IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2021

CORAM

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

W.P. No. 11136 of 2011
and
M.P. No.1 of 2011

Tamil Nadu Khadi and Village Industries Board,
Rep. by its Chief Executive Officer,
Kuralagam,
Chennai – 108. ... Petitioner

-vs-

1. The Assistant Commissioner of Labour/Controlling Authority Under the payment of Gratuity Act, Labour Welfare Board, Chennai – 6.

2. S.Pitchaiammal
3. S.Senthilvel
4. S.Vijayalakshmi
5. S.Suseela ... 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 First Respondent relating to the interim order dated 28.02.2011 passed in P.G.I.A. No. 126 of 2010 and quash the same as illegal.

For Petitioner : Mr. S.Packiaraj

For First Respondent: Mr. Harsha Raj
Counsel appearing for the Government
For Second to Fifth
Respondents : Mr. S.N.Ravichandran

ORDER
(through video conference)

Heard Mr. S.Packiaraj, Learned Counsel for the Petitioner, Mr. Harsha Raj, Learned Counsel representing the First Respondent and Mr. S.N.Ravichandran, Learned Counsel for the Second to Fifth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, viz., Tamil Nadu Khadi and Village Industries Board, is a body corporate established under the Tamil Nadu Khadi and Village Industries Board Act, 1959. One S.A. Sankaranarayanan (hereinafter after referred to as 'the employee' for clarity and convenience), who was employed as Supervisor by the Petitioner, had retired from its service on 31.07.1993 on attaining the age of superannuation. According to the Petitioner, it has adopted the Tamil Nadu Pension Rules, 1978, for extending the benefits of Death-cum-Retirement-Gratuity (hereinafter referred to as 'the DCRG' for short) and monthly pension to its employees on their retirement from service and in furtherance thereof, the employee was entitled to the DCRG of Rs. 37,290/- apart from monthly pension. The sum of Rs. 24,905/- had been deducted towards certain loss incurred from DCRG of the employee, who had subsequently expired on 19.06.1995, before releasing the remaining amount to him. The Second to Fifth Respondents, who are his legal heirs, had filed the Writ Petition in W.P. No. 3148 of 1999 before this Court, seeking direction to return the said sum of Rs. 24,905/- recovered from the employee and this Court on 26.02.1999 had passed an order in that Writ Petition directing the Chief Executive Officer of the Petitioner to dispose the appeal preferred by the employee in that regard. In furtherance thereto, the Chief Executive Officer of the Petitioner by proceedings R.C. No. 18513/Pen-3/1999 dated 04.05.1999 rejected the said appeal. The Second to Fifth Respondents thereafter made an application in P.G. No. 62 of 2010 under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Gratuity Act' for short) before the First Respondent claiming that the employee was entitled to receive gratuity from the Petitioner calculated in accordance with the provisions of the Gratuity Act and as a lesser sum had been paid to him, they were entitled to the shortfall including the sum of Rs. 24,905/- that had been recovered earlier. This Court by an order dated 15.03.2010 in W.P. No. 11230 of 2001 filed by the Second to Fifth Respondents directed the First Respondent to dispose the application for gratuity on merits and in accordance with law within a period of three months from the date of receipt of the copy of that order, after due notice to the parties.

3. Despite the aforesaid directions issued by this Court, the Petitioner filed an application in I.A. No. 126 of 2010 before the First Respondent raising preliminary objection that the First Respondent does not have jurisdiction to entertain and decide on the non-payment of DCRG or part thereof which is covered under the Tamil Nadu Pension Rules, 1978. The First Respondent by an order dated 28.02.2011 overruled the objections raised by the Petitioner and dismissed the application in I.A. No. 126 of 2010 and posted the main case for enquiry on

07.04.2011. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging that order. At the time when the matter came up for admission on 28.04.2011, this Court granted interim stay of the impugned order while directing notice to be issued to the Second to Fifth Respondents.

