IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NOS.41432 & 41433 OF 2005
AND
W.P.M.P.NOS.44494 & 44496 OF 2005

W.P.No.41432 of 2005

1. The Chairman
   Indian Telephones Industries Limited
   Corporate Office, ITA Bhavan,
   Doorvani Nagar, Bangalore – 560 016.

2. The Chief Regional Manager,
   Indian Telephones Industries Limited
   129, Greams Road, Chennai – 600 006

... Petitioners

-vs-

1. The Regional Labour Commissioner (C)
   Appellate Authority under the payment of Gratuity Act
   No.26, Haddows Road,
   Shastri Bhavan,
   Chennai 600 006.

2. Controlling Authority
   Assistant Labour Commissioner (C)
   No.26, Haddows Road,
   Shastri Bhavan,
   Chennai 600 006.

3. R.Janarthanam

.... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records on the file of the 1st respondent in G.A.No.40 of 2005 and its order dated 17.10.2005 and quash the same.

For Petitioner : Mrs.Rita Chandrasekar
for M/s.Aiyar & Dolia

For Respondents : Mr.E.Palani for R1 & R2
No appearance for R3

W.P.No.41433 of 2005

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Bangalore – 560 016.

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Vs

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2. Controlling Authority
Assistant Labour Commissioner (C)
No.26, Haddows Road,
Shastri Bhavan,
Chennai 600 006.

3. Mr.K.R.Krishnamoorthy

.... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari by calling for the records on the file of the 1st respondent in G.A.No.39 of 2005 and its order dated 17.10.2005 and quash the same.

For Petitioner : Mrs.Rita Chandrasekar
for M/s.Aiyar & Dolia

For Respondents : Mr.A.S.Vijayaraghavan for R1 & R2
Mr.S.Baskaran for R3

COMMON ORDER

These present Writ Petitions have been filed by the Management, questioning the order of the Appellate Authority / 1st Respondent, by which, the order of the Controlling Authority was reversed and gratuity amount was determined by the Appellate Authority.

2. It is the case of the Management that the 3rd Respondent / Employee was employed by the Management on 28.04.1990 and he, after rendering a number of years of service, retired from service on Voluntary Retirement Scheme on 30.10.1998. The Management has decided to revise the pay of employees in the light of the Circular dated 21.07.2000, issued by the Government of India, Ministry of Communication, Department of Telecommunication and the relevant Clause of the Circular dated 21.07.2000 is extracted below.

> “(ii) payment of revised salary will be made with effect from 01.04.2000 and the arrears from 01.01.1997 to 31.03.2000 will be paid later in a phased manner on the improvement of the profitability position of the Company, generation and availability of funds.
>
> (iii) the pay revision would be dated to the components of pay only and ITI should avoid the revision of perquisites and perquisites related allowances. Para 12 of the order No.2 (49/98-DPE(WO) dated 25.06.1999 may be implemented strictly in accordance with the

guidelines contained in OM of DPE dated 27th March 2000 HRA and CCA would be computed on a revised basic pay from the date of issue of Presidential Directives.

(iv) The payment of productivity linked incentives and other allowances should be as per the DPE order dated 25th June, 1999 and 27th March 2000.

3. It is further case of the Management that though the Employees retired from service prior to 31.03.2000, they, on the presumption that there was a revision of wages even prior to 31.03.2000 and would be entitled to gratuity, filed a petition before the 2nd Respondent, claiming the amount of gratuity. However, the 2nd Respondent / Controlling Authority, by an order dated 04.11.2003, negatived their claim and held as follows:-

"Whether the claim of the applicant with regard to the difference of gratuity amount on account of the revised pay scale is sustainable and within the ambit of the provisions of the act".

