

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.10.2020
CORAM

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

W.P. No. 12109 of 2020
and
W.M.P. Nos. 14852 and 14855 of 2020

The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010. ... Petitioners

-vs-

1. The Additional Commissioner of Labour,
Chennai,
(Appellate Authority as under the
-Payment of the Gratuity Act, 1972)
Chennai - 6.
2. The Assistant Commissioner of Labour,
O/o I-Joint Commissioner of Labour,
(Controlling Authority as under the -
-Payment of the Gratuity Act, 1972)
Chennai - 6.
3. R.Panchamoorthy,
2/31, Kilaparthiyur
Arukattur Post,
Kamalapuram (Via),
Kudavasal Taluk,
Thiruvarur District. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the order of passed by the Second Respondent, in P.G.No.164/2014, dated 16.04.2018 and consequential order of the First Respondent in P.G.A.No.15 of 2019 dated 27.09.2019 and quash the same.

For Petitioner : Mr. P.Paramasiva Doss

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

O R D E R
(through video conference)

Heard Mr. P.Paramasiva Doss, Learned Counsel for the Petitioner and Mr. D.Sathyaraj, Learned Special Government Pleader, who takes notice for the First and Second Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. Having regard to the nature of order proposed to be passed in the matter which would not cause any prejudice to the Third Respondent, notice to him is dispensed with.

3. The Third Respondent had joined the services of the Petitioner on consolidated pay on 23.10.1981 and he had ultimately retired from the post of Junior Assistant on 31.01.2011 when he attained the age of superannuation. However, the Petitioner did not make payment of his gratuity. This had necessitated the Third Respondent to make an application under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the 'Act' for short) for payment of gratuity for his services for the period from 23.10.1981 to 31.01.2011 in P.G. No. 164 of 2014 before the Second Respondent/Assistant Commissioner of Labour, and it was resisted by the Petitioner for the following reasons:-

- (i) The Third Respondent worked as seasonal employee in the seasonal establishment of the Petitioner for the period from 23.10.1981 to 31.03.2008, which cannot be taken into account for the purpose of calculating his gratuity.
- (ii) The Third Respondent had caused loss for an extent of Rs. 2,37,097.05 due to his negligence, which forfeits his right to receive any gratuity from the Petitioner.
- (iii) The Third Respondent was inflicted with a fine of Rs. 3,258/-, which he authorized the Petitioner to recover from his terminal benefits and the eligible amount of gratuity of Rs. 17, 567/- for the period from 31.03.2008 to 31.01.2011 has been settled to him.

The Second Respondent by a detailed order dated 16.04.2018 overruled the aforesaid objections raised by the Petitioner and held as follows:-

- (i) The period from 23.10.1981 to 31.03.2008 when the Third Respondent worked in the establishment of the Petitioner amounted to 'continuous service' for the purpose of Section 2-A of the Act, in addition to the accepted period from 31.03.2008 to 31.01.2011, and there was nothing to believe as if the Third Respondent was a seasonal employee or the Petitioner was a seasonal establishment as now claimed.
- (ii) It was not proved that any enquiry had been conducted for the loss said to have been caused by the Third Respondent

due to his negligence to the extent of Rs. 2,37,097.05 so as to forfeit his gratuity.

- (iii) The overriding effect of Section 14 of the Act does not enable the Petitioner as employer to deduct any amount from the gratuity towards fine and that no proof had been produced for having made payment for the sum of Rs. 17,567/- said to have been settled as gratuity to the Third Respondent.

The Second Respondent determined that the total amount of gratuity payable by the Petitioner to the Third Respondent was Rs. 1,69,817/- as per calculation shown below:-

Gratuity = Rs. 10,150 x 29 years x 15/26 = Rs. 1,69,817/-

The Petitioner was required to pay the aforesaid sum of Rs. 1,69,817/- with interest at the rate of 10% from 31.01.2011. The appeal under Section 7(7) of the Act preferred by the Petitioner against that order in P.G.A. No. 15 of 2019 was dismissed by the First Respondent/Additional Commissioner of Labour by order dated 27.09.2019 confirming the order of the Second Respondent.

4. 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 23.10.1981 to 31.03.2008 could not be taken into account for the purpose of calculation of gratuity when it is accepted that he had worked for that period and satisfied the requirement of 'continuous service' in terms of Section 2-A of the Act, without any distinction as to whether it was on daily wages basis or after regularization in service. There is also nothing on record to dislodge the conclusion arrived in the impugned orders that the Third Respondent had not forfeited his right to gratuity.

5. 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] have 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.

6. There does not appear to be any infirmity in the impugned orders requiring interference by this Court in the exercise of discretionary power of judicial review under Article 226 of the Constitution. 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.

7. The Writ Petition is dismissed with the aforesaid observations. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

msm/kv/vjt
To

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RLD co
A.SK(03/11/2020)