

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 33942 of 2019
and
W.M.P. No. 34516 of 2019

The Management,
State Express Transport Corporation
(TN) Limited,
Thiruvallur Illam, Pallavan Salai,
Chennai - 600 002.Petitioner

-vs-

1. The Deputy Labour Commissioner,
(Appellate Authority under
Payment of Gratuity Act, 1972),
D.M.S. Complex, VI Floor,
Teynampet, Anna Salai,
Chennai - 600 002.

2. Mr. M. Mohamed IthrisRespondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India, praying for issuance of Writ of
Certiorari to call for the records pertaining to the order
passed in P.G.A. No. 14 of 2018 dated 22.05.2019 on the file
of the first respondent and quash the same.

For Petitioner : Mr. M. Chidambaram
Standing Counsel

For Respondents : Mr. S.T. Varadarajulu

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O R D E R

The prayer sought for herein is for a Writ of Certiorari
to call for the records pertaining to the order passed in
P.G.A. No. 14 of 2018 dated 22.05.2019 on the file of the
first respondent and quash the same.

2. The very short facts which are required to be noticed
for the disposal are as follows:

(i) That the second respondent was an employee, as he was
appointed as a Driver on 20.02.1994, as daily paid Driver in
the petitioner corporation. While So, in the year 1999, due to
the involvement in a fatal accident by the second respondent,

there had been a disciplinary proceedings, which ended in termination of service of the second respondent. As against which, the second respondent raised an Industrial Dispute in I.D. No.330 of 2003.

(ii) Subsequently, the I.D. was decided by the Labour Court, whereby, the punishment awarded to the second respondent was set aside and a direction was given to reinstate the second respondent without backwages, however with continuity of service.

(iii) It seems that, the order of the Labour Court has become final, as no appeal was filed by the petitioner corporation and in fact, the said award of the Labour Court was accepted and implemented by the petitioner corporation.

(iv) In this context, on 21.01.2012, the second respondent was reinstated and after two years of service, since he reached superannuation, he was retired from service on 31.12.2014.

(v) It is to be noted that, since the second respondent was getting salary, based on the daily wages prior to involving in the fatal accident, specifically, when he was reinstated in the year 2012 also, till he superannuated in the year 2014, he was paid continuously only the daily wages rate, which comes approximately a sum of Rs. 6,900/- only per month.

(vi) Subsequently, after retirement, the second respondent approached the Controlling Authority under the Payment of Gratuity Act, 1972 (in short "The Act") by filing P.G. No. 51 of 2015, where, the Gratuity Controlling Authority passed an order dated 11.08.2017, by that order, the Gratuity Authority had directed the petitioner corporation to pay only a sum of Rs. 83,596/- with 10% interest as total gratuity amount by calculating the last drawn salary of the second respondent as only Rs.6,900/- per month.

(vii) Aggrieved over the said order, the second respondent filed an appeal in P.G.A. No. 14 of 2018 before the Appellate Authority under the Act and the said appeal was allowed by the order of the Appellate Authority dated 22.05.2019, whereby the gratuity claimed by the second respondent based on the monthly salary of a sum of Rs. 26,000/- was accepted and accordingly, the revised full gratuity, based on the said amount of last drawn salary of Rs. 26,000/- as claimed by the second respondent, since was allowed by the Appellate Authority under the Act, through the impugned order, the petitioner corporation has filed this Writ Petition challenging the same.

3. Heard Mr. M. Chidambaram. learned Standing counsel appearing for the petitioner corporation and Mr. S.T. Varadarajulu, learned counsel appearing for the second respondent employee.

4. The only controversy arose in this Writ Petition is as to whether the gratuity directed to be calculated by the Original Authority under the Act based on the monthly salary of Rs. 6,900/- is correct, or the order of the Appellate Authority directed the petitioner corporation to calculate the gratuity payable to the second respondent on the basis of monthly salary of Rs. 26,000/- is correct.

5. In order to resolve this issue, after hearing sometime of this Writ Petition, during the last hearing, this Court directed both the learned counsel appearing for the parties to file a respective calculation, on what basis, the petitioner corporation claimed a sum of Rs. 6,900/- as the last drawn salary of the second respondent and on what basis, the second respondent has claimed a sum of Rs. 26,000/- as a last drawn salary.

6. Pursuant to the said direction issued by this Court, the learned Standing counsel for the petitioner as well as the Counsel for the second respondent have filed separate additional typed set of papers.

