



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :19.04.2022

CORAM:

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. Nos.28769, 29067, 29387, 28661, 28767, 28770 of 2016
and

W.M.P.Nos.24811, 25126, 24735, 24808, 24810 and 25406 of 2016
W.P.No.28769 of 2016

The Management
rep. by Secretary
Nanjaiah Lingammal Polytechnic College
Sirumugai Road, Mettupalayam
Coimbatore Dt.,
Pin 641 301

... Petitioner in all WPs

Vs

1. The Appellate Authority under
the Payment of Gratuity Act 1972
cum Joint Commissioner of Labour
Coimbatore
2. The Controlling Authority
under Payment of Gratuity Act 1972 cum
Assistant Commissioner of Labour
Office of Deputy Commissioner of Labour
Coimbatore-18 .. Respondents 1 & 2 in all WPs

D.Prabakaran	...3 rd Respondent in WP.29069/2016
S.Marry Immaculate	...3 rd Respondent in WP.29067/2016
A.V.R.Mageswari	...3 rd Respondent in WP.29387/2016
P.Senthil Kumar	...3 rd Respondent in WP.28661/2016
M.D.Ramanath	...3 rd Respondent in WP.28767/2016
A.N.Swaminathan	...3 rd Respondent in WP.28770/2016

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for records of the 1st respondent passed impugned order dated 12.4.2016 in the Appeal No.AGA 93,97,95,96,98 of 2015 to quash the same.

For Petitioner in all W.Ps. ... Mr.A.Sivaji



For Respondents
in all W.Ps.

... Mr.L.S.M.Hasan Fizal,
Additional Government Pleader
for respondents 1 and 2
Mr.C.K.Chandrasekaran,
for 3rd respondent

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O R D E R

These writ petitions have been filed against the common order passed by the authority constituted under the Payment of Gratuity Act, 1972, allowing the claim of the respondent employees. The respondent employees have approached the authority claiming due gratuity from the date of their appointment and till the date of their termination of service, which had not been settled by the petitioner management.

2. The petitioner management herein resisted the claim of the employees principally on the ground that while making Provident Fund contribution, they had deducted excess wages from the employees than what was eligible to be claimed by them. According to the management, the excess deduction made towards the Provident Fund had to be adjusted towards payment of gratuity and therefore, the claims as such made by them were not sustainable.

3. According to the management, excess amounts had been deducted towards P.F. contribution which ought to be adjusted and off set in respect of the claim towards gratuity. This according to the Management was akin to having a more beneficial scheme providing better terms of gratuity. Accordingly, they are exempted under Section 4(5) of the Payment of Gratuity Act, 1972. In regard to two employees, one other objection was also raised stating that they were appointed prior to the coming into effect of the amendment of the Payment of Gratuity Act, 1972, on 03.04.1997 bringing within its fold the teaching community. According to the management, two employees namely, Mary Immaculate and A.N.Saminathan were appointed in 1994, prior to the coming into force of the amendment to the Act and therefore, they were not entitled to claim gratuity at all and could stated to be covered by the subsequent amendment.

4. The learned Authority, by order dated 07.09.2015, rejected the contentions of the management and held that all the employees were entitled to be paid gratuity as per their claims. According to the Authority, in terms of Section 14 of the Act, so called excess deduction towards PF contributions cannot be taken into consideration for the purpose of adjustment towards the claim for gratuity. As regards the non-applicability of the amendment, which had come into force on 03.04.1997 in respect of the two above named employees, the Authority held that the same



would be applicable to them, since they were in service on the date when the amendment came into force and their services stood terminated only thereafter. The Authority held that only if any person had retired prior to the date of amendment to the Act, he or she would not have been eligible to claim gratuity under the Act.

5. Being aggrieved by the order of the Authority, appeals were filed before the Appellate Authority by the management. The Appellate Authority by orders dated 12.04.2016, rejected the appeals by a detailed order. In fact, the Appellate Authority has also relied upon Section 14 of the Act for discountenancing the contentions of the management. The appellate authority had fully in agreement with the conclusion reached by the original authority and confirmed the orders in toto. As against the order of the Appellate Authority, the present writ petitions have been filed.

