



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**
W.P. (MD)No.14459 of 2012

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The Management,
Madura Sugars,
Pandiarajapuram,T.Vadipatty,
Madurai,
Represented through its
Chief Executive

... Petitioner

Vs.

1.The Appellate Authority under the Payment of
Gratuity Act,
(Joint Commissioner of Labour),
Madurai.

2.The Controlling Authority under the Payment of
Gratuity Act,
(Assistant Commissioner of Labour),
Madurai.

3.S.Meenal

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records from the file of the 1st respondent herein in relating to the order passed by the 1st respondent in PGA 27/2020, dated 08.11.2011 received on 26.04.2012 and to quash the same.

For Petitioner : Mr.P.Chandra Bose

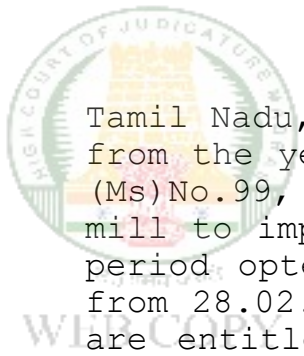
For R1 & R2 : Mr.M.Muthu Geethaiyan
Spl.Govt.Pleader

For R3 : Mr.R.Shankar Ganesh

O R D E R

This writ petition has been filed by the petitioner, to call for the records from the file of the 1st respondent relating to the order passed by the 1st respondent in PGA 27/2020, dated 08.11.2011 received on 26.04.2012 and to quash the same.

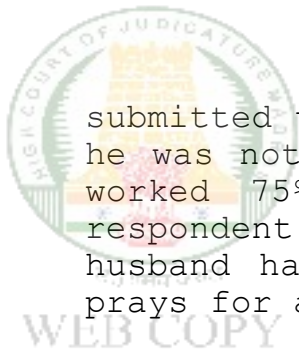
2.The case of the petitioner is that the petitioner is the Management of Madura Sugars, which was owned by a Private Company prior to 1983. After acquisition of the Mill by the Government of



Tamil Nadu, the Mill was run by the petitioner. The Mill was stopped from the year 2002-2003. The Government of Tamil Nadu, through G.O (Ms)No.99, Industrial Employment, dated 27.12.2004, permitted the mill to implement VRS scheme and all the workers worked during that period opted for VRS Scheme and relieved from service with effect from 28.02.2005. During the lay off period, the seasonal employees are entitled for retaining allowance. But, NMR (casual) employees were engaged during the crushing season and they were not entitled for any retaining allowance. During the crushing season, the casual employees were offered for working in the Mill gate, according to the availability of the work. The casual employees list will be called and who ever at the main gate would be called and provided work. The casual employees were not having any scale of pay, but depending upon their nature of work and the seniority, the daily wages have been fixed.

3.Further, the petitioner has averred that one casual employee viz., late N.Asaithambi, filed Gratuity application before the second respondent/Controlling Authority as if he had worked in Boiler Department and resigned his job on 13.04.2007 and his last drawn wages of Rs.4,6125.50/- and claimed gratuity to the tune of Rs.57,656.25/- for the alleged total period of 25 years of service. Subsequently, the said Asaithambi expired and his wife, who is the third respondent herein, was impleaded as a legal heir of the deceased Asaithambi. Before the second respondent, on the side of the third respondent, no witness was examined and no documents were marked. On the side of the petitioner/Management, the Establishment Clerk was examined and documents Ex.R.1 to Ex.R.10 were marked and clearly established that the deceased Asaithambi was engaged as a casual employee and he was never engaged for 75 % of the crushing season, so as to enable him to get gratuity. Apart from that, the petitioner Factory was stopped from 30.11.2002 and all the workers' accounts were settled. The third respondent has not established that her husband had continuously worked during the crushing season or he was a seasonal employee. The EPF contribution has been paid only on the basis of the salary paid to the employee. The petitioner's husband being a NMR employee and his name was not found place in the salary Register. All those facts have not been properly considered by the second respondent/Controlling Authority while allowing the petition filed by the third respondent's husband and the same was confirmed by the Appellate Authority. Challenging the same, the present writ petition is filed.

