

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

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

W.P. No. 23410 of 2019
and
W.M.P. Nos. 23177 and 23178 of 2019

The Management,
The Senior Regional Manager,
Tamil Nadu Supplies Corporation,
Siluvampatti,
Tiruchengodu Road,
District Collectorate backside,
Namakkal. Petitioner

-vs-

1. The Joint Commissioner of Labour
(Appellate Tribunal as under the
Payment of Gratuity Act, 1972),
Coimbatore.
2. The Assistant Commissioner of Labour
(Controlling Authority as under
the Payment of Gratuity Act, 1972),
Salem.
3. M.Adaikalam ... 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 order passed by the Second Respondent in P.G. No. 262/2016 dated 28.09.2017 and consequential order of the First Respondent in P.G.A. No. 54/2018 dated 25.03.2019 and to quash the said orders.

For Petitioner : Mr. P.Paramasiva Doss

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

No appearance (for R3)

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 appearing for the First and Second Respondents 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 as Bill Clerk temporarily on consolidated pay on 22.01.1980 and was confirmed in service on 15.10.1982. He was subsequently promoted to higher positions and ultimately retired from the post of Deputy Manager on 31.08.2014 when he attained the age of superannuation. However, the Petitioner did not make payment of his gratuity due at the time of his retirement for the reason that there were certain disciplinary proceedings then pending against him in respect of losses caused to the Petitioner due to his negligence. This had necessitated the Petitioner 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 in P.G. No. 262 of 2016 before the Second Respondent/Assistant Commissioner of Labour and during the pendency of that proceedings, he was paid a sum of Rs. 8,67,489/- as gratuity for his services for the period from 15.10.1982 to 31.08.2014. The Third Respondent agitated his claim for the remaining sum of Rs. 81,327/- due as gratuity for his services for the period from 22.01.1980 to 14.10.1982, which was opposed by the Petitioner on the ground that the said period could not be reckoned for the purpose of computation of gratuity as he would have to be treated as an 'apprentice' excluded in the definition of 'employee' under Section 2(e) of the Act inasmuch as he had been undergoing training during that period. The Second Respondent did not accept that contention of the Petitioner and by order dated 28.09.2017 determined that the total amount of gratuity payable by the Petitioner to the Third Respondent was Rs. 9,48,816/- as per calculation shown below:-

Gratuity = Rs. 46,989 x 35 years x 15/26 = Rs. 9,48,816/-

After deducting the sum of Rs. 8,67,489/-, which was already paid, the Petitioner was required to pay the balance sum of Rs. 81,327/- with interest at the rate of 10% for the sum of Rs. 9,48,816/- for the period from 31.08.2014 to 18.06.2017 and for the sum of Rs. 81,327/- for the period from 19.06.2017 till the date of actual payment to the Third Respondent by order dated 28.09.2017. The appeal under Section 7(7) of the Act preferred by the Petitioner against that order in G.A. No. 54 of 2018 was

dismissed by the First Respondent/Joint Commissioner of Labour by order dated 25.03.2019 confirming the order of the Second Respondent.

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. Learned Counsel for the Petitioner contends that the term 'apprentice' must be given wide meaning so as to convey that any period for which an employee has undergone training would have to be excluded for the purpose of calculating the period of service for gratuity. It is not possible to accept the said contention in view of the clear reasoning by this Court in the decision in S.Arunachalam -vs- Managing Director, Southern Structurals, Madras [(2001) 3 MLJ 382], where it has been held as follows:-

"A plain reading of the said Act shows that it excludes an apprentice from the application of the provisions of "the Act". In order to find out whether the word "apprentice" includes the trainee also, and in the absence of any definition of an apprentice under "the Act" this Court has to consider the same with reference to the dictionary meaning as well as the interpretation of the said section with reference to the object of "the Act" coupled with the definition of apprentice or training in any other statute. In the CONCISE OXFORD DICTIONARY the word "apprentice" means, "a person learning a trade from a skilled employer". In BLACK'S LAW DICTIONARY the word "apprentice" means, a person bound by an indenture to work for an employer for a specific period to learn a craft, trade or profession and a learner in any field of employment or business. As per P. RAMANATHA AIYAR'S LAW OF LEXICONS the word "apprentice" means, "a learner is one who is taken to learn a trade, a person under a contract of apprenticeship, to a master to learn from him his trade or business and to serve him during his time of the apprenticeship". Correspondingly as per CONCISE OXFORD DICTIONARY the word "trainee" means a person undergoing training for a particular job or profession".