6. Mr.A.Sivaji, learned counsel for the petitioner management reiterated the above facts. According to the petitioner management, the teaching staff of the petitioner college were not entitled to the gratuity amount as claimed by them before the Original Authority, as admittedly, the excess amount had been deducted towards the PF contributions in respect of the respondent employees who have made more than their contribution which ought to have been taken into account before allowing the claim of the claimants. The learned counsel also contended that the fact that excess amount has been deducted towards PF contribution would mean that the management had more beneficial scheme that was made applicable to its staff and in such an event, Section 4(5) was attracted. In the said circumstances, the gratuity as claimed by the respondents cannot be countenanced in law and on facts.

7. Even on merits, the learned counsel would submit that the amounts claimed towards gratuity were not established by the respective claimants but the authorities have simply allowed the claims mainly on the basis of the statements from the respondents without any proper appreciation of the counter case of the management.

8. On the other hand, the learned counsel for the respondent employees would submit that in terms of Section 14 any excess amount deducted towards PF contribution cannot be adjusted towards claim for gratuity. What was deducted from the employees was towards PF and the same under no circumstances can be stated to represent any claim towards gratuity.



9. The learned counsel would also rely on a recent decision of the Hon'ble Supreme Court reported in (2019) 4 SCC 513 (Birla Institute of Technology v. State of Jharkhand). According to him, the issue of entitlement of gratuity under the Act is no more res integra as per the decision. The learned counsel would in this regard refer to paragraph 12 to 15, 22 to 27 which are extracted hereunder.

"12. Respondent No.4 joined the appellant - Institute as Assistant Professor on 16.09.1971 and superannuated on 30.11.2001 after attaining the age of superannuation. Respondent No.4 then made a representation to the appellant and prayed therein for payment of gratuity amount which, according to respondent, was payable to him by the appellant under the Payment of Gratuity Act, 1972. The appellant, however, declined to pay the amount of gratuity as demanded by respondent No.4. Respondent No.4, therefore, filed an application before the controlling Authority under the Act against the appellant and claimed the amount of gratuity which, according to him, was payable to him under the Act.

13. By order dated 07.09.2002, the controlling Authority (respondent No.3) allowed the application filed by respondent No.4 and directed the appellant to pay a sum of Rs.3,38,796/ along with interest at the rate of 10% p.a. towards the gratuity to respondent No.4.

14. The appellant felt aggrieved and filed appeal before the Appellate Authority under the Act. By order dated 15.04.2005, the Appellate Authority dismissed the appeal. The appellant felt aggrieved and carried the matter to the High Court in a writ petition. The High Court (Single Judge) by order dated 12.01.2007 dismissed the writ petition and upheld the orders of the authorities passed under the Act. The appellant then filed Letters Patent Appeal before the Division Bench against the order passed by the Single Judge. The LPA was also dismissed by the impugned order which has given rise to filing of the present appeal by way of special leave by the appellant-Institute in this Court.

15. The short question, which arises for consideration in this appeal, is whether the Courts below were justified in holding that respondent No.4 was entitled to claim gratuity amount from the appellant (employer) under the Act.

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22. The definition of "employee" as defined under Section 2(e) was accordingly amended with effect



from 03.04.1997 retrospectively vide Payment of the Gratuity (Amendment) Act, 2009 (No. 47 of 2009) published on 31.12.2009. The amended definition reads as under:

“(e) “employee” means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

23. In the light of the amendment made in the definition of the word “employee” as defined in Section 2(e) of the Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997, the benefit of the Payment of Gratuity Act was also extended to the teachers from 03.04.1997. In other words, the teachers were brought within the purview of “employee” as defined in Section 2(e) of the Payment of Gratuity Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997.

24. The effect of the amendment made in the Payment of Gratuity Act vide Amending Act No. 47 of 2009 on 31.12.2009 was twofold. First, the law laid down by this Court in the case of Ahmadabad Pvt. Primary Teachers Association (supra) was no longer applicable against the teachers, as if not rendered, and Second, the teachers were held entitled to claim the amount of gratuity under the Payment of Gratuity Act from their employer with effect from 03.04.1997.

