BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.07.2021
C O R A M
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU
W.P. (MD) No. 13800 of 2014
and
M.P. (MD) Nos. 1 and 2 of 2014

The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Kuruvikkaran Salai,
Madurai. ... Petitioner

-vs-

1.The Joint Commissioner of Labour,
Madurai.

2.The Assistant Commissioner of Labour,
Office of the Assistant Commissioner of Labour,
Madurai.

3.P.Pitchai

4.The Management,
Tamil Nadu Civil Supplies Corporation Ltd.,
12, Thambusami Salai,
Kilpauk, Chennai - 10. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining the impugned order passed by the First Respondent in PGA No.3 of 2013 dated 30.10.2013 confirming the order passed by the Second Respondent in PG No.40 of 2009 dated 29.05.2012 and quash the same.

For Petitioner	:	Mr. G.Mohan Kumar for Mr. R.Vijayakumar
For R-1 & R-2	:	Mr. D.Ghandhiraj, Government Counsel
For R-3	:	Mr. S.Satheesh Kumar
For R-4	:	No appearance

O R D E R
(through video conference)

Heard Mr. G.Mohankumar, Learned Counsel for the Petitioner, Mr. D.Ghandhiraj, Learned Government Counsel appearing for the First and Second Respondents and Mr. S.Satheesh Kumar, Learned Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent viz., Pitchai, who was working as a Load Man in the establishment of the Petitioner, made a claim against the Petitioner for gratuity payable to him in the application in P.G. No. 40 of 2009 under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred as 'the Act' for short) before the Second Respondent, who overruled the various objections raised by the Petitioner in the order dated 29.05.2012 and came to the conclusion that the Third Respondent worked for a period of 33 years from 01.04.1978 to 31.07.2008 and taking his last drawn wages as Rs. 133/- per day, determined that the gratuity payable to him would be Rs. 65,835/- as per the calculation shown below:-

"133 x 15 x 33 years = Rs. 65,835/-"

The said amount of gratuity was required to be paid with interest at the rate of 10% per annum from 01.09.2005 till payment. The appeal in P.G.A. No. 3 of 2013 preferred by the Petitioner under Section 7 (7) of the Act against that order before the First Respondent was dismissed on 30.10.2013. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the same.

3. The primordial contention of the Learned Counsel for the Petitioner is that the Second Respondent has condoned the delay in filing the application for gratuity made by the Third Respondent without any acceptable reasons or substantiating materials in that regard. It must, at once, be pointed out here that when the Act came into force on 16.09.1972, an employee could make an application for payment of gratuity under the Explanation to Section 7(4)(a) of the Act only after requiring the employer to deposit the gratuity amount and the employer had failed to do so. In that Rule 10 of the Tamil Nadu Payment of Gratuity Rules, 1973 (hereinafter referred to as 'the Rules' for short), which were made in the exercise of powers under Section 15(1) of the Act, provides as follows:-

*"**10. Application to controlling authority for direction:-***

(1) If an employer:-

(i) refuses to accept a nomination or to entertain an application sought to be filed under rule 7, or

(ii) issues a notice under sub-rule (1) of rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or

(iii) having received an application under rule 7 fails to issue any notice as required under rule 8 within the time specified therein, the claimant employee, nominee or legal heir, as the case may be, may, within ninety days of the occurrence of the cause for the application, apply in Form 'N' to the controlling authority for issuing a

direction under sub-Section (4) of Section 7 with as many extra copies as are the opposite parties.

Provided that the controlling authority may accept any application under this sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period.

(2) Application under sub-rule(1) and another documents relevant to such an application shall be prescribed in person to the controlling authority or shall be sent by registered post acknowledgment due."

