



W.P.No.13128 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.13128 of 2014

1.D.Premkumar

2.D.Latha

...Petitioners

Vs

1.The Management of
Mukkotu Mudi Estate,
Bombay Burma Trading Corporation,
Mudis Post, Valparai Taluk,
Coimbatore District - 642 117.

2.The Joint Commissioner of Labour/
Appellate Authority under the
Payment of Gratuity Act,
Coimbatore - 641 018.

3.The Asst. Commissioner of Labour/
Authority under the Payment of
Gratuity Act,
Coimbatore - 641 018.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records pursuant to the order of the 2nd respondent passed in A.G.A.No.7 of



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2011 dated 25.08.2011 uphold in G.A.No.113 of 2008 vide order dated 07.12.2010 on the file of the 3rd respondent, quash the same and consequently direct the 1st respondent to pay the remaining gratuity amount with due interest for the period from the date became due and till the date of realization.

For Petitioners : Mr.G.B.Saravanabhavan

For R1 : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

For R2 & R3 : Mr.G.Velu,
Additional Government Pleader

ORDER

Heard Mr.G.B.Saravanabhavan, learned counsel for the petitioners, Mr.Anand Gopalan, learned counsel for the first respondent and Mr.G.Velu, learned Additional Government Pleader for the second and third respondents.

2. On an application made by the second petitioner before the authority under the Payment of Gratuity Act, claiming for payment of the gratuity amount, together with interest, the second respondent herein had quantified the gratuity amount as Rs.44,926/-. However, the interest on the quantified gratuity amount was denied, on the ground that the family of the late employee had not



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vacated the quarters allotted to them for a considerable time. The appeal preferred by the petitioners herein was also rejected. Challenging these orders, the present Writ Petition has been filed.

3. The learned counsel for the petitioners submitted that the interest on the gratuity amount computed by the authority is mandatory, in view of Section 7(3-A) of the Payment of Gratuity Act and therefore, denial of interest on the gratuity amount is illegal. For such a proposition, the learned counsel relied upon the two Judges decisions of the Hon'ble Supreme Court in the cases of ***R.Kapur Vs. Director of Inspection reported in (1994) 6 SCC 589*** and ***H.Gangahanume Gowda Vs. Karnataka Agro Industries reported in 2003 (3) SCC 40.***

4. Per contra, learned counsel appearing for the first respondent placed reliance on the three judges decision of the Hon'ble Supreme Court in the case of ***Steel Authority of India Ltd., Vs. Raghendra Singh and others reported in 2020 SCC OnLine SC 1063*** and submitted that in view of this decision, the decision of the original authority, as well as the appellate authority, denying the



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back wages on the ground that the family of the late employee had failed to vacate the premises, is justifiable.

5. Section 7(3-A) of the Payment of Gratuity Act provides for payment of interest in the following manner:-

If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest 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: Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

6. In the cases referred to by the learned counsel for the petitioners in *R.Kapur and H.Gangahamune Gowda (supra)*, it has been held that the denial of interest on the ground that the employee had not vacated the official



accommodation, cannot be sustained, since the right to gratuity is not dependent upon such a factor of refusal to vacate the official residence. Both these decisions relied upon by the learned counsel for the petitioners are by two Hon'ble Judges of the Supreme Court.

7. On the contrary, reliance placed on by the learned counsel for the first respondent in *Steel Authority's case* also deals with the same ratio, whereby the Hon'ble Supreme Court, while placing reliance on a decision in the case of ***Secretary, ONGC Ltd., Vs. V.U. Warriar reported in (2005) 5 SCC 245***, had held that the penal rent can be adjusted even against the gratuity amount payable. The relevant portion of the order reads as follows:-

"2. We, however, set aside the observations made in paras 10 and 21 qua the principles of penal rent being charged as we are of the view that if an employee occupies a quarter beyond the specified period, the penal rent would be the natural consequence and such penal rent can be adjusted against the dues payable including gratuity. This is so in view of the judgment in Secretary, ONGC Ltd. v. V.U. Warriar - (2005) 5 SCC 245 and the reliance placed in the impugned judgment on the case of Ram Naresh Singh v. Bokaro Steel Plant [Civil Appeal



No.4740/2007] dated 31.03.2017 is misplaced as it not even a judgment but an order in the given facts of the case."

8. In the case of *Steel Authority of India (supra)*, reliance was placed on ONGC's case, in which, it was held as follows:-

"28. As already adverted to by us hereinabove, the facts of the present case did not deserve interference by the High Court in exercise of equitable jurisdiction under Article 226 of the Constitution. The respondent-petitioner before the High Court was a responsible officer holding the post of Additional Director (Finance and Accounts). He was, thus, "gold collar" employee of the Commission. In the capacity of employee of the Commission, he was allotted residential quarters. He reached the age of superannuation and retired after office hours of 28-2-1990. He was, therefore, required to vacate the quarters allotted to him by the Commission. The Commission, as per its policy, granted four months' time to vacate. He, however, failed to do so. His prayer for continuing to occupy the quarters was duly considered and rejected on relevant and germane grounds. The residential accommodation constructed by him by taking loan at the concessional rate from the Commission was leased to the



Commission, but the possession of that quarters was restored to him taking into account the fact that he had retired and now he will have to vacate the quarters allotted to him by the Commission. In spite of that, he continued to occupy the quarters ignoring the warning by the Commission that if he would not vacate latest by 30-6-1990, penal rent would be charged for him. In our judgment, considering all these facts, the High Court was wholly unjustified in exercising extraordinary and equitable jurisdiction in favour of the petitioner - respondent herein - and on that ground also, the order passed by the High Court deserves to be set aside."

9. As stated earlier, the decisions relied upon by the learned counsel for the petitioners in *R.Kapur and H.Gangahamune Gowda cases (supra)* were rendered by two Hon'ble Judges of the Hon'ble Supreme Court of India, