

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 20.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.20776 of 2005
and
WP.MP.No.22689 of 2005

Krishnaveni Textile Mills
Rep. By its General Manager,
Singanallur,
Coimbatore.

...Petitioner

Vs

1.The Appellate Authority
Under the Payment of Gratuity Act,
Regional Labour Commissioner
(Central), No.4. Haddows Road,
Chennai-600 006.

2.The Assistant Labour Commissioner,
(Central-I)
No.4. Haddows Road,
Chennai-600 006.

3.L.Durairaj

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate Writ, Order or Direction calling for the records of the 1st Respondent in Gratuity Appeal No.14 of 2003 dated 11.03.2005, confirming the order of the 2nd respondent in Gratuity Application No.14 of 2002 dated 11.11.2002 and quash the same.

For Petitioner : Mr.R.Parthiban

For Respondents: Mr.A.Kumaraguru, SCCG
for R1 & R2

No appearance for R3

O R D E R

When the advance amount received by the 3rd respondent was withheld at the time of paying statutory amount, the 3rd respondent filed an application before the 2nd respondent

claiming the balance gratuity amount of Rs.17,426.21/-. The said application came to be ordered, as against which, the Management have filed an appeal before the 1st respondent, which was also dismissed, as against the same, the present writ petition has been filed.

2. It is seen that in identical circumstances, this Court had rejected the Management's claim as raised in this writ petition in an order dated 10.02.2011 in WP.No.32319 of 2004. The observations of this Court in the said order is as hereunder:

"3. The short question that arises for consideration is whether the stand of the management that in view of the receipts given by the workmen dated 11.7.2000 undertaking that they will not claim any more amounts either in law or in equity from the mill, the amounts received were vouchsafed as the full discharge of the liability of the management. According to the petitioner management, the management faced a severe loss from the accounting year 1991-1992. In view of the pecuniary limit under the Payment of Bonus Act, majority of the workmen have gone out of the provisions of Payment of Bonus Act. However, the workmen were insisting for payment during the Deepavali period.

4. Therefore, for the accounting year 1996-1997, on 23.10.1997, a settlement was reached under Section 18(1) of the Industrial Disputes Act with the recognised unions, by which in respect the workmen, whose wages exceeding Rs.3,500/- per month, were to be paid an advance, which will be equivalent to bonus and exgratia payable. The mode of adjustment of the advance was to be subsequently discussed with the Trade Unions and decided. For the year 1997-1998, the management also put up a notice on 5.11.1999 stating that those workmen who are not covered by the Payment of Bonus Act will be given an advance on condition that the management will seek the Central Government's sanction funds towards the repayment of the advance. If the Central Government agreed for the waiver, the amounts will not be recoverable. But, however, in case of refusal by the Central Government, the issue will be sorted out between the authorities.

5. On 26.7.1999, the Central Government rejected the waiver of repayment of advance amount. The workmen did not repay the amounts even on monthly instalments. Therefore, the management at the time of their resignation or retirement adjusted those amounts from the terminal dues payable. After adjusting the

advance already made, the contesting respondents were paid their statutory gratuity. Notwithstanding the same, the workmen approached the 2nd respondent with different Gratuity Applications 7 of 2001 to 17 of 2001 claiming the unpaid gratuity. The authority issued Notices to the petitioner mill. The petitioner mill appeared before the authority and contended that the quit receipt passed on by each of the workmen at the time of leaving their service can operate an estoppel against their claim for unpaid gratuity. Since the management had paid the recoverable advance, it is not open to them to claim the difference in gratuity, which had been adjusted against the advance already paid.

6. Before the 2nd respondent authority, reliance was placed upon the judgment of the Bombay High Court in *Air India Ltd., vs. Appellate authority under Payment of Gratuity Act, 1972* and *Regional Labour Commissioner (Central), Bombay and others* reported in 1999 (1) LLN 905. The Bombay High Court in paragraphs 12 and 26 held as follows:

"12... It would be evident from the above provisions that S.13 of the Gratuity Act protects gratuity from being attached in execution of any decree or order of any civil, revenue or criminal court. Section 14 makes it clear that the provisions of the Gratuity Act or any rule made thereunder shall have overriding effect notwithstanding anything inconsistent therewith contained in any other enactment or any instrument or contract...

