



WEB COPY

W.P.(MD)Nos.11601 and 11608 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.12.2021
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P. (MD)Nos.11601 and 11608 of 2013

and
M.P. (MD)No.2 of 2013

W.P. (MD)No.11601 of 2013

A.Savaria Pitchai

... Petitioner

vs

1. The Assistant Labour Commissioner,
[Central] 5, Lady Dok College Road,
Chinnachockikulam Madurai - 625 002.
2. The Appellate Authority under the
Payment of Gratuity Act,
[Regional Labour Commissioner [Central],
No.26. Hadows Road, Sastri Bhavan,
Chennai - 600 006.

3.A.Stanly

... Respondents

PRAYER in W.P.(MD)No.11601 of 2013: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the first respondent relating to G.A.No.82/09 and of the second respondent in G.A.No.3/12 and 6/12, quash the order of the first respondent passed in G.A.No.82/09, dated 31.12.2011 and the common order of the second respondent passed in G.A.NO.3/12 and 6/12, dated 29.02.2013 [wrongly noted as 29th day february 2013 instead of 28th February 2013] dismiss the claim of the third respondent dated 13.08.2009 for gratuity as not maintainable under law, as well as, on facts.

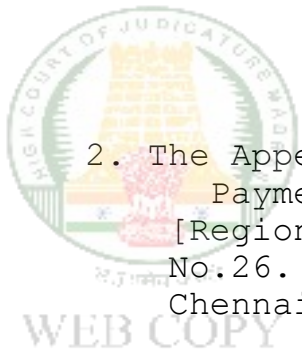
W.P. (MD)No.11608 of 2013

A.Savaria Pitchai

... Petitioner

vs

1. The Assistant Labour Commissioner,
[Central] 5, Lady Dok College Road,
Chinnachockikulam Madurai - 625 002.



2. The Appellate Authority under the
Payment of Gratuity Act,
[Regional Labour Commissioner [Central],
No.26. Hadows Road, Sastri Bhavan,
Chennai - 600 006.

3. S.Raj

... Respondents

PRAYER in W.P.(MD)No.11608 of 2013: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the first respondent relating to G.A.No.6/11 and of the second respondent reliant to G.A.No.2/12 and 05/12, quash the order of the first respondent passed in G.A.No.6/11, dated 31.12.2011 and the common order of the second respondent passed in G.A.NO.2/12 and 5/12, dated 29.02.2013 [wrongly noted as 29th day February 2013 instead of 28th February 2013] dismiss the claim of the third respondent, dated 02.06.2011 for gratuity as not maintainable under law, as well as, on facts.

In both cases

For Petitioner : Mr.S.Seenivasagam

For Respondents : Mrs.L.Victoria Gowri, for R-1 and
R-2
Mrs.Geetha
Mr.R.Diwakaran, for R-3

COMMON ORDER

The writ petition in W.P.(MD)No.11601 of 2013 is filed for issuance of a Writ of Certiorari, to quash the impugned order passed in G.A.No.82/09 and of the second respondent in G.A.No.3/12 and 6/12, quash the order of the first respondent passed in G.A.No.82/09, dated 31.12.2011 and the common order of the second respondent passed in G.A.NO.3/12 and 6/12, dated 29.02.2013 [wrongly noted as 29th day February 2013 instead of 28th February 2013] dismiss the claim of the third respondent dated 13.08.2009 for gratuity as not maintainable under law as well as on facts.

2. The writ petition in W.P.(MD)No.11608 of 2013 is filed for issuance of a Writ of Certiorari, to call for the records of the first respondent relating to G.A.No.6/11 and of the second respondent reliant to G.A.No.2/12 and 05/12, quash the order of the first respondent passed in G.A.No.6/11, dated 31.12.2011 and the common order of the second respondent passed in G.A.NO.2/12 and 5/12, dated 29.02.2013 [wrongly noted as 29th day February 2013



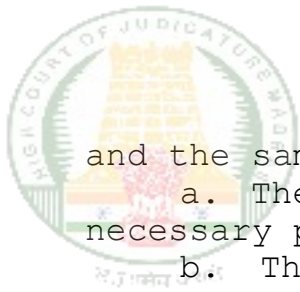
instead of 28th February 2013] dismiss the claim of the third respondent, dated 02.06.2011 for gratuity as not maintainable under law as well as on facts.