4.The learned counsel appearing for the petitioner submitted that as per Section 2(A)(3) of the Payment of Gratuity Act, where an employee, employed in a seasonal establishment, is not in continuous service for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy- five per cent., of the number of days on which the establishment was in operation. Further, the learned counsel for the petitioner



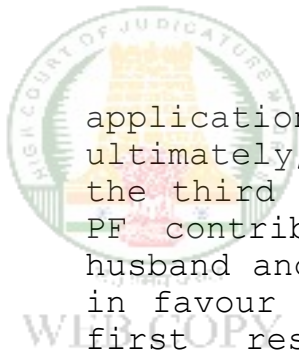
submitted that the third respondent's husband was a NMR employee and he was not continuously worked in the petitioner Mill and he never worked 75% of the days for the particular period. The third respondent has not produced any document to establish that her husband has continuously worked in the petitioner Mill. Hence, he prays for allowing the present writ petition.

5. Heard the learned counsel appearing for the petitioner and perused the materials placed on record.

6. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the Award of the Labour Court. The Hon'ble Supreme Court, in a catena of decisions, has held that normally a writ court should not interfere with the Award of the Labour Court, unless the Award is perverse. It has been further held that if the Award is not irrational or perverse, the High Court should not interfere with the reasons in the Award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned Award.

7. The facts in the present case are not in dispute. Admittedly, the petitioner Mill did not dispute the employer and employee relationship between the petitioner and the third respondent's husband. Further, it is the case of the petitioner that the third respondent's husband was NMR employee and he did not work continuously and he never worked 75% of the days for the particular period. Hence, as per Section 2(A)(3) of the Payment of Gratuity Act, the claim made before the second respondent is not sustainable. A perusal of the award reveals that the third respondent's husband filed an application before the second respondent under Rule 7(d) of the Payment of Gratuity Act, 1972. Before the second respondent/Controlling Authority, except the third respondent, no witness was examined and no document was marked on the side of the workman. On the side of the petitioner Mill, Ex.R.1 to Ex.R.10 were marked. A perusal of Ex.R.9 reveals that the third respondent's husband was working from 1995 to 2002 in the petitioner Mill and Ex.R.10 reveals that the husband of the third respondent was working from 1983 to 1994 in the Petitioner Mill.

8. A perusal of the above said documents reveals that the third respondent's husband had continuously worked from 1983 to 2004. Further, Ex.R.8-shows that the petitioner Mill paid the contribution in favour of the third respondent's husband from 01.04.2001 to 31.03.2002. Therefore, the third respondent's husband sent a



application was not properly served by the petitioner Mill and ultimately, the second respondent has arrived at a conclusion that the third respondent's husband continuously worked for 25 years and PF contribution also paid on behalf of the third respondent's husband and elaborately discussed the said issue and passed an award in favour of the third respondent, which was also confirmed by the first respondent/Appellate Authority. The second and first respondents arrived at a conclusion that the third respondent's husband is an employee of the petitioner Mill and he is entitled for gratuity amount, which cannot be interfered with and the order passed by the 1st respondent in PGA 27/2020 is confirmed.

9.For the foregoing reasons, this Writ Petition fails and accordingly, the same stands dismissed. No costs.

Sd/-

Assistant Registrar(CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Appellate Authority under the Payment of Gratuity Act,
(Joint Commissioner of Labour), Madurai.

2.The Controlling Authority under the Payment of Gratuity Act,
(Assistant Commissioner of Labour),
Madurai.

+1 CC to M/s.SPL GP (SR-11991[F] dated 17/03/2021)

+1 CC to M/s.R.SHANKAR GANESH, Advocate (SR-11931[F] dated
17/03/2021)

W.P. (MD)No.14459 of 2012

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SRK(CO)

TR(05.07.2021) 4P 5C