

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2020

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.27713 of 2005

The Management of
United Foundries Limited
No.12D, SIPCOT Industrial Complex
Ranipet 632 403.

...Petitioner

Vs.

1.The Joint Commissioner of Labour
(Appellate Authority under the
Payment of Gratuity Act)
DMS Complex, Teynampet, Chennai - 6.

2.The Asst. Commissioner of Labour
(Controlling Authority under the
Payment of Gratuity Act)
DMS Complex, Teynampet, Chennai - 6.

3.L.Dhandapani ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of 1st Respondent by its order dt. 13.5.2005 in PGA 33/05 confirming the order of the 2nd Respondent in PG Case No.270/04 dt.16.12.2004 and quash the same.

For Petitioner : Mr.Anand Gopalan

For 3rd Respondent : Mr.V.Ajoy Khose

O R D E R

The prayer sought for in the writ petition is for a writ of certiorari calling for the records of first Respondent, by its order dated 13.5.2005 in PGA 33/05 confirming the order of the second Respondent in PG Case No.270/04 dated 16.12.2004 and quash the same.

2.The short facts required to be noticed for the disposal of this writ petition is that, the third respondent joined in the service of the petitioner as Junior Officer (Excise) on 01.06.1994. According to the petitioner, the third respondent

resigned his job on 04.11.1997 and left the service. Subsequently, on 16.03.1998, the third respondent sought re-employment with the petitioner, which was considered and given, accordingly on 16.03.1998, the third respondent was appointed as Deputy Manager (Central Excise) and since the said appointment, according to the petitioner, was fresh and distinct, he was made a member of EPF Scheme with specific Account number and thereafter, the third respondent, having worked for some years, resigned his job on 20.03.2002 and the said resignation having been considered he was relieved from service with effect from 30.04.2002 and his legal dues were also settled on 17.07.2002. In this regard, a Service Certificate was also given mentioning his period of employment between 16.03.1998 and 30.04.2002.

3. In this context, in order to get gratuity, the third respondent approached the second respondent in filing PG Case No.270/2004 and the said petition was ordered by the second respondent, vide order dated 16.12.2004, against which, the petitioner/Management preferred Appeal to the first respondent in PGA Case No.33/2005, which was also decided in favour of the third respondent, against the petitioner/Management, by order dated 13.05.2005, where the order of the second respondent directing the petitioner/Management to pay a sum of Rs.29,008/- as gratuity to the third respondent was confirmed. Aggrieved over the same, the present writ petition has been filed by the petitioner/Management.

4. The learned counsel appearing for the petitioner/Management would submit that, pursuant to the order passed by the second respondent before the authority concerned, the said sum of Rs.29,008/- was deposited without prejudice to the rights and contention of the petitioner/Management and during the pendency of this writ petition, subsequently, 50 % of the said deposit was permitted to be withdrawn by the third respondent/employee and he has already withdrawn the same and only the remaining 50% of the said deposit alone is lying in the account and this factor also is not controverted by the learned counsel appearing for the third respondent.

5. In this context, the learned counsel appearing for the petitioner would further contend that, though the entire amount was deposited, out of which, 50% of the said deposit has been withdrawn by the employee and the remaining 50% of the amount alone lying in the account. It is not a matter, such quantum of the amount paid or payable to the employee, but the question is whether the employee/third respondent is entitled to get the gratuity, in view of the provisions of the Gratuity Act. It has required an employee to continue in a permanent job of an establishment or organization, which is a must for consideration in giving gratuity by taking into account the 50% completed

service or by taking into account last drawn wages of the employees concerned. However, so far as the case of the third respondent is concerned, according to the learned counsel appearing for the petitioner/ Management that, though he originally joined on 01.06.1994, he left the service by giving a resignation on 04.11.1997 and thereafter, only on his specific request, he was appointed in a different capacity on 16.03.1998 and since then, he was working for some years before he left the Management on 30.04.2002 by giving resignation voluntarily. Therefore, the service rendered by the third respondent between 16.03.1998 and 30.04.2002 is alone his continuous service, thus he has not fulfilled five years continuous service. However, both the second and first respondents have taken into account the earlier service rendered by him in a different capacity between 01.06.1994 and 04.11.1997 also for the purpose of filling up the gap of five years requirement and accordingly, the said decision taken by the second and first respondents is basically wrong as it goes against the provisions of the Gratuity Act. Therefore, only in that context, the petitioner/Management wanted to pursue this writ petition that, the third respondent/employee was not entitled to get the gratuity, as has been directed through the impugned order passed by the second and first respondents.