However, amendments have been made by Act 25 of 1984 with effect from 01.07.1984 and Act 22 of 1987 with effect from 01.10.1987 by which the Act provides in Section 7(4)(b) that an employee may straight away make an application for payment of gratuity to the Controlling Authority for deciding the dispute arising out of the matter specified in Clause (a) thereto, which includes non-payment of gratuity by the employer within the time limit after it had fallen due. It could be noticed from reading together of Clauses (2) and (3) of Section 7 of the Act that the employer has to make payment of the admitted amount of gratuity to the employee within a period of thirty days from the date on which it falls due, irrespective of whether the employee has made such claim. Further, Section 7(3-A) of the Act fastens liability on the employer to pay simple interest thereon at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify. When the employer fails to make or there is shortfall in payment of gratuity, the employee is entitled to make an application for payment of gratuity to the Controlling Authority under Section 7(4)(b) of the Act. It becomes evident from the said amendments made to the Act that the period of limitation prescribed in Rule 10 of the Rules is in derogation of clauses (2), (3), (3-A) and (4) of Section 7 of the Act. This Court in the decision in ***Sri Muthukumaran Institute of Technology -vs- J.Rajalakshmi*** (Order dated 01.10.2020 in W.P. No. 3222 of 2019) has elaborately delved into that controversy with reference to various judicial decisions, which clinches that question. As such, when there is no necessity for an employee to make any application to condone delay in filing the application for payment of gratuity in terms of Rule 10 of the Rules, it would follow that resort to such procedure becomes superfluous.

4. It is the next plea of the Learned Counsel for the Petitioner that the Second Respondent has erred in accepting the date of joining of the Third Respondent in the service of the Petitioner as '01.04.1978' instead of '30.04.1999' and that the date of retirement has been taken as '31.07.2008' instead of '31.07.2005' as claimed by

the Third Respondent himself. It requires to be noticed in this regard that the Second Respondent has observed that the Third Respondent had not produced any document to prove the date on which he had joined the service of the Petitioner, but such date has been taken as 01.04.1978 from the admission made by the witness of the Petitioner during cross examination. In respect of the date of retirement of the Third Respondent, the Second Respondent took the date as 31.07.2008 again from the admission made by the witness of the Petitioner during cross examination. However, it was the specific case of the Third Respondent that he retired from service on 31.07.2005 and Learned Counsel for the Third Respondent confirms the said fact before this Court. The necessary consequence that follows is that the actual number of years worked by the Third Respondent is from 01.04.1978 to 31.07.2005, which is 27 years, and not from 01.04.1978 to 31.07.2008, which is 30 years. This would mean that the gratuity amount payable to the Third Respondent would be as per the calculation shown below:-

"133 x 15 x 27 years = 53,865/-"

Learned Counsel for the Third Respondent accepts that the gratuity amount to be payable to the Third Respondent would be Rs. 53,865/- and has filed a memo to that effect, which is placed on record.

5. The result of the foregoing discussion is that the amount of gratuity payable by the Petitioner to the Third Respondent would be Rs. 53,865/- instead of Rs. 65,835/- in the order dated 29.05.2012 in P.G. No. 40 of 2009 passed by the Second Respondent, which has been confirmed by order dated 30.10.2013 in P.G.A. No. 3 of 2013 passed by the First Respondent. In all other aspects, the impugned order does not require any interference by this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution. Since it is represented that the Petitioner has already deposited the gratuity amount with the Second Respondent at the time of filing of appeal before the First Respondent, the Third Respondent is at liberty to make necessary application for withdrawal of the sum of Rs. 53,865/- from the amount deposited by the Petitioner and the balance sum shall be returned to the Petitioner.

6. In the upshot, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sm/skr

To

1.The Joint Commissioner of Labour,
Madurai.

2.The Assistant Commissioner of Labour,
Office of the Assistant Commissioner of Labour,
Madurai.

+1 CC to M/s.R.VIJAYA KUMAR, Advocate (SR-22845[F] dated 16/07/2021)

W.P. (MD) No. 13800 of 2014
15.07.2021

RK(13.10.2021) 5P 4C