7. In this context, the petitioner corporation has filed some documents, among which, one of the crucial document is last drawn pay certificate, pertaining to the second respondent employee. According to the last pay certificate, the salary payable to the second respondent was fixed at Rs. 17,243/-.

8. It is pertinent to be noted that, in fact during these period, there had been a 12(3) settlement under the Industrial Disputes Act, between the petitioner corporation and the employees Union, based on which, what should be the Dearness Allowances to be taken into account for the purpose of the salary to the employees concerned and other service/ monetary benefits, covered under the said 12(3) settlement whether had been implemented, in respect of the second respondent case or not was also an issue. In this context, now the position has been cleared through the last drawn pay certificate filed by the very petitioner corporation itself that, after implementing the 12(3) settlement benefits also, the salary of the second respondent has been fixed as Rs.17,243/-.

9. Therefore, the basis for the Original Authority under the Act, to take Rs. 6,900/- alone as a last drawn salary, based on the daily rate basis for the second respondent, shall not stand in the way, as there has been no justification to fix the gratuity amount payable to the second respondent, based on the said amount of Rs. 6,900/- per month.

10. At the same time, on what basis, a sum of Rs. 26,000/- was claimed by the second respondent employee also to be looked into.

11. In this context, based on the 12(3) settlement, what are all the benefits, which are available monetarily, along with the basic pay seems to have been calculated by the second respondent on his own and accordingly, he claimed a sum of Rs. 26,000/- that should have been last drawn salary of the second respondent and only on that basis, he made a claim before the Appellate Authority under the Act and that was also accepted by the Appellate Authority through the impugned order.

12. However now, it has become quite clear on showing the last pay certificate issued by the petitioner corporation in respect of the second respondent, which the learned counsel appearing for the second respondent cannot dispute.

13. If the gratuity is payable to the second respondent is calculated on the basis of this last drawn salary of Rs. 17,243/-, certainly, the calculation made by the Original Authority under the Act by taking into account, a sum of Rs. 6,000/- monthly salary as the last drawn salary would not have any basis and therefore, it has to go.

14. But at the same time, in respect of the claim made by the second respondent to calculate the gratuity on the basis of the amount of Rs. 26,000/- being the last drawn salary payable to the second respondent also since do not have any supporting documents, the said amount cannot be taken into account for calculating gratuity. Therefore, the order passed by the Appellate Authority, which has been impugned herein, would not stand. However, the correct last drawn salary payable to the second respondent since has come out in the pay certificate produced by the petitioner corporation, accordingly, it was the amount of Rs. 17,243/- per month and if that is taken into account, based on which, the gratuity amount payable to the second respondent is calculated, certainly a higher amount would come, than the one fixed by the Original Authority. However, the same may not match that of the amount to be calculated based on the fixation of monthly salary of Rs. 26,000/- as has been allowed by the Appellate Authority through the impugned order.

15. In view of the aforesaid factual matrix, after hearing both the learned counsel appearing for the parties, this Court feels that, the Writ Petition can be disposed of with the following orders:

"(i) That the last drawn salary of the second respondent since has been fixed and the certificate to that effect has been produced before this Court by the petitioner corporation, where the gross salary of the second respondent has been shown as Rs. 17,243/-, such amount shall be taken as last drawn salary of the second respondent.

(ii) Based on the said last drawn salary of Rs. 17,243/-, the petitioner corporation shall calculate the gratuity amount, taking into account the total service rendered by the second respondent and accordingly, the gratuity amount payable to the second respondent shall be computed and such computed amount shall be disbursed to the second respondent with allowable 10% interest within a period of thirty days from the date of receipt of a copy of this order.

(iii) With the aforesaid orders and modification, the impugned order of the Appellate Authority is sustained."

16. In the result, the Writ Petition is disposed of with the aforesaid directions. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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To

The Deputy Labour Commissioner,
(Appellate Authority under
Payment of Gratuity Act, 1972),
D.M.S. Complex, VI Floor,
Teynampet, Anna Salai, सत्यमेव जयते
Chennai - 600 002.

+1cc to M/s.S.T.Varadarajulu, Advocate, S.R.No.38692
+1cc to Mr.N.Chidambaram, Advocate, S.R.No. 38400
+1cc to the Government Pleader, S.R.No.38667

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RSI (CO)
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