6. However, Mr.V.Ajoy Khose, learned counsel appearing for the third respondent/employee has contended that, from 01.06.1994 till 30.04.2002 the petitioner was working continuously. However, the break-in service between 04.11.1997 and 16.03.1998 is concerned, though it was claimed by the Management that, it is a fresh appointment, on facts, it was found by the authorities concerned under the Gratuity Act that, it is a continuous service. Therefore, taking into account his original service from 01.06.1994 till he left the Management on 30.04.2002, as the third respondent since has completed five years and more, he was eligible to get the gratuity, that was rightly held by the authorities. Therefore, insofar as the entitlement of the third respondent to get gratuity is concerned, it has been found in favour of the third respondent based on the available evidence and accordingly, the said findings given by the authorities concerned requires no interference.

7. On hearing both sides, this Court feel that, the very issue is pertaining to the entitlement of the gratuity of the third respondent, which was quantified as Rs.29,008/- and the said amount also was deposited by the petitioner/Management, of course, without prejudice to the contention. However, subsequently 50% of the sum has been admittedly withdrawn by the third respondent and only the remaining 50% of the amount is lying in the account. Insofar as the entitlement of the third

respondent to get the gratuity, by considering the fact whether he has eligible service or not is concerned, this Court feel that, the said controversy need not be gone into at this juncture, since the third respondent already has left the petitioner's Management long back i.e., as early as 30.04.2002 and the entire gratuity, as found by the authorities concerned since has been deposited by the petitioner's Management, we need not ponder into those aspects at this stage and accordingly, the said issue raised by the petitioner/Management whether in between the period between 04.11.1997 and 16.03.1998 the third respondent was in service or the said period can be effectively taken into account for the purpose of calculating the total service for the purpose of calculating gratuity under the provisions of the Act, need not be gone into in this case and if any similar issue is raised in future, the same can be decided at an appropriate time in an appropriate case and therefore, this Court feel that the impugned orders passed by the second and first respondents can be confirmed, in view of the aforesaid peculiarity in the facts of the case, of course, keeping the issue raised by the petitioner's Management open to be decided at a later point of time in an appropriate case.

8. In that view of the matter, this Court is inclined to pass the following order in this writ petition.

The impugned orders are hereby sustained. However, the issue raised by the petitioner's Management on the question of law can be decided at a later point of time in an appropriate case and therefore, keeping the said issue open, this writ petition is disposed of with the direction that, the third respondent/employee can withdraw the remaining amount lying in the account concerned, which was already deposited by the petitioner's Management, by filing an appropriate petition before such authority at his will.

9. With this observation, this Writ Petition is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

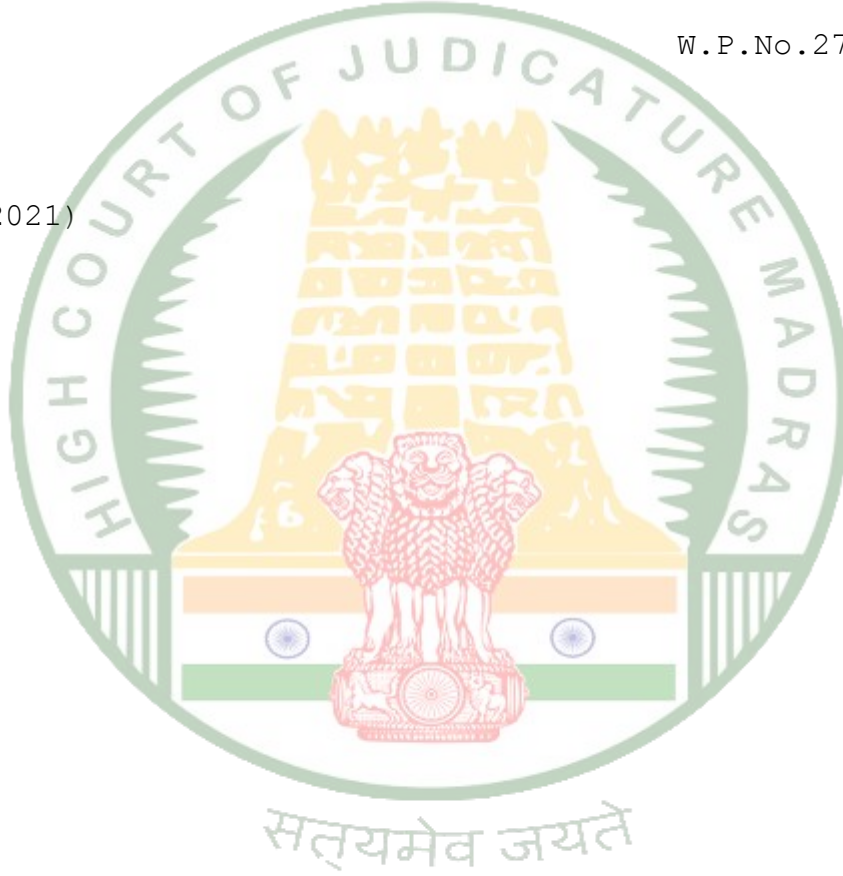
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To

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