The same view has been expressed by the High Court of Orissa in Orissa Mining Corporation Ltd. -vs- Controlling Authority Under Payment of Gratuity Act cum Assistant Labour Commissioner [(1994) 2 LLN 1180], the High Court of Allahabad in Chairman cum Managing Director, Fertilizer Corporation -vs- Regional Labour Commissioner (Order dated 26.05.2005 in Writ - C No. 36892 of 2004) and the High Court of Karnataka in H. Ramappa -vs- General Manager, Sri Yellama Cotton, Wollen & Silk Mills [(2008) 5 LLN 228].

4. Viewed from that perspective, it could be seen from the materials placed on record, as rightly noticed by the First and Second Respondents in the impugned orders, that the nature of duties performed by the Third Respondent as Bill Clerk temporarily on consolidated pay for the period from 22.01.1980 to 14.10.1982 cannot be said to be as relating to any apprenticeship so as to be excluded from the definition of employee under Section 2(e) of the Act. There is no dispute regarding either the period of employment of the Third Respondent or the amount of last drawn salary based on which the amount of gratuity has been calculated.

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. 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.

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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

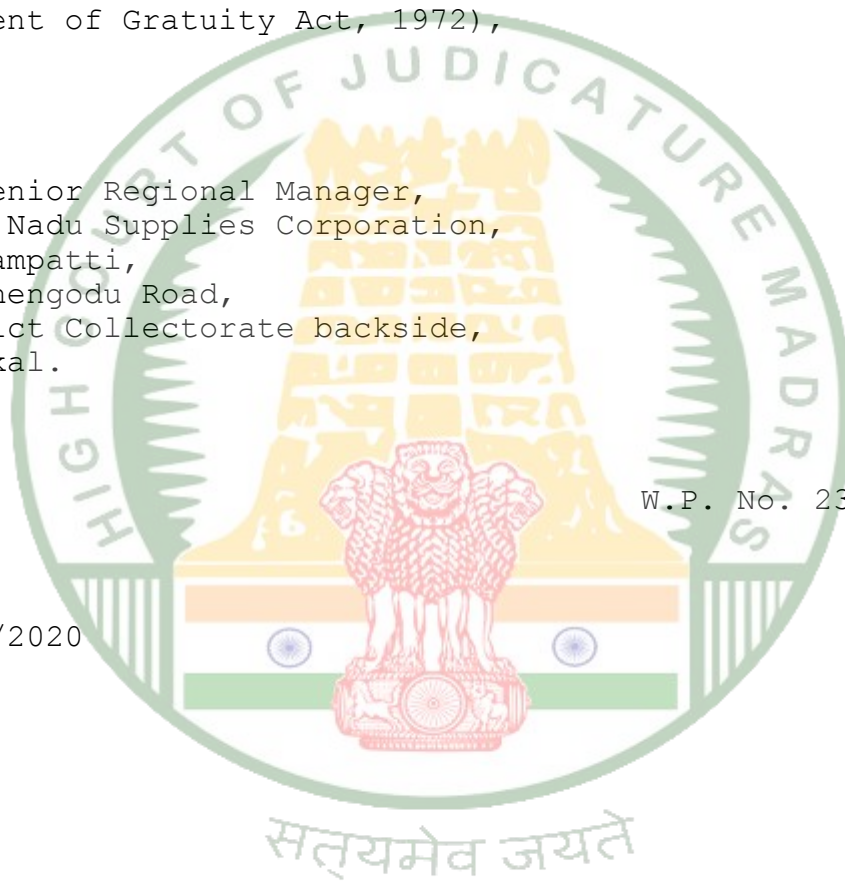
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