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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

CORAM

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

W.P. No. 1869 of 2012

and

M.P. No. 1 of 2012

1. S.Muthusamy

2. P.Subramanian

... Petitioners

-vs-

1.The Joint Commissioner of Labour,
(Appellate Authority under the Payment of Gratuity Act,
1972),
Coimbatore - 641 018.

2.The Assistant Commissioner of Labour,
(Controlling Authority under the Payment of Gratuity Act,
1972),
Coimbatore - 641 018.

3.The Management of Sri Ramalinga Choodambikai Mills Ltd.,
113, B.S.Sundaram Road,
Thiruppur - 641 601.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, to issue a Writ of Certiorari, praying to call for the records and papers from the files of the First Respondent in P.G.A. Nos. 1 and 2 of 2011 and quash the common impugned order made therein dated 29.08.2011

For Petitioners : Mr. K.M.Ramesh

For Respondents : Mr. C.Harsha Raj,
Government Counsel (for R1 & R2)

Mr. Anand Gopalan
for M/s. T.S. Gopalan & Co. (for R3)



O R D E R
(through video conference)

Heard Mr.K.M.Ramesh, Learned Counsel for the Petitioners, Mr. C.Harsha Raj, Learned Government Counsel appearing for the First and Second Respondents and Mr. Anand Gopalan, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Petitioner, viz., S.Muthusamy, and the Second Petitioner, viz., P.Subramanian, had been working in the textile mill of the Third Respondent as cone winders from 01.07.1979 and 01.01.1973 respectively. The textile mill of the Third Respondent had suspended its operations from February 1995 onwards. Thereafter, the Third Respondent had entered into settlement with the individual employees for payment of their dues in an agreed manner within a specified time limit. According to the Third Respondent, most of the employees had received their dues calculated in terms of that settlement which brought about a cessation of employer and employee relationship that existed between them. However, in the case of the Petitioners, they had not been paid their dues and they had attained their age of superannuation on 01.12.2008 and 10.11.2008 respectively. Thereafter, the Petitioners made separate claims for gratuity for the entire period of service till they attained their age of superannuation before the Second Respondent in P.G. Nos. 49 and 50 of 2009 under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Gratuity Act' for short). The Third Respondent took a plea before the Second Respondent that inasmuch as its textile mill had ceased to be functional from February 1995 onwards and the settlement had been arrived with the Petitioners on 04.01.1999, they were not entitled to claim gratuity for the period beyond February 1995. The Second Respondent rejected the said contention and calculated the gratuity amount due to the Petitioners as per the calculation shown below:-

Thiru. S.Muthusamy (First Petitioner)	Rs. 5,988.51 x 15/26 x 29 years = Rs. 98,824/-
Thiru. P.Subramanian (Second Petitioner)	Rs. 5,988.51 x 15/26 x 36 years = Rs. 1,23,920/-

However, on an appeal preferred by the Third Respondent against the said order under Section 7(7) of the Gratuity Act in P.G.A. Nos. 1 and 2 of 2011, the First Respondent by order dated 29.08.2011, relying upon the decision of this Court in P.Malligarjunan -vs- Joint Commissioner of Labour, Coimbatore (Order dated 28.06.2011 in W.P. No. 27494 of 2009), reversed that order of the Second Respondent and held that the period of service of the Petitioners with the Third Respondent had to be continued till 31.12.1998, in view of the settlement arrived



on 04.01.1999, and the gratuity amounts were reduced treating the period of employment as ending on 31.12.1998. In this Writ Petition, the Petitioners have assailed the aforesaid order passed by the First Respondent.

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3. Learned Counsel for the Petitioners submits that though it was true that the textile mill of the Third Respondent had not been in operation from February 1995 onwards, the procedure for closure under Section 25-O of the Industrial Disputes Act, 1947, had not been followed which would necessarily give rise to the inference that the Petitioners would have to be treated to be continuing in employment till they attained their age of superannuation and in such circumstances, the Second Respondent rightly held that they were entitled to reckon the period from the date of joining duty till they attained the age of superannuation for payment of gratuity, but it has been erroneously set aside by the First Respondent in the impugned order, and contends that the Petitioners are entitled to the gratuity amount granted by the Second Respondent.

