

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

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

W.P. No. 32345 of 2019

and

W.M.P. Nos. 32643 and 32644 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
(Joint Commissioner of Labour),
Coimbatore.
2. The Controlling Authority under
the Payment of Gratuity Act, 1972
Deputy Commissioner of Labour (incharge),
Office of Joint Commissioner of Labour,
Salem.
3. K.Pushpa 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 A.G.A. No.
25/2019 dated 13.08.2019 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)

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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 daily wage basis as gardener from 31.12.1986 and she was made permanent pursuant to a settlement entered under Section 18(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short), between the Petitioner and the Third Respondent on 30.11.2015. When the Third Respondent attained the age of superannuation on 29.02.2016, she made a claim for gratuity for 29 years of service based on her last drawn salary. Since the Petitioner refused to pay gratuity taking into account the period prior to 30.09.2015, when the aforesaid settlement under Section 18(1) of the Act was entered for regularizing the services of the Third Respondent, she filed an application for payment of gratuity in P.G. No. 23 of 2017 under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the 'Act' for short) before the Second Respondent. The Petitioner took the plea before the Second Respondent that inasmuch as the Third Respondent had expressly agreed that she would be entitled to gratuity only with effect from 30.09.2015, the claim for the period prior thereto could not be taken into consideration and since she had not completed five years of continuous service, she is not eligible for gratuity. The Second Respondent did not accept the said contention of the Petitioner and by order dated 16.07.2018 held that the entire period of service of the Third Respondent from 31.12.1986 to 29.02.2016 would have to be considered for calculation of gratuity and taking her last drawn wages as on 29.02.2016, the amount of gratuity was arrived as follows:-

Gratuity = Rs. 13,725 x 29 years x 15/26 = Rs. 2,29,630/-
The Petitioner was required by order dated 16.07.2018 to pay the aforesaid sum of Rs. 2,29,630/- with interest at the rate of 10% for the period from 01.04.2016 till the date of actual payment to the Third Respondent. The appeal under Section 7(7) of the Act preferred by the Petitioner against that order in A.G.A. No. 25 of 2019 was dismissed by the First Respondent by order dated 13.08.2019 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. It is not possible to countenance the submission made by the Learned Counsel that inasmuch as the Third Respondent had agreed to restrict the period for claiming gratuity by calculating the same with effect from 30.09.2015, the earlier period from 31.12.1986 to 30.09.2015 could not be taken into account. In this regard, it must, once, be pointed out that Section 14 of the Act reads follows:-

"14. Act to override other enactments, etc.:- The provisions of this Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

Having due regard to the overriding effect of the operation of law in that statutory provision, any agreement between the parties to the contrary would be ineffective, when it is accepted that the Third Respondent has worked for the relevant period amounting to 'continuous service' as per the requirements 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 no dispute regarding the amount of salary as on 29.02.2016 when the Third Respondent was relieved based on which the amount of gratuity has been calculated. Learned Counsel for the Petitioner has also not able to controvert the conclusions arrived by the Second Respondent rejecting the objections raised for grant of gratuity to the Third Respondent as claimed by her.

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] 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.

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 petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Appellate Authority under
the Payment of Gratuity Act, 1972
(Joint Commissioner of Labour),
Coimbatore.
2. The Controlling Authority under
the Payment of Gratuity Act, 1972
Deputy Commissioner of Labour (incharge),
Office of Joint Commissioner of Labour,
Salem.

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 32455

W.P. No. 32345 of 2019

JP(CO)
GN(02/11/2020)

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