

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.09.2019

CORAM

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

W.P.No.31701 of 2017
and
W.M.P.No.34848 of 2017

The General Manager,
The Cannannore Spinning and Weaving Mills,
A Unit of NTC (APKK & M) Ltd.,
Palloor, Mahe.

.. Petitioner

..vs..

1.Labour Officer,
O/o the Labour Officer,
Controlling Authority under the Payment of Gratuity Act,
Perunthalaivarkamarajar Administrative Complex,
Second Floor, Madagadi,
Karaikal - 609 602.

2.The Commissioner of Labour,
O/o. The Commissioner of Labour,
2nd Floor, Labour Complex,
Gandhi Nagar,
Puducherry - 605 009.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to recall the orders dated 27.02.2017 in PGA Nos.12 to 33, 35 to 131, 133 to 135, 137 & 138, 140 to 142, 144 to 171, 173, 175 to 206, 208 to 212, 217, 218 and 221 of 2012 pursuant to the representation of the petitioner dated 19.08.2017.

Petitioner : Mrs.M.Devi Rudra
for Mr.Anand Gopalan for M/s.T.S.Gopalan& Co.

For Respondents: Mrs.G.Djearany
Government Advocate (Puducherry)

O R D E R

The writ on hand is filed to direct the respondents 1 and 2 to recall the orders dated 27.02.2017 in PGA Nos.12 to 33, 35 to 131, 133 to 135, 137 & 138, 140 to 142, 144 to 171, 173, 175 to

206, 208 to 212, 217, 218 and 221 of 2012 pursuant to the representation of the petitioner dated 19.08.2017.

2. The learned counsel appearing on behalf of the writ petitioner made a submission that the Division Bench of this Court adjudicated the similar issue and passed an order dated 04.08.2016, in Writ Appeal Nos.178 to 180 of 2012 and the relevant paragraphs are extracted hereunder:

"12. In fact, the High Court of Kerala has dealt with a similar question of law in W.P (C) No.3990 of 2004 (Y) (M/s.Parvathi Mills, a unit of National Textile Corporation (APKK & M) Ltd., Bangalore (a Government of India Undertaking, P.B.No.1, Kollam 691 001 Rep.by its General Manager) vs. Chandrasekharanpillai, vide order dated 5.12.2005, wherein at Paragraph No.5, it is observed as follows:

"5. However, by Ext.P5, the second respondent overrules the objections of Parvathi Mills, a unit of NTC, that the District Labour Officer does not have authority and is not the controlling authority under the Payment of Gratuity Act in relation to the establishment in question. The third respondent Assistant Labour Commissioner (Central) is the Controlling authority under the Payment of Gratuity Act, 1972 as regards the establishment is concerned."

13. From a mere perusal of the observation made by Kerala High Court, it is made clear that in the matter of Payment of Gratuity Act, 1972, in a case of sick textile mills, Assistant Labour Commissioner (Central) is the controlling authority.

14. In the instant case, as stated in many places, the only point that involves is as to whether, in payment of gratuity under the said Act, the Central Government is having power or the Union Territory of Puducherry? Since similar question has been dealt with by the High Court of Kerala referred to supra and ultimately found that the Assistant Labour Commissioner (Central) and the Controlling Authority under the Payment of Gratuity Act, 1972 is having power, this Court is of the considered view that preliminary objection raised by the appellant/petitioner is quite correct, but the authority concerned has erroneously rejected the preliminary objection. The learned Single Judge has also erred in dismissing the Writ Petition No.13655 of 2008.

15. It is seen from the records that W.P.Nos.25050/2009 and 25051/2009 are nothing but related to payment of gratuity and also deduction. It has already been pointed out that the concerned employees have already received their claims. Under such circumstances, relief sought in W.P.Nos.25050/2009 and 25051/2009 need not be decided and the same have become infructuous.

16. It has already been decided that in payment of gratuity under the said Act, only the Central Government is having power in case of sick textile mills by virtue of the said Act and therefore, the Writ Appeal No.178 of 2012 is liable to be allowed and the impugned order passed by the learned Single Judge in W.P.No.13655 of 2008 is liable to be set aside.

17. In fine, Writ Appeal No.178 of 2012 is allowed without cost and the impugned order passed in W.P.No.13655 of 2008 by the learned Single Judge is set aside and W.P.No.13655 of 2008 is allowed without cost and the order passed by the first respondent dated 7.5.2008 in P.G.A.No.9 of 2007 is quashed. W.A.Nos.179 and 180 of 2012 are dismissed without cost as infructuous. Consequently, connected Miscellaneous Petitions are closed."

3. In view of the orders passed by the Division Bench of this Court, the issues are to be settled now by the Government of India and therefore, the impugned orders are liable to be scrapped.

4. Under these circumstances, this Court is of the opinion that the writ petition is to be considered. Accordingly, the respondents 1 & 2 are directed to recall the orders dated 27.02.2017 in PGA Nos.12 to 33, 35 to 131, 133 to 135, 137 & 138, 140 to 142, 144 to 171, 173, 175 to 206, 208 to 212, 217, 218 and 221 of 2012.

5. Accordingly, the present writ petition stands allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pns
To

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+1cc to M/s.T.S.Gopalan& Co. Advocate SR.76262
+1cc to the Government Pleader SR.76332

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and
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SS(CO)
CB(23/10/2019)