



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2021

C O R A M

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THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No.7477 of 2015
and
M.P (MD) No.1 of 2015

R.Ratna Kumar

... Petitioner

Vs.

1.The Assistant Commissioner
of Labour Court,
Tirunelveli.

2.The Joint Commissioner of Labour,
Madurai.

3.The Chairman,
Raja Dental College and Hospital,
Kavalkinary Junction,
Tirunelveli District.

... Respondents

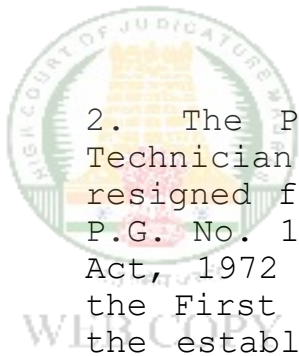
PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorari, to call for the records pertaining to the order passed by the Second Respondent in P.G.A.No.24 of 2013 dated 15.12.2014 and quash the same.

For Petitioner	: Mr. C.K.Chandrasekar for Mr. T.Selvakumaran
For Respondents	: Mr. M.Jeyakumar (For R1 & R2) Additional Government Pleader Mr. M.Suri (For R3)

ORDER

(through video conference)

Heard Mr. C.K.Chandrasekar representing Mr. T.Selvakumaran, Learned Counsel for the Petitioner and Mr. M.Jeyakumar, Learned Additional Government Pleader appearing for the First and Second Respondents and Mr. M.Suri, Learned Counsel appearing for the Third Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

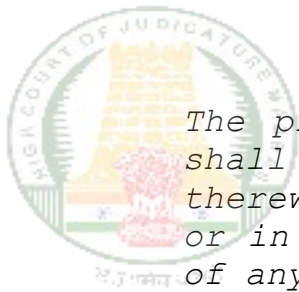


2. The Petitioner, who had been appointed to the post of Lab Technician in the college of the Third Respondent on 16.12.1988, had resigned from service on 23.08.2010. He had made an application in P.G. No. 18 of 2012 under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act' for short) before the First Respondent claiming gratuity for the period he worked in the establishment of the Third Respondent. The claim for gratuity was resisted by the Third Respondent by contending that the provisions of the Act were not applicable to its college and that the Petitioner in his letter dated 09.09.2010 had stated that he had received emoluments and all monies that was due to him for the work done and there was nothing due from the Third Respondent. The First Respondent overruled the said objections and arrived at the conclusion that the provisions of the Act were applicable to the college of the Third Respondent and determined that the sum of Rs. 88,846/- was payable by the Third Respondent to the Petitioner along with interest at the rate of 10% p.a. from 23.08.2010, when he ceased to be in employment. The Third Respondent preferred appeal in P.G.A. No. 24 of 2012 under Section 7(7) of the Act before the Second Respondent, who had in the order dated 15.12.2014, taken the view that the Petitioner had acknowledged the receipt of all amounts due to him and reversed the order of the First Respondent granting the gratuity amount claimed. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the said order passed by the Second Respondent.

3. Learned Counsel for the Petitioner submits that the overriding effect in Section 14 of the Act protects the entitlement of an employee to recover the gratuity due from his employer, unless it is proved that the entire amount of gratuity due to him has already been paid in terms of the Act. He further stresses that the letter dated 09.09.2010 relied by the Third Respondent does not show payment of any amount towards gratuity due to the Petitioner and the Second Respondent grossly erred in relying upon the same to deprive the Petitioner of that benefit. He has placed reliance on the decision of the Division Bench of this Court in **Rajamani -vs- Deputy Commissioner of Labour** [2001-II-LLJ (Madras)] in this regard. On the other hand, Learned Counsel appearing for the Third Respondent justifies the impugned order passed by the Second Respondent by citing the decision of the Division Bench of this Court in **M.Devadasan -vs- Southern Railways Limited** [2017-I-LLJ-95 (Mad)], where it has been held that when an employee, on his own volition, has accepted the amount towards the gratuity from his employer in full quit, it is not open to him to make any further claim without having reserved any right to do so in that regard.

