

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.09.2019

CORAM

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

W.P.No.5097 of 2019
and
W.M.P.No.5818 of 2019

M/s.NKCM Spinners Private Limited
Rep.by its Director,
Salem Main Road, Ethirmedi,
Valaiykarapur Post, B.Komarapalayam,
Namakkal - 638 183.Petitioner

vs

1.The Additional Commissioner of Labour,
Coimbatore.

2.The Deputy Commissioner of Labour,
Salem.

3.K.RamanathanRespondents

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 impugned order dated 26.12.2018 passed in AGA.No.32 of 2018, confirming the order of the 2nd respondent dated 16.04.2018 made in P.G.No.75 of 2017 and quash the same as illegal, arbitrary and unlawful and pass such further or any other appropriate order as this Hon'ble Court may deem fit and pass such further or any other appropriate order as this Hon'ble Court may deem fit and proper to the circumstances of this case and thus render justice.

For Petitioner : Mr.S.Viswanathan
For M/s.Das and Viswa Associate

For Respondents: Mr.A.Zakir Hussain
Government Advocate for R1 & R2

Mr.N.Manokaran for R3

O R D E R

The order dated 26.12.2018 passed in AGA.No.32 of 2018, confirming the order of the 2nd respondent dated 16.04.2018 made in P.G.No.75 of 2017 is under challenge in the present writ petition.

2. The writ petitioner is M/s.NKCM Spinners Private Limited. Admittedly, the 3rd respondent was an employee of the writ petitioner company. The 3rd respondent has joined in the company of the writ petitioner as a casual labourer on 03.12.2003. Subsequently, he left the job and he was permitted to rejoin on 01.07.2009. The learned counsel appearing on behalf of the writ petitioner company states that the writ petitioner was permitted to rejoin as a fresh entrant and therefore, he cannot claim any continuity of service from the year 2003 onwards for the purpose of payment of gratuity under the Gratuity Act.

3. The contention of the writ petitioner is that the 3rd respondent workman, citing his health conditions, resigned the job in the year 2016 and all the benefits due to him were already settled. However, the workman claimed that he is entitled for gratuity by reckoning the period of service rendered from the year 2003 onwards. However, the said claim is disputed by the Management on the ground that the petitioner was not at all in service from the year 2007 to 2009 and he was permitted to rejoin duty from the year 2009 as a fresh appointee and therefore, he is not entitled to claim gratuity from the period from 2007 to 2009 and in respect of other claims, the writ petitioner Management is ready and willing to settle.

4. The workman filed a petition before the Deputy Commissioner of Salem in P.G.No.75 of 2017 to settle the gratuity by reckoning the period of service from the year 2003 onwards. The 2nd respondent adjudicated the issues and passed an order on 16.04.2018, allowing the petition filed by the workman. Accordingly, the gratuity amount of Rs.90,750/- (Rupees Ninety Thousand Seven Hundred and Fifty only) was fixed by the original authority and the writ petitioner Management was directed to settle the said amount of gratuity within a period of thirty(30) days along with 10% interest from 01.11.2016 onwards.

5. Challenging the said order of the Deputy Commissioner of Labour, the Management preferred an appeal before the Additional Commissioner of Labour, Coimbatore in AGA.No.32 of 2018. The Appellate Authority also adjudicated the issues and considered the claim of the workman on the basis of the documents produced by the respective parties. The findings of the Appellate Court also reveals that the writ petitioner Management had not established that the workman was not in service from the year 2007-2009. In other words, the findings of the Appellate Authority establishes that the Management had not produced any acceptable document for the purpose of establishing that the workman is not entitled to claim gratuity for the period from the year 2007 to 2009. Contrarily, the workman had established that he is entitled to get gratuity for the said period.

6. The learned counsel appearing on behalf of the workman also opposed the contention by stating that for all purposes even the period of absence from the year 2007-2009 is to be taken into account for the purpose of calculating the gratuity. The workman was permitted to rejoin duty in the year 2009 and for which, the workman cannot be blamed at all.

7. This Court is of the considered opinion that in the absence of any document to establish that the workman is responsible for not working for the period from the year 2007 to 2009, the right of gratuity under the provisions of Gratuity Act cannot be denied to the workman. Even the findings of the Appellate Authority categorically enumerates that the writ petitioner Management has not filed any document to show that the workman was responsible for his absence for the period from the year 2007 to 2009. In the absence of any such valid document, the claim of the workman is to be accepted. In the present case on hand, both before the original authority as well as before the Appellate authority, the writ petitioner Management had not established that the workman is not entitled to get gratuity, more specifically, for the period from the year 2007 to 2009. Thus, there is no infirmity in respect of the findings of the original authority as well as Appellate authority. In the absence of any document, this Court cannot come to the conclusion that the writ petitioner is to be exempted from paying the gratuity to the workman for the period from the year 2007 to 2009.

8. Under these circumstances, this Court has no hesitation in coming to the conclusion that the writ petitioner has not made out any acceptable legal ground for the purpose of

assailing the orders of the original authority as well as the Appellate authority.

9. Consequently, the orders passed in AGA.No.32 of 2018 dated 16.04.2018 as well as the order passed in P.G.No.75 of 2017 dated 26.12.2018 are confirmed and the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional Commissioner of Labour,
Coimbatore.
- 2.The Deputy Commissioner of Labour,
Salem.

+1cc to Mr.N.Manokaran, Advocate Sr.76352

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