BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.06.2021
C O R A M
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU
W. P.(MD) No. 17968 of 2014
and
M.P.(MD) Nos. 1 and 2 of 2014

The Senior 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.Pattammal

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 to the impugned order passed by the First Respondent in P.G.A. No. 26 of 2013 dated 27.01.2014 confirming the order passed by the Second Respondent in P.G. No. 49 of 2010 dated 30.06.2012 and quash the same.

For Petitioner	:	Mr. G. Mohankumar
For R1 and R2	:	Mr. B. Saravanan, Government Counsel
For R3	:	Mr. S.Satheesh Kumar
For R4	:	No appearance

O R D E R
(through video conference)

Heard Mr. G.Mohankumar, Learned Counsel for the Petitioner, Mr. B.Saravanan, 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 husband of the Third Respondent, viz., Thangapandi, who was working as an Assistant Operator in the establishment of the Petitioner, died in harness on 18.02.1996. Long thereafter, the Third Respondent made a claim against the Petitioner for gratuity payable to the said Thangapandi in the application in P.G. No. 49 of 2010 under Section 7(4) of the Payment of Gratuity Act (hereinafter referred to 'the Act' for short) before the Second Respondent, who overruled the various objections raised by the Petitioner in the order dated 30.06.2012 and came to the conclusion that the said Thangapandi worked for a period of 19 years from 10.02.1978 to 18.09.1996 and taking his last drawn wages as Rs. 3,250/-, determined that the gratuity payable to him would be Rs. 35,625/- as per the calculation shown below:-

"19 years x 15/26 x 3,250 = Rs. 35,625/-"

The said amount of gratuity was required to be paid with interest at the rate of 10% per annum from 18.07.1996 till payment. The appeal in P.G.A. No. 26 of 2013 preferred by the Petitioner under Section 7 (7) of the Act against that order before the First Respondent was dismissed on 27.01.2014. 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 backdrop, 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 other documents relevant to such an application shall be presented in person to the controlling authority or shall be sent by registered post acknowledgement 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 said Thangapandi in the service of the Petitioner as '10.02.1978' instead of '01.11.1979' as reflected in his service record signed by him, which has been marked as Ex. R-1 in the said proceedings. It has been noticed from the order passed by the Second Respondent that the Third Respondent had produced a copy of the proceedings dated 24.02.1989 issued by the Chairman-cum-Managing Director of the Petitioner, which has been marked as Ex. P-1 showing that the date of joining of the said Thangapandi in the service of the Petitioner was 10.02.1978, which was also admitted by the witness examined by the Petitioner in cross-examination. It assumes significance that the Petitioner had not chosen to explain that discrepancy in the date of joining of the said Thangapandi in the service of the Petitioner and in any event, it is incumbent upon the Petitioner, as the employer, to have produced the order of appointment of the said Thangapandi in the service of the Petitioner, which ought to be available in its custody to ascertain the exact date in that regard, but had failed to do so. Since it has been concluded that the said Thangapandi joined duty on 10.02.1978 in the services of the Petitioner relying on a document issued by the Petitioner, this Court cannot substitute that view taken merely because another view is also possible from the evidence on record. In this context, reference must be made to the decision of the Hon'ble Supreme Court of India in ***General Manager, Electrical Rengali Hydro Electric Project, Orissa -vs- Giridhari Sahu*** [(2019) 10 SCC 695] where the scope of Writ of Certiorari to interfere on an error of law apparent on the face of record has been explicated as follows:-

> *“28. ... As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter ‘off bounds’ for the writ court. This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law.”*

As such, it is not possible for this Court to accept the contentions of the Petitioner in that regard.

5.The last submission of the Learned Counsel for the Petitioner is that the actual pay which was drawn by the said Thangapandi at the time of his death on 18.09.1996 was Rs. 3,085/- as evident from Ex. R-2 produced by the Petitioner, but the Second Respondent has erroneously taken the same as Rs. 3,250/- by relying upon Ex. P-2 which is the letter dated 15.03.2010 issued by the Petitioner showing that if the revision of pay scales with effect from 01.01.1996 had been given effect as per the Fifth Pay Commission recommendation, the basic pay of the said Thangapandi would have been Rs. 3,125/- with Dearness Allowance of Rs. 125/- aggregated to that sum, but as the said employee was not in service on the date from which it had retrospective effect, the Second Respondent could not claim that benefit for determining the gratuity amount. Though it may be true as stated by the Learned Counsel for the Petitioner that the actual pay received by the said Thangapandi at the time of his death is Rs. 3,085/-, his legal representatives were certainly entitled to claim the arrears arising out of the pay revision with effect from 01.01.1996 that was due to him till his death, which would obviously mean that it is his revised pay of Rs. 3,250/- that would have to be taken into account for determining the gratuity as rightly adopted by the Second Respondent in this case.

6.The result of the foregoing discussion is that there does not appear to be any infirmity in the order dated 27.01.2014 in P.G.A. No. 26 of 2013 passed by the First Respondent confirming the order dated 30.06.2012 in P.G. No. 49 of 2010 passed by the Second Respondent, warranting interference by this Court in the exercise of discretionary powers of judicial view 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 that amount in accordance with law.

7.In the upshot, this Writ Petition is dismissed with the aforesaid clarifications. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ns/SRM/vjt

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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.VIJAYAKUMAR, Advocate (SR-19631[F] dated 18/06/2021)

+1 CC to M/s.SPL GP (SR-19508[F] dated 17/06/2021)

W.P.(MD)No.17968 of 2014
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ES(CO)/RS (13.10.2021) 6P 5C