4. Having regard to the rival contentions, it is necessary at the outset to refer to Section 14 of the Act, which is extracted below:-

"14. Act to override other enactments, etc.-



The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

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The Division Bench of this Court in **Rajamani -vs- Deputy Commissioner of Labour** [2001-II-LLJ (Madras)] has explicated the impact of this legal provision for pursuing the claim for gratuity in the following words:-

" This provision makes it abundantly clear that the Gratuity Act shall have the effect notwithstanding anything found inconsistent with this enactment either by way of instrument or by way of contract having effect by virtue of any enactment other than this Act. In other words, there is no scope for contracting out of the overriding Act of Gratuity Act. No instrument, contract, standing order, rule can have force over and above the provisions of the Gratuity Act. The Parliament has intended that every employee shall be provided with gratuity on his minimum required service and it has to be paid compulsorily by the employer and there cannot be any instrument or contract inconsistent with the provisions of Gratuity Act.

6. In the light of the above provisions of the Act, it is crystal clear that the employer has no other option except to pay the gratuity as accrued or payable under the Act. There is no scope for any contract or instrument to take away that statutory right. The crucial question that arises for consideration in the above circumstances is whether the alleged letter or receipt given by the appellants to the management agreeing to receive a particular amount can be treated as full and final settlement of the claim of gratuity.

7. Argument of the learned Senior Counsel Mr. Prasad is that assuming for the sake of argument that the workers have agreed to receive a lesser amount, that will not disentitle them to claim the remaining amount and that a receipt passed on for a lesser amount will be subject to the overriding provision of Section 14.

8. There is no need for enquiry as to whether receipt is given voluntarily or compulsorily or whether the employer knows that the amount that is paid is less. Such kind of



enquiry is outside the scope of the Act. What is contemplated is liability under Section 4 and determination under Section 7. Once the determination is made taking into account the continuous service under Section 2(a), then there is no scope for paying lesser amount or receiving a lesser amount than the amount provided under the Act. Assuming for the sake of argument that the petitioners have agreed to receive a lesser amount, there cannot be an estoppel against the statutory claim. If there is any such payment binding the workers, that will be not only contrary to the provisions of the Act, but that is illegal, arbitrary and unfair and would be affecting the fundamental rights of the workers to receive their gratuity amount under the Act."

In the subsequent decision in **M.Devadasan -vs- Southern Railways Limited** [2017-I-LLJ-95 (Mad)], the Court has specifically taken note of the fact that the employee concerned had acknowledged the receipt of the gratuity amount and in that backdrop, it had been held that no further claim for gratuity could be made. This would show that there is really no contradiction in the two decisions of this Court, which have been referred by the Learned Counsel for the respective parties.

5. In view of the aforesaid legal position, what would be relevant in this case is to ascertain whether the Third Respondent had actually paid gratuity that was due to the Petitioner while obtaining the letter dated 09.09.2010 stating that there is nothing due to the Petitioner from the Third Respondent. It would assume significance to notice here that the Third Respondent had taken a specific plea before the First Respondent that the provisions of the Act were not applicable to its college, meaning thereby its case was that no gratuity was at all payable to the Petitioner, and it was not that the eligible amount of gratuity has already been received by the Petitioner from the Third Respondent. It is borne out from the materials placed on record that there is no independent evidence to prove that the Third Respondent had paid any amount to the Petitioner towards gratuity and in the absence thereof, the only possible interference that could be drawn from the fact situation is that the letter dated 09.09.2010 executed by the Petitioner that he has no claim against the Third Respondent would not encompass the gratuity amount due to him.

6. The result of the foregoing discussion is that the impugned order in P.G.A. No. 24 of 2013 dated 15.12.2014 passed by the Second Respondent, which cannot be sustained, is set aside and the order in P.G. No. 18 of 2012 dated 12.06.2013 passed by the First Respondent is restored. The Petitioner is at liberty to make necessary application for the withdrawal of the amount of gratuity that has been deposited by the Petitioner before the concerned authority.



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

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

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 Assistant Commissioner of Labour Court,
Tirunelveli.

2.The Joint Commissioner of Labour,
Madurai.

Copy to

The Section Officer, V.R.Section(2C)
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-17851[F] dated 28/04/2021)

+1 CC to M/s.SPL GP (SR-18089[F] dated 29/04/2021)

+1 CC to M/s.M.SURI, Advocate (SR-18118[F] dated 30/04/2021)

W.P. (MD) No.7477 of 2015

and

M.P(MD)No.1 of 2015

Dated : 28.04.2021

KB(18.06.2021) 5P 8C