

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 192 of 2019

and

W.M.P. Nos. 204 and 4363 of 2019

The Divisional Manager,
Naduvattam Tea Division,
Tamil Nadu Tea Plantation,
Corporation Ltd.,
Naduvattam,
The Nilgiris.

... Petitioner

-vs-

1. The Controlling Authority under the
Payment of Gratuity Act, viz.,
The Assistant Commissioner of Labour
Office of the Deputy Commissioner of Labour
Coimbatore - 18.

2. The Appellate Authority under the
Payment of Gratuity Act,
Joint Commissioner of Labour,
Coimbatore - 18.

3. J.Raman

... Respondents

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 2nd Respondent in AGA. No.23 of
2018 and quash the order dated 11.09.2018 confirming the order
of the 1st Respondent in Gratuity Case No.87 of 2016 dated
15.09.2017.

For Petitioner :Mr. Anand Gopalan
for T.S.Gopalan and Co.

For Respondents:Mr. D.Sathyaraj,
Special Government Pleader (for R1 & R2)

Mr. P.Ganesan
for M/s. C.S. Associates (for R3)

O R D E R
(through video conference)

Heard Mr. Anand Gopalan, Learned Counsel for the Petitioner, Mr. D.Sathyaraj, Learned Special Government Pleader appearing for the First and Second Respondent and Mr. P.Ganesan, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is a Company owned by the Government of Tamil Nadu and had framed the Tantea Employees Death cum Retirement Gratuity Scheme (hereinafter referred to as the 'DCRG Scheme' for short) for its employees. According to the Petitioner, in view of the aforesaid DCRG Scheme, the provisions of the Payment of Gratuity Act, 1972, (hereinafter referred to as the 'Act' for short) would not apply to its employees. The Third Respondent, who was an employee of the Petitioner, was paid the amount in terms of the DCRG scheme on his retirement from service. However, as the amount in terms of the DCRG scheme was lesser than the amount of gratuity under the Act, the Third Respondent made a claim bearing G.A. No. 87 of 2016 for the differential sum of gratuity before the First Respondent/Assistant Commissioner of Labour under Section 7(4) of the Act for the payment of gratuity, which was granted after hearing the Petitioner by order dated 15.09.2017. The appeal bearing A.G.A. No. 23 of 2018 preferred by the Petitioner against that order under Section 7(7) of the Act was rejected by order dated 11.09.2018 passed by the Second Respondent/Joint Commissioner of Labour. Aggrieved thereby, the Petitioner has challenged the said order of the Second Respondent confirming the order of the First Respondent in this Writ Petition.

3. The contention raised by the Learned Counsel for the Petitioner that the First Respondent does not have jurisdiction to adjudicate the claim for gratuity made by the Third Respondent under the Act due to the distinguishing features of its DCRG scheme in terms of Section 4(5) of the Act, is misconceived. In the first place, Section 4(5) of the Act cannot have any application when the amount of gratuity offered by the Petitioner to the Third Respondent under its DCRG scheme is admittedly lesser than what the Third Respondent is lawfully entitled under the Act. Moreover, Section 14 of the Act in no uncertain terms states that the provisions of that Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than that Act or in any instrument or contract, having effect by virtue of any enactment other than that Act. This would obviously mean that merely because the Petitioner has framed the DCRG scheme and payment has been made thereunder to the Third Respondent, it would not absolve the liability of the Petitioner

to pay gratuity in accordance with the provisions of the Act, unless the establishment of the Petitioner has been exempted under Section 5 of the Act, on being satisfied that the employees are in receipt of gratuity and pensionary benefits are not less favourable than the benefits conferred under that Act. It is not in dispute that the Petitioner has not obtained any such exemption. Hence, the amount of gratuity that the Third Respondent is entitled would have to be determined only in accordance with the provisions of the Act. This view is fortified by the binding decisions of the Hon'ble Supreme Court of India in Municipal Corporation of Delhi -vs- Dharam Prakash Sharma [(1998) 7 SCC 221] and Allahabad Bank -vs- All India Allahabad Bank Retired Employees Association [(2010) 2 SCC 44]. It would necessarily follow that the Petitioner is liable to pay the differential amount of gratuity due to the Third Respondent, after deducting the amount already paid under the DCRG scheme, as rightly held in the impugned orders which do not suffer from any infirmity. The Third Respondent may make necessary application for payment out of that amount said to have been already deposited by the Petitioner with the First Respondent pursuant to the impugned orders.

4. In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vjt

To

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GS(26/08/2020)