26. Even assuming that there was a valid assignment by virtue of the provisions of Cl.21 of the agreement of leave and licence, in my view, the provisions of S.14 will override such an assignment.

7. Therefore, the management cannot refuse to pay the entire gratuity on the plea that they are entitled to adjust the advance paid to the workmen from the gratuity payable. Again the identical orders passed by the Controlling Authority dated 1.1.2003, the management preferred appeal under Section 7(7) of the Payment of Gratuity Act, 1972 before the 1st respondent appellate authority. Their appeals were numbered as Gratuity Appeal Nos.241 to 250, 252, 253 of 2003. Notices were issued to the contesting respondents. As a condition of pre-deposit required to be made for maintaining the appeals, the management had also deposited the amount with the 2nd respondent.

8. Before the appellate authority, once again similar contentions were raised. The appellate authority relied upon Section 13, whether the gratuity was freed from attachment even against court decrees. He also referred to Section 14 of the Payment of Gratuity Act, 1972 by which only better terms of payment of gratuity has been protected. That itself will show there cannot be payments less than the statutory requirement. Therefore, the authority held that the quit receipt cannot take away the claim for the legitimate gratuity amount. The receipts cannot be construed as if the workmen have given up their right to receive full gratuity. Thus, the appeals were dismissed by a common order dated 14.8.2004. It is against those order, the Writ Petition came to be filed.

9. Mr. John, learned counsel appearing for M/s.T.S.Gopalan and Co., contended that since the amounts have been paid already as a recoverable advance, it is not open to the workmen to claim anything more inspite of furnishing quit receipts as referred to above. In the present case, the receipts given by the workmen do not make the reference to any gratuity. In fact, the receipts were printed were in English. It was typed under the text of the receipt that it was translated to the workmen in Tamil and they have understood the same and have signed those receipts. Since the text of the receipts were not make clear, the workmen could not have understood that gratuity was also one of the item covered therein. The text of the undertaking shows that the workman understood not to make claim of any kind either in law or in equity against the mill on any account and that the mill can accept this as voucher of full discharge. It was also found in those receipts that he will not make any claim towards the closure period until the Writ Petition filed by the petitioner was determined by this Court.

10. Even assuming that the workman had stated that he will not make any claim in law, such an undertaking is clearly hit by Section 14 of the Payment of Gratuity Act, 1972 as held by the respondents 1 and 2. However, adjustment of the recoverable advance even if it is treated as decree of

the civil court, the Payment of Gratuity cannot be attached or adjusted in the absence of any law to the contrary. In view of the non-obstante clause under Section 14, the refusal made by the petitioner mills is misconceived and not supported by law. Hence, the Writ Petition stands dismissed. No costs. The connected Miscellaneous Petition stands closed.

11. In view of the dismissal of the Writ Petition, the contesting respondents are entitled to withdraw the amount lying in deposit with the 2nd respondent."

3. The above order is as self explanatory. In view of the same, I do not find any infirmity in the orders passed by the 1st respondent herein in Gratuity Appeal No.14 of 2003 dated 11.03.2005, confirming the order of the 2nd respondent in Gratuity Application No.14 of 2002 dated 11.11.2002.

4. It is now brought to the notice of this Court that at the time of filing the appeal before the 1st respondent, the petitioner had deposited a sum of Rs.17,426.21 before the 2nd respondent. In view of the dismissal of the writ petition, the 3rd respondent would be entitled to withdraw the aforesaid amount deposited by the Management.

5. Hence, the writ petition stands dismissed, with the above liberty. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

hvk

To

1.The Appellate Authority
Under the Payment of Gratuity Act,
Regional Labour Commissioner
(Central), No.4. Haddows Road,
Chennai-600 006.

WEB COPY

2.The Assistant Labour Commissioner,
(Central-I)
No.4. Haddows Road,
Chennai-600 006.

+lcc to Mr.R.Parthiban, Advocate sr.no.26334

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