

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.01.2019
CORAM
THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.29272 of 2016 and W.M.P. No.25305 of 2016

The Management
S.No.1558,
The Government College of Engineering
Co-operative Stores Ltd.,
rep. by its President
Salem-636 011.

.. Petitioner

-VS-

1.S.Gnanasekaran

2.The Presiding Officer,
Labour Court, Salem

.. Respondents

Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records relating to the passing of the award in C.P. No.11 of 2012 dated 28.04.2016 on the file of the second respondent, Labour Court, Salem and quash the same as being illegal, arbitrary and unconstitutional.

For Petitioner :: Mr.L.P.Shanmugasundaram

For Respondents :: Mr.K.S.Narayanan for R1
R2 Court
Mr.V.Ajoykhous, Amicus Curiae

ORDER

The Management, the Government College of Engineering Co-operative Stores Ltd. has filed the writ petition questioning the correctness of the Award passed in C.P. No.11 of 2012 dated 28.04.2016 wherein the Labour Court, Salem/the second respondent herein, while entertaining the petition filed by the first respondent against the petitioner under Section 33(C)(2) of the Industrial Disputes Act, claiming retiral benefits, allowed the same directing the petitioner to pay a sum of Rs.4,87,543/- within a period of three months.

2.Assailing the impugned award passed by the second respondent, learned counsel appearing for the petitioner would submit that the claim made by the first respondent for a sum of Rs.4,52,047/- in respect of payment of gratuity, is not maintainable as at no point of time, the petitioner Society employed more than two employees. He would further submit that the Labour Court has wrongly come to the conclusion that the

first respondent is entitled to get the payment of gratuity on the basis of settlement under the provisions of I.D. Act, but there is no evidence to show that there was settlement either under Section 12(3) or under Section 18(1) of the I.D. Act. When the payment of Gratuity Act itself is not applicable to the facts and circumstances of the case, the Labour Court ought to have rejected the Computation Petition as unsustainable, but the same has not been done. He would further submit that when the petitioner society at no point of time, employed more than two employees, the Computation Petition cannot be filed against the petitioner, since Section 1(3)(b) of the Payment of Gratuity Act 1972 shows that the applicability of the gratuity provision can be invoked only in a case where ten or more persons are employed in an establishment. Again referring to the additional affidavit, learned counsel appearing for the petitioner would submit that the first respondent was paid with Rs.4,200/-, Rs.4,887/-, Rs.1,120/-, Rs.360/- and Rs.100/- respectively towards grade pay, dearness allowance, HRA, CCA and Medical allowance. According to the learned counsel for the petitioner, as per the scale prescribed by the special bye laws of the society, the first respondent is eligible to receive Rs.63,531/- as gratuity, but not Rs.4,52,047/- as ordered by the second respondent.

Learned counsel appearing for the petitioner would further submit that this Court, while granting an order of interim stay, directed the petitioner society to pay 50% of the amount determined by the second respondent and therefore, the petitioner has paid a sum of Rs.2,43,772/- vide cheque No.025150 dated 15.03.2018 to the first respondent. According to the learned counsel for the petitioner, since the first respondent has received the excess amount than what he was eligible, the same may be directed to be repaid.

3.Reiterating the averments made in the counter affidavit, learned counsel appearing for the first respondent would submit that the first respondent having served in the petitioner society, retired from service on attaining superannuation in December 2011. However, the first respondent claimed Rs.4,52,047/-, Rs.76,548/-, Rs.1,28,956/- towards Gratuity, Provident Fund and Earned leave for 170 days as per the revised special bye law framed. As the petitioner society by its letter dated 17.05.2012 offered to settle only a sum of Rs.1,17,849/- as retiral dues, the first respondent filed the Computation Petition in C.P. No.11 of 2012 claiming the above benefits. However, the petitioner society, instead of complying with the same, has filed W.P. No.31376 of 2014 before this Court. By order dated 27.11.2015 this Court permitted the first respondent to withdraw the entire amount of Rs.2 lakhs deposited to the credit of the above C.P. According to the learned counsel for the first respondent, though the petitioner pleaded that the

Gratuity Act was not applicable to the petitioner society, the Labour Court, Salem by order dated 28.04.2016 held that the provisions of the Payment of Gratuity Act are very much applicable to the petitioner society. Therefore, he prays for confirming the impugned award passed by the Labour Court.

4. Admittedly, the petitioner is having only two employees. Since the first respondent was not paid with the retiral benefits, he has approached the Labour Court by filing a Computation Petition in C.P. No.11 of 2012 under Section 33(C) (2) of the Industrial Disputes Act against the petitioner. Taking into account the factual aspects with regard to the applicability of the provisions of the Payment of Gratuity Act, the Labour Court has passed an Award directing the petitioner to pay a sum of Rs.4,87,543/- within a period of three months. As against the same, the present writ petition has been filed. This Court by order dated 15.06.2017, granted an order of interim stay directing the petitioner society to pay 50% of the amount determined by the second respondent and therefore, the petitioner society had paid a sum of Rs.2,43,772/- vide cheque No.025150 dated 15.03.2018 to the first respondent.

5. Since according to the learned counsel for the petitioner, as per the scale prescribed by the special laws of the society, the first respondent is eligible to receive Rs.63,531/- as gratuity, but not Rs.4,52,047/- as ordered by the second respondent and the petitioner has also paid a sum of Rs.2,43,772/- vide Cheque No.025150 dated 15.03.2018 to the first respondent as directed by this Court and the first respondent has also withdrawn the same, hence no further adjudication is necessary.

6. With the above modification, the writ petition stands disposed of. No costs. Consequently, connected W.M.P. is closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

vga

To

The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.L.P.Shanmuga Sundaram, Advocate, S.R.No.7133

W.P.No.29272 of 2016
and W.M.P. No.25305 of 2016

rrs 30/01/2019