



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.11271 of 2011

and

M.P. (MD)No.1 of 2011

A.Muthangu Thevar

:Petitioner

vs.

1.The Assistant Commissioner of Labour
(Controlling Officer under Payment of Gratuity Act)
Tirunelveli.

2.Somasundaram

:Respondents

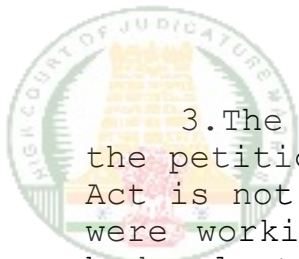
PRAYER: Writ Petition filed under Article 226 of Constitution of India to call for the records relating to the proceedings of the first respondent in case No.PG/82/2006(I.A), dated 13.07.2011 and to quash the same.

For Petitioner	:Mr.J.Ashok for M/s.Jayapaul Associates
For R1	:Mr.M.Jeyakumar Additional Government Pleader
For R2	:Mr.M.E.Elango

ORDER

This Writ Petition is filed for issuing a Writ of Ceriorari, to quash the proceedings of the first respondent in case No.PG/82/2006 (I.A), dated 13.07.2011.

2.It is stated that the petitioner's wife was running a Sweet Stall in the name and style of "Sundaravalli Sweet Stall". The petitioner's shop comes under the definition of Shops under the Tamil Nadu Shops and Establishments Act, 1947. It is stated that the second respondent was engaged as a Salesman from 01.01.1985 to 31.03.2005 and that due to old age, the second respondent voluntarily left the job. It is stated that after few years, the second respondent filed an application under Section 4 of the Payment of Gratuity Act, stating that he is entitled to for a sum of Rs.3,50,000/- towards gratuity.



3.The petition filed by the second respondent was opposed by the petitioner by stating that the provisions of Payment of Gratuity Act is not applicable to the petitioner's shop, as two persons alone were working as Salesman from 1985 and that the second respondent had voluntarily left the job. During the pendency of the petition, the second respondent filed an interlocutory application for production of documents, like, ledgers, vouchers, salary register, inspection register, attendance registrar and Form-J relating to the petitioner's shop from the year 1977 to 2002.

4.The said application was resisted by the petitioner by stating that the records referred to in the petition are not available with the petitioner and that the petitioner need not preserve those documents beyond the period of one year. Though the petitioner has produced some documents from the year 2003 to 2005, it is contended that the petitioner need not produce any documents prior to the said period. Stating that the second respondent himself has admitted that there were only two persons working in the Sweet Stall, it was contended that the Act has no application to the petitioner's establishment.

5.The interlocutory application filed by the second respondent was allowed by the first respondent, by directing the petitioner to produce the documents. Aggrieved by the same, the present writ petition is filed.

6.The petitioner in his counter in the interlocutory application, has made the following submissions:-

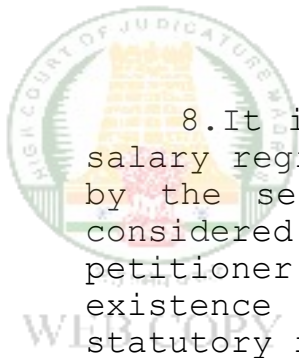
a)The Payment of Gratuity Act is not applicable to the petitioner's establishment and that the second respondent has admitted that there are only two employees engaged in the Sweet Stall run by the petitioner.

b)The petitioner is not having the custody of the records, which are to be produced before the Court.

c)The records are not required to be maintained by the petitioner beyond the period of one year.

d)The petitioner has produced several records to prove his contention that the Act is not applicable to the petitioner's establishment.

7.The learned Counsel for the petitioner submitted that the second respondent, who was only a temporary employee, received a sum of Rs.3000/- per month and that he left the job on 31.03.2005, and hence, he is not entitled to seek any relief. With regard to availability of records, the petitioner has denied the existence of any of the documents listed in the petition. The petitioner, if he admits the maintenance of statutory records, which are relevant, the Court would then examine the case of petitioner, whether his contention that the documents are not available.



8.It is seen that the petitioner has disputed the existence of salary register, attendance register and ledger. The petition filed by the second respondent before the Statutory Authority, can be considered only if all the documents, which are in possession of the petitioner are produced. Though, the petitioner disputes the existence of documents, the petitioner is expected to maintain the statutory records.

9.The one year prescription is a statutory obligation for compulsory maintenance of records for a difference purpose. However, the contention of petitioner denying the existence of attendance register, salary register cannot be believed, as the petitioner is expected to maintain all these records for quiet some time, as they are relevant for the petitioner to comply with the statutory obligations. It is to be seen that the petitioner disputes the claim of second respondent by stating that the second respondent never worked after 2005. The question whether the second respondent left from service voluntarily or he was not provided employment by the petitioner after 2005 are factual issues, which has to be decided on the basis of the records, which are under the custody of petitioner. By denying the existence of documents of all kind, the petitioner has come to this Court. This Court is unable to accept the case of the petitioner for obvious reasons apart from certain facts indicated above.

10.Hence, this Court has no reason to interfere with the order passed by the first respondent. Accordingly, this writ petition is dismissed and the order passed by the first respondent, dated 13.07.2011 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

To

The Assistant Commissioner of Labour
(Controlling Officer under Payment of Gratuity Act)
Tirunelveli.

+1 CC to M/s.SPL GP (SR-94632[F] dated 25/10/2019)
+1 CC to Mr.J.ASHOK, Advocate (SR-94484[F] dated 25/10/2019)
+1 CC to Mr.M.E.ILANGO, Advocate (SR-94744[F] dated 25/10/2019)

W.P.(MD)No.11271 of 2011
24.10.2019

VB(13.11.2019) 3P 5C

<https://hcservices.ecourts.gov.in/hcservices/>