Before being gone into the right of the Applicant in receiving the difference gratuity amount of the revised salary it shall be worth to discuss the salient features of Section 4 of the Act which reads as under sub-section (2) of Section 4 of the Act for every completed years of service or part of thereof of excess of six months the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned. A plain reading of Sub Section (2) of Section 4 of the Act, will clarify that the components of last drawn wages for the purpose of calculation of gratuity have its conclusive and decisive effect i.e., the last drawn wages of the Applicant should be invariably taken into account for the purpose of calculation of gratuity. The respondent without prejudice to the aforesaid section of the Act and Rules have taken the component of last drawn wages as the basis for calculation of gratuity and the amount whereof has been arrived at and paid accordingly. The arrears on account of revision of salary as per Notification dated 21.07.2000 is yet to be brought into force by the respondent i.e., the same is still lying unrevised. In nutshell it may be mentioned that the Applicant is yet to receive the wages on the revised scale in the form of arrears. Had the respondent paid the arrears as per their Notification dated 21.07.2000 and subsequently delayed the gratuity, the Applicant would have earned and derived the right under the provisions laid down under the Act and Rules to claim his gratuity. In the instant case, the fact remains that the arrears on account of revised salary is yet to be paid. The applicant only after receiving the arrears shall drive the right to claim the difference of gratuity. In the absence of the last drawn wages, the calculation of the amount of gratuity is not feasible and hence I find no substance on the contentions of the applicant. The claim of the applicant urging the authority to pass necessary direction upon the respondent to pay the gratuity on the basis of the revised salary is therefore unsustainable in the eye of law and the same deserves to be rejected as pre-mature."

4. It is also the case of the Management that aggrieved by the order of the Controlling Authority, the Employees preferred an appeal before the 1st Respondent, being an Appellate Authority, in which the gratuity amount was computed, taking note of the notional revision of wages payable to the employees on the higher side. The Appellate Authority, after determination of the amount, directed the Management to pay the computed amount together with interest in terms of the scheme.

5. In any event, the jurisdiction of the Authority in passing the order has been questioned by the Management and this Court is not inclined to traverse into all those details.

6. The Employees contended that the Management has admitted that the Employees are entitled to receive the balance gratuity amount due to them. In my view, a single sentence cannot be taken to be the admission of the Management to decide the case, as the Management in the subsequent sentence has clearly stated that the Management could not pay the amount of arrears. The Employees have not let in any evidence to show that their counter parts have been paid revision of wages and gratuity and at least, they should have filed a proof that there was a revision of wages in respect of the serving employees in terms of the Circular dated 21.07.2000. Though the Appellate Authority has proceeded on the basis that there was a revision for employee, who retired prior to the cut off date, whereas the Controlling Authority had held that on presumption, the Management cannot be directed to pay the amount and that the application itself is premature.

7. It is represented by the Management that Indian Telephones Industries Limited have already been closed and not even a single employee has been extended the benefit of revision of wages, as there was no profit. Both parties relied upon the judgment of the Karnataka High Court in the case of HSCL vs. Appellate Authority under the Gratuity Act [W.P.No.30683 of 2000] to state that similarly placed employees were granted relief by the Karnataka High Court and the order has been stayed by the Hon'ble Supreme Court and that they are not aware of the present stage of the matter pending before the Supreme Court. It was affirmed by the parties that the Supreme Court has not stayed other similar proceedings pending before various High Courts and Authorities concerned.

8. On scrutiny of the entire facts and circumstance of the case, it is seen that the Appellate Authority has proceeded on the presumption and assumption that the revision of wages is applicable to the Employees herein, which has not been actually extended to them. Moreover, no evidence has been adduced on the side of the Employees in support thereof. Hence, this Court has no other option, but to interfere with the order of the Appellate Authority and restore the order of the Controlling Authority on file. But at the same time, in case the Employees are able to produce any evidence to show that revision of wages was granted to others, then they are entitled to submit an application afresh before the Authority concerned and the period

during which the writ petition was pending shall be excluded for the purpose of computing the limitation.

9. The Controlling Authority declined to accept the plea of the workers, holding that the application is premature and it means that the doors to approach the Authority are not closed and they can knock at the doors, if they are able to establish their case at a later point of time. I find that the order of the Appellate Authority cannot be given effect to.

10. For the foregoing discussions, the Writ Petition is allowed and the order of the Controlling Authority is restored on file. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

dpq

To:

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+1cc to Mr.S.Baskaran, Advocate, S.R.No.34207
+1cc to M/s.Aiyar & Dolia, Advocate, S.R.No.34779

W.P.Nos.41432 & 41433 of 2005
and M.P.Nos.43880 & 43881 of 2005

CA(CO)
RLP(11/11/2021)