



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.26450 of 2016

and

W.M.P.No.22670 & 22671 of 2016

The Management,
Tamil Nadu State Transport
Corporation (Coimbatore) Limited,
37, Mettupalayam Road,
Coimbatore - 641 043.
Rep by its Managing Director

... Petitioner

-vs-

1.G.Krishnamoorthy

2.The Joint Commissioner of Labour/
(Appellate Authority as under Payment
of Gratuity Act, 1972),
Coimbatore.

3.The Assistant Commissioner of Labour/
(Controlling Authority as under Payment
of Gratuity Act, 1972), Coimbatore. ... Respondents

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari, calling for the records of the order of the 2nd respondent, the Appellate Authority (under the Payment of Gratuity Act, 1972), The Joint Commissioner of Labour, Coimbatore made in AGA No.28/2015 dated 29.09.2015 and the order passed by the 3rd respondent, The Controlling Authority (under the Payment of Gratuity Act, 1972), The Assistant Commissioner of Labour, Coimbatore in PGA No.57/2014 dated 16.02.2015 and to quash the same as illegal.

For Petitioner : Mr.A.Sundaravadanam

For Respondent-1 : Mr.V.Ajay Khose

For Respondents-2&3 : Mr.LSM.Hasan Fizal
Government Advocate

O R D E R

The Management has questioned the order of the Appellate Authority, confirming the order of Controlling Authority, granting gratuity for the period of 2 years, which the



Workman, according to the Management, is not entitled to, as he was an Apprentice. However, the order of grant of interest by the Controlling Authority was reversed by the Appellate Authority.

WEB COPY

2. The narrow issue involved in this Writ Petition is, whether an Apprentice can be excluded for the purpose of payment of gratuity or not? For the sake of convenience, Section 2(e) of Payment of Gratuity Act, 1972 is extracted below:

"2(e) "employee" means any person (other than an apprentice) employed on wages, [3][***] in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, [4] [and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity]".

3. A reading of the above provision is apparent that the period of apprenticeship has got to be excluded. Though the Act is a Social Welfare Legislation, it cannot be applied mechanically and rigidly and a harmonious construction has got to be given. If an employee, after training, is confirmed in service, then the past services will have to be necessarily taken into account, which is the ultimate intention of the beneficial legislation. This Court, in the case of S.Arunachalam vs. The Managing Director, Southern Structurals, Pattabhiram, Madras and others reported in 2001 (4) LLN 940, had elaborately dealt with the term 'apprentice' and held as follows:

"....."Apprentice" means a person who is undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship."

8. For all the above reasons, I find that the orders of the Controlling Authority and the Appellate Authority holding that the word "apprentice" as mentioned in the definition of Section 2(e) of "the Act" includes a trainee also, are liable to be set aside as the said findings are not in conformity with the purport of the definition of Section 2(e) of "the Act".

Bearing in mind the above order, the Authority has rightly taken into account the period of two years of apprenticeship for the purpose of payment of gratuity, as the Workman was not informed that the said period would be treated as break in-service and no interference is warranted against the said finding.



4. Yet another issue raised by the Management is that the Workman had attained the age of superannuation on 30.09.2010 and after his retirement, a settlement was entered into, granting benefits retrospectively from 01.09.2010. Since the Workman was not in service on the date of settlement, he will not be entitled to the benefits. If the said submission is accepted, it would defeat the purpose of the I.D.Act, 1947, as the real purpose of entering into a Settlement between the two parties is to resolve the dispute, so as to ensure that there is peace and harmony between the employer and employee. When the settlement gives retrospective effect under Section 18 of the I.D. Act, 1947, the employees, who were on the rolls on the date from which the settlement was to be effected, are entitled to the benefits of the said Settlement. Of course, it is true that the Workman retired from service on 30.09.2010, but, however, the Settlement was given effect to retrospectively and thus, the benefits of the revision of Dearness Allowance have got to be taken into account and the benefits need to be extended. The Appellate Authority has rightly determined the amount and directed the Management to pay the difference amount of Rs.89,210/- payable to the Workman, but, without interest.

5. This Court makes it very clear that the amount determined by the Controlling Authority as confirmed by the Appellate Authority will have to be paid within a period of three months from the date of receipt of copy of this order. The amount must have been definitely deposited to the credit of the Controlling Authority, failing which the Appeal would not have been entertained by the Appellate Authority. Hence, the first respondent/Workman is permitted to withdraw the amount lying before the Controlling Authority together with accrued interest and the Controlling Authority is directed to release the amount, within a period of one month from the date of production of this order.

6. With the above observation and direction, this Writ Petition filed by the Management, is dismissed. No costs. Consequently, the connected miscellaneous petition are closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

rsi



To:

1.The Joint Commissioner of Labour/
(Appellate Authority as under Payment
of Gratuity Act, 1972),
Coimbatore.

2.The Assistant Commissioner of Labour/
(Controlling Authority as under Payment
of Gratuity Act, 1972),
Coimbatore.

+1cc to Mr.V.Ajay Khose, Advocate SR.No.37269

W.P.No.26450 of 2016

KSM(CO)
GMY (26/11/2021)