducing evidences.

8. Admittedly, the order impugned dated 05.04.2004 is an ex parte order. The issues were not adjudicated on merits and in accordance with law. Under these circumstances, the rights of the second respondent-employee cannot be crystallised in this writ petition based on the ex parte order and more-so, the issues are also to be adjudicated with reference to the records and the rights of the second respondent-employee.

9. Under these circumstances, the order impugned dated 05.04.2004, passed by the first respondent pertaining to order No.A4/2775/2004, is quashed. The first respondent is directed to restore P.G.No.66 of 2002 on file and adjudicate the same by affording opportunity to all the parties concerned and pass orders on merits and in accordance with law, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

10. It is made clear by the writ petitioner that even in case of any dues regarding gratuity, they are willing to settle the same in accordance with the provisions of the Gratuity Act. Thus, the right of the second respondent-employee for receiving the gratuity is also admitted by the writ petitioner-Management.

11. With the above directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Svn

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner of Labour,
(Authority under the Payment of Gratuity
Act, 1972), Salem - 7.

+2cc to Mr.V.P.Sengottuvel, Advocate, SR.No.88158 & 88200
+1cc to the Govt.Pleader, Vide Sr.No.88236

सत्यमेव जयते

W.P.No.33744 of 2004

Kak(20/11/2019)

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