4. Learned Counsel for the Third Respondent strenuously pleaded that the settlement entered by the individual employees with the Third Respondent has brought about a cessation of the employer and employee relationship between the parties from that date and as a consequence thereto, the First Respondent was justified in restricting the gratuity amount till 31.12.1998 in the impugned order.

5. Having regard to the rival submissions made, it must, at once, be recapitulated here that the Gratuity Act is a self-contained code, and the non-obstante clause in Section 14 of the Gratuity Act, mandates as follows:-

"14. Act to override other enactments, etc:- The provisions of this Act or any rule made thereunder 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."

This would obviously mean that if the Third Respondent relies upon any settlement entered with the Petitioners for payment of gratuity, it cannot be in contravention of any provision of the Gratuity Act. Section 2-A(1) of the Gratuity Act, reads as follows:-

"2A. Continuous service:- For the purposes of this Act,

(1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order



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treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;"

In the absence of any order of closure by the Competent Authority under Section 25-O of the Industrial Disputes Act, 1947, it is incumbent upon the Third Respondent in conformity with the statutory prescription of continuous period of service in terms of Section 2-A of the Gratuity Act to establish that the non-employment of the Petitioners after February 1995 till they attained the age of superannuation was due to any fault on their part so as to deprive them of their entitlement to gratuity during that period. It is not the case of the Third Respondent that the Petitioners were responsible for such non-employment and even the settlement dated 04.01.1999 relied by the Third Respondent specifically requires that payment of the dues ought to have been made to the Petitioners in the agreed manner within specified time limit, if the same has to be given effect, but the amounts due to the Petitioners thereunder have not been paid by the Third Respondent.

6. It has been brought to notice that the Labour Court, Coimbatore, in the order dated 30.10.2003 in C.P. Nos. 732 to 751 of 2002 had held that in view of the settlement dated 04.01.1999 entered by them with the Third Respondent, they are not entitled to claim any amount in excess of what has been agreed therein, but that cannot have any relevance to deny their legitimate entitlement to gratuity for the period as specified in the relevant statutory provisions quoted earlier. The reliance placed by the First Respondent on the ruling of this Court in P.Malligarjunan -vs- Joint Commissioner of Labour, Coimbatore (Order dated 28.06.2011 in W.P. No. 27494 of 2009) so as to deprive the Petitioners of benefit of gratuity for the period from 01.01.1999 till they attained the age of superannuation, is also misconceived. On a reading of the facts involved therein, it could be seen that there was a industrial adjudication of 'closure' of the establishment of the employer in that case and having regard to that material fact, it had been held that the right to claim gratuity by its erstwhile employees would be only till the date of such 'closure', unlike the present one where the Third Respondent has not produced any evidence in that regard. In this context, it would be useful here to refer to the decision of the Hon'ble Supreme Court of India in Regional Manager -vs- Pawan Kumar Dubey [(1976) 3 SCC 334], where it has been observed as follows:-

"7.It is the rule deducible from the application of law to the facts and circumstances of



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a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

In such circumstances, it would have to be necessarily construed that the Petitioner continued to be in employment in the textile mill of the Third Respondent till the respective dates on which they attained the age of superannuation so as to include that period for calculating gratuity amount due to them.

7. In that view of the matter, it is not possible to uphold the order dated 29.08.2011 in P.G.A. Nos. 1 and 2 of 2011 passed by the First Respondent, which is quashed, and the order dated 03.03.2010 in P.G. Nos. 49 and 50 of 2009 passed by the Second Respondent is revived. The Petitioners are at liberty to make necessary application for the withdrawal of the amount of gratuity that has been deposited by the Third Respondent before the concerned authority.

In the result, the Writ Petitions are ordered on the aforesaid terms. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

skr/vjt

To

1.The Joint Commissioner of Labour,
(Appellate Authority under the Payment of Gratuity Act,
1972), Coimbatore - 641 018.

2.The Assistant Commissioner of Labour,
(Controlling Authority under the Payment of Gratuity Act,
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+1cc to Mr.K.M.Ramesh, Advocate SR. No.57231

W.P. No. 1869 of 2012

NK (CO)

PR (07/12/2021)