

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22727 of 2005

Kaleeswarar Mills 'A' Unit,
Rep by General Manager,
Coimbatore - 641 009.Petitioner

Vs.

1. The Appellate Authority,
Under the Payment of Gratuity Act,
Regional Labour Commissioner (Central),
No.4, Haddows Road,
Chennai - 600006.
2. The Assistant Labour Commissioner,
(Central - I)
No.4, Haddows Road,
Chennai - 600006.
3. A.ThangaveluRespondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent in Gratuity Appeal No.431 of 2003 dated 11.03.2005, confirming the order of the 2nd respondent in Gratuity Application No.64 of 2001 dated 20.03.2003 and quash the same.

For Petitioner : Mr.R.Parthiban

For Respondents: No appearance

ORDER

The order dated 11.03.2005 passed by the first respondent in Gratuity Appeal No.431 of 2003 confirming the order of the second respondent in Gratuity Application No.64 of 2001 dated 20.03.2003 are sought to be quashed in the present writ petition.

2. The writ petitioner - Kaleeswarar Mills 'A' Unit is one of the Unit Mills of National Textile Corporation Limited, which is a Public Sector Undertaking functioning under the control of Ministry of Textiles, Government of India. The third respondent/workman approached the Controlling Authority under the payment of Gratuity Act, 1972 for settlement of gratuity amount. The Controlling Authority passed an order on 20.03.2003 directing the writ petitioner/Management to pay a sum of Rs.10,652.73/- as gratuity to the applicant within a period of 30 days along with an interest rate of 10% from the date it is payable till the date of payment. Challenging the said order of the Original Authority, the writ petitioner preferred a Gratuity Appeal before the Appellate Authority and the Appellate Authority also passed an order on 11.03.2005, dismissing the appeal and the writ petitioner was further directed to pay the balance gratuity claimed by the workman and as per the direction of the Controlling Authority along with interest as per the provisions of the Act and Rules. Challenging these two orders, the writ petition is filed.

3. It is brought to the notice of this Court that the very same issue, raised by the writ petitioner, has been decided by this Court in WP.No.20776 of 2005 dated 20.03.2019.

4. The above order was passed, based on the circumstances in an identical case where the Court has rejected the claim of the Management in order dated 10.02.2011 in WP.No.32319 of 2004. The observations by this Court in the said order is extracted 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."

5. In view of the orders cited supra, the claim of the Management raised in the present writ petition deserves no merit of consideration. Accordingly, the writ petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sni
To

1. The Appellate Authority,
Under the Payment of Gratuity Act,
Regional Labour Commissioner (Central),
No.4, Haddows Road,
Chennai - 600006.
2. The Assistant Labour Commissioner,
(Central - I)
No.4, Haddows Road,
Chennai - 600006.

+1cc to Mr.R.Parthiban , Advocate SR.No. 78781

W.P.Nos.22727 of 2005

A.SK(30/10/2019)