4. The pivotal attack by the Learned Counsel for the Petitioner on the impugned order is that when the employee has received the DCRG amount calculated in accordance with the Tamil Nadu Pension Rules, 1978, without any demur, the Second to Fifth Respondents cannot pursue any claim for higher amount of gratuity calculated under the provisions of the Gratuity Act. In this regard, it must be pointed out that Section 4(5) of the Gratuity Act entitles an employee to receive better terms of gratuity under any award or agreement or contract with the employer, but in this case, the amount paid as DCRG by the Petitioner to the employee under the Tamil Nadu Pension Rules, 1978, is lesser than the amount of gratuity payable under the Gratuity Act. Moreover, Section 14 of the Gratuity Act in no uncertain terms states that the provisions of that Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than that Act or in any instrument or contract, having effect by virtue of any enactment other than that Act. This would obviously mean that merely because the establishment of the Petitioner has extended the benefits of DCRG and pension under the Tamil Nadu Pension Rules, 1978, and has made payments towards the same to the employee, it would not absolve the liability of the establishment of the Petitioner to pay gratuity in accordance with the provisions of the Gratuity Act, unless the establishment of the Petitioner has been exempted under Section 5 of the Gratuity Act, on being satisfied that the employees are in receipt of gratuity and pensionary benefits, which are not less favourable than the benefits conferred under that Act. It is not in dispute that the establishment of the Petitioner has not obtained any such exemption. Hence, the amount of gratuity that the employee is entitled would have to be determined only in accordance with the provisions of the Gratuity Act. This view is fortified by the binding decision of the Hon'ble Supreme Court of India in Municipal Corporation of Delhi -vs- Dharam Prakash Sharma [(1998) 7 SCC 221], which has been duly taken note by the First Respondent while repelling the contentions of the Petitioner in the impugned order.

5. The result of the foregoing discussion is that there is no infirmity in the impugned order warranting interference by this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution. The application for gratuity in P.G No. 62 of 2010 filed by the Second to Fifth Respondents shall be listed for hearing on 01.11.2021 before the

First Respondent and the Petitioner shall peremptorily file its Counter in P.G. No. 62 of 2010 on that date. If the First Respondent is not in a position to take up the matter on the said date, the date to which it is adjourned shall be informed in the prescribed manner. The parties or their respective Counsel shall attend the hearing on the said date as well as on the subsequent dates to which it is adjourned and extend their co-operation for the early disposal of the matter. After affording full opportunity of hearing to all parties concerned following the prescribed procedure in consonance with the principles of natural justice, the First Respondent shall deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the concerned parties under written acknowledgment. It shall be ensured that there is atleast one effective hearing every week showing progress of the case and monthly reports in that regard shall be sent to the Registrar (Judicial) of this Court till the case is finally decided.

In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

dm/skr

To

1. The Assistant Commissioner of Labour/Controlling
Authority Under the Payment of Gratuity Act,
Labour Welfare Board,
Chennai - 600 006.

2. The Chief Executive Officer,
Tamil Nadu Khadi and Village Industries Board,
Kuralagam, Chennai - 600 108.

Copy to

1. S.Pithaiammal,
W/o. Late Sankaranarayanan,
Plot No. 80 C, Radhakrishnan Street,
NGGO Colony,
Nagamalai Pudukottai,
Madurai - 19.

2. S.Senthilvel,
S/o. Late Sankaranarayanan,
Plot No. 80 C, Radhakrishnan Street,
NGGO Colony,
Nagamalai Pudukottai,
Madurai - 19.

3. S.Vijayalakshmi,
W/o. Ravichandren,
No. 20 E, Naidu Street,
Kottur,
Chennai - 600 085.

5. S.Suseela,
D/o. Late Sankaranarayanan,
Plot No. 80 C, Radhakrishnan Street,
NGGO Colony,
Nagamalai Pudukottai,
Madurai - 19.

5. The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.42337

W.P. No. 11136 of 2011

SJ(CO)
CB(24/09/2021)