

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.09.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 1007 of 2019
and
W.M.P. No. 1123 of 2019

The Principal,
Institute of Road & Transport Technology,
Sri Vasavi College Post,
Erode - 638 316.

... Petitioner

-vs-

1. The Appellate Authority under the Payment of Gratuity Act, 1972, Coimbatore.
2. The Controlling Authority under the Payment of Gratuity Act, 1972, (Assistant Commissioner of Labour), Salem.
3. K.Kalaimani ... 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 First Respondent in P.G.A. No. 51/2017 dated 30.04.2018 and to quash the same.

For Petitioner : Mrs. Kala Ramesh
For Respondents: Mr. D.Sathyaraj,
Special Government Pleader (for R1 & R2)
Mr. N.Manokaran (for R3)

सतयमेव जयते
O R D E R
(through video conference)

Heard Mrs. Kala Ramesh, Learned Counsel for the Petitioner, Mr. D.Sathyaraj, Learned Special Government Pleader appearing for the First and Second Respondents and Mr. N.Manokaran, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent had joined the services of the Petitioner on 31.12.1995. As 41 persons including the Third Respondent had not been regularized in service, they had made an

application in C.P. No. 1375 of 2010 under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, before the Inspector of Labour, Erode, who had granted such relief in the order dated 15.09.2014. Though the Petitioner challenged the aforesaid order in W.P. No. 34291 of 2014 before this Court, a settlement under Section 18(1) of the Industrial Disputes Act, 1947, was entered between the Petitioner and certain other employees on 05.11.2015 and as a consequence thereof, the aforesaid Writ Petition was withdrawn. It requires to be stated here that the Third Respondent is not a signatory to the aforesaid settlement as she was excluded for the reason that she had attained the age of superannuation on 31.05.2013 before that time. However, it is not in dispute that the Third Respondent continued to be employed by the Petitioner till 31.01.2016 when she was relieved from duty and her last drawn pay was Rs. 13,359/- as borne out from the record. Thereafter, the Third Respondent made a claim for gratuity before the Second Respondent in P.G. No. 268 of 2016 under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the 'Act' for short). The Petitioner took the plea before the Second Respondent that inasmuch as the Third Respondent had attained the age of superannuation on 31.05.2013, her last drawn pay of Rs. 8,800/- as on that date would have to be taken into account and the period of her service would also stand restricted till that date. The Second Respondent did not accept the said contention of the Petitioner and by order dated 17.03.2017 held that the entire period of service of the Third Respondent from 31.05.2013 to 31.01.2016 would have to be counted for calculation of gratuity and taking her last drawn wages as on 31.01.2016, the amount of gratuity was arrived as follows:-

Gratuity = Rs. 13,359 x 20 years x 15/26 = Rs. 1,54,142/-

The Petitioner was required to pay the aforesaid sum of Rs. 1,54,142/- with interest at the rate of 10% for the period from 03.03.2016 till the date of actual payment to the Third Respondent by order dated 17.03.2017. The appeal under Section 7 (7) of the Act preferred by the Petitioner against that order in P.G.A.

No. 51 of 2017 was dismissed by the First Respondent by order dated 30.04.2018 confirming the order of the Second Respondent, which is assailed in this Writ Petition.

3. Though the Petitioner seeks to re-agitate the same issue in this Writ Petition, there does not appear to be any acceptable reason to take a different view from what has been concluded by the First and Second Respondent in the impugned orders. It is not possible to countenance the submission made by the Learned Counsel for the Petitioner that the period from 31.05.2013 to 31.01.2016 after the Third Respondent attained the age of superannuation could not be taken into account for the purpose of calculation of gratuity when it is accepted that she

had worked for that period. In this context, it would be necessary to refer to Section 4(1) of the Act, which is extracted below:-

"4. Payment of gratuity:-

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:-

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:"

The term 'superannuation' has been defined in Section 2(r) of the Act as follows:-

"(r) "superannuation", in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment;"

The definition of 'retirement' under Section 2(q) of the Act, reads as follows:-

"(q) "retirement" means termination of the service of an employee otherwise than on superannuation;"

On a conspectus of the aforesaid statutory provisions, the following legal position would emerge:-

- (i) The entitlement to gratuity for an employee from his employer would arise only on termination of service.
- (ii) Such termination could either be on 'superannuation' or 'retirement'.
- (iii) The term 'superannuation' for the purpose of the Act has been confined to attaining the age fixed for vacating from the post.
- (iv) On the other hand, all other modes of termination otherwise than on superannuation has been taken into account for 'retirement'.

It is not the case of the Petitioner that there was any cessation of jural relationship of employer and employee between the Petitioner and the Third Respondent on her attaining the age of superannuation on 31.05.2013 and it is accepted that the Third Respondent continued in the employment of the Petitioner till 31.01.2016. This would obviously mean that the Third Respondent would be entitled to count the entire period till she was actually relieved from service for the purpose of claiming gratuity from the Petitioner in terms of Section 4(1)(b) of the Act. There is no dispute regarding the amount of salary as on 31.01.2016 when the Third Respondent was relieved based on which the amount of gratuity has been calculated.

4. The Hon'ble Supreme Court of India in H. Ganghanume Gowda -vs- Karnataka Agro Industries Corporation Ltd. [(2003) 3

SCC 40] and Y.K. Singla -vs- Punjab National Bank [(2013) 3 SCC 472] has reiterated the legal position from Section 7(3A) of the Payment of Gratuity Act, 1972, that if the amount of gratuity payable to an employee within 30 days from the date of cessation of his employment is not paid, there is no discretion to the employer to deny interest which would have to be paid at such rate not exceeding the rate notified by the Central Government from time to time, and the only exception for the same would be:-

- (i) when the delay in the payment of gratuity is due to the fault of the employee; and
- (ii) the employer has obtained permission in writing from the Controlling Authority under the Payment of Gratuity Act, 1972, for the delayed payment on this ground.

In the absence of having obtained any such permission from the Second Respondent, for the delayed payment of gratuity, the Third Respondent would be entitled to the gratuity amount due with interest at the rate fixed by the Central Government from time to time under the aforesaid statutory provision.

5. In that view of the matter, there does not appear to be any infirmity requiring interference in the impugned orders, which have to be upheld. The Third Respondent is at liberty to make necessary application for the withdrawal of the amount of gratuity that has been deposited by the Petitioner before the concerned authority.

6. The Writ Petition is dismissed with the aforesaid observations. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

vjt
To

1. The Appellate Authority under the Payment of Gratuity Act, 1972, Coimbatore.

2. The Controlling Authority under the Payment of Gratuity Act, 1972, (Assistant Commissioner of Labour), Salem.

+1cc to Mr.N.Manokaran , Advocate SR.No. 32086

W.P. No. 1007 of 2019

A.SK(02/11/2020)