25. In our considered opinion, in the light of the amendment made in the Payment of Gratuity Act as detailed above, reliance placed by the learned counsel appearing for the appellant (employer) on the decision of Ahmedabad Pvt. Primary Teachers Association (supra) is wholly misplaced and does not help the appellant in any manner. It has lost its binding effect.

26. Learned counsel for the appellant then urged that the constitutional validity of Amending Act No. 47 of 2009 is under challenge in this Court in a writ petition, which is pending. Be that as it may, in our view, pendency of any writ petition by itself does not affect the constitutionality of the Amending Act, and nor does it affect the right of respondent No.4



(teacher) in any manner in claiming gratuity amount from the appellant(employer) under the Act.

27. It is only when the Court declares a Statute as being ultra vires the provisions of the Constitution then the question may arise to consider its effect on the rights of the parties and that would always depend upon the declaration rendered by the Court and the directions given in that case. Such is not the case here as of now."

10. In view of the above ruling of the Hon'ble Supreme Court, both the authorities below have correctly appreciated the claim on its merits as well as the legal position in support of the claim and have rightly allowed the applications. In the said circumstances, the present writ petitions have no merits and also have no legal legs to stand on.

11. This Court considered the submissions of the learned counsel for the petitioner as well as the respondent employees.

12. As rightly contended by the learned counsel respondent employees, in terms of Section 14, which has an overriding effect on other enactments, the contentions raised before the authorities below by the management that some excess deductions had been made from the salaries of the employees ought to be adjusted towards the gratuity claim cannot be countenanced in law. Section 14 reads as under:

"Section 14: Act to override other enactments, etc.

The provisions of this Act or any rule made there under 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."

13. Both the authorities below have rightly appreciated the scope and import of the Section and held that the contention raised on behalf of the management was invalid and unsustainable. This Court does not find any infirmity at all in the approach of both the authorities below. The Authorities have supported their decision with sound reasoning on the basis of the materials made available by the parties. This Court finds no scope for interference with the impugned order.



14. As regards the contention of the management in respect of two employees who had joined prior to the coming into force of the amendment to the Act, i.e. 03.04.1997, the above ruling of the Hon'ble Supreme Court is in an answer to the contention by the management. That was a case where an Assistant Professor joined service on 16.09.1971 and superannuated on 30.11.2001, after attaining the age of superannuation. Since the employee therein superannuated after coming into force of the amendment to the Act on 03.04.1997, the Hon'ble Supreme Court directed that he was entitled to be paid gratuity.

15. Even otherwise, it stands to reason that once an employee is in service while the Gratuity Act is made applicable to the teaching staff, it cannot be gainsaid that such employee cannot be extended the benefit of gratuity merely because he or she has been appointed prior to the coming into force of the amendment to the Act. Once an employee is in service on the date when the amendment had been given effect to, whatsoever service he or she had rendered prior to the service had to be calculated for the purpose of gratuity claim and the same ought to be paid.

16. On the whole, this Court finds that both the authorities have correctly appreciated the claims as on legal position and have passed orders allowing the claim of the respondent employees on the one hand and the contentions of the Management, on the other both on its merit as well as the legal position. This Court does not find modicum of infirmity in the orders passed by the original authority as well as the Appellate Authority. These writ petitions are therefore, devoid of merits and substance and liable to be dismissed.

17. Accordingly, the Writ Petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

vsi/tar
To

1. The Appellate Authority under
the Payment of Gratuity Act 1972
cum Joint Commissioner of Labour
Coimbatore



2. The Controlling Authority
under Payment of Gratuity Act 1972 cum
Assistant Commissioner of Labour
Office of Deputy Commissioner of Labour
Coimbatore-18.

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+5 ccs to Mr.A.Sivaji, Advocate Sr.NO.26505 to 26509
+2 ccs to Mr.C.K.Chandrasekhar, Advocate Sr.NO. 26449
+1 cc to Government Pleader Sr.NO. 26788

W.P. Nos.28769, 29067, 29387,
28661, 28767 & 28770 of 2016

NR (CO)
A.SK (05/05/2022)