3. The brief facts of the case are that the petitioner is a Registered Partnership Firm, plying Lorries for anybody, who will be hired by the public at large. The petitioner's contention is that he is doing Transportation business in the name of "M/s. A. Savaria Pitchai". On calling for tenders by M/s. Bharat Petroleum Corporation Limited (BPCL) to undertake transportation of LPG gas cylinders, the petitioner was awarded contract. As per the contract the petitioner has to lift the LPG cylinders from the bottling plant and deliver them to their retail agencies and collect back the empty cylinders. There are also several such Transport Operators undertaking similar business and at present there are about 25 such contractors/tenders and executing the same from the 20 Contractors, including the petitioner who is working for the BPCL and the people like third respondent are working as a daily wages under the petitioner and other 19 contractors. When the third respondent has filed a petition before the first respondent, a notice was issued to the petitioner and he had appeared before the authority and filed a counter affidavit and an additional counter affidavit. Then the petitioner had submitted written argument also and the orders were reserved on.

4. In the meanwhile, the petitioner has filed memo dated 19.01.2012 in person in the office of the 1st respondent to re-open the case to add additional plea and lead additional evidence, but the office refused to receive the same. Hence the petitioner submitted the same through registered post with acknowledgment due. The petitioner anticipating that the case would be reopened and would be posted for further hearing, also had filed a second additional counter statement raising three legal pleas. But the petitioner received an order through post on 09.02.2012 without referring to the memo dated 19.01.2012 or the additional counter statement dated 30.01.2012. The specific contention of the petitioner is that though the order was passed after memo and additional counter but the order was ante dated as 31.12.2011. The petitioner preferred an appeal in G.A. No. 6 / 2012 before the 2nd respondent but the second respondent had dismissed the appeal. Since there is no further appeal and since there is violation of principles of Natural Justice the petitioner had preferred the present writ petition.

5. Heard the Learned Counsel for the petitioner and the Learned Counsel for the respondent and perused the materials on record.

6. The petitioner has filed the memo dated 19.01.2012 and filed additional counter statement dated 30.01.2012 raising three pleas



and the same is as under:

- a. The main application suffers the defect of non-jointer of necessary parties
- b. The 3rd respondent was not an employee employed in an establishment coming under the ambit of Payment of Gratuity Act
- c. The petitioner was coming under the jurisdiction of State Government and hence the jurisdiction of ALC (C) was ousted

7. The petitioner has submitted a petition under the Right to Information Act seeking details and a reply was received by the petitioner. In the reply it is stated that the payment of gratuity decision was signed on 03.02.2012 and dispatched on 06.02.2012. But the impugned order shows that it has been signed on 31.12.2011. The contention of the petitioner is that since the order was signed only on 03.02.2012 and before that itself the petitioner had filed the memo dated 19.01.2012 and additional counter on 30.01.2012, which is well before the signature of the order. But the order states the order was signed on 30.12.2011 which is clearly ante dated. The respondent opposed to remitting back the case stating that these three issues need not be taken into account for deciding the issue. The worker, namely, Stanly, has already worked as per their statement itself and the said Stanly is eligible for the payment of gratuity. This Court without going into the merits of these factual matters is remitting back the matter to the authority taken note of the reply issued for the petition filed under the Right to Information Act.

8. Therefore, the Writ Petitions are allowed and the authority under the Payment of Gratuity is directed to take up the three pleas raised by the petitioner and grant opportunity to all the parties, thereafter render a finding on the said three pleas raised. The authority shall pass an order after hearing the parties within 6 months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar (CS)

jbr



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MGJ(14.02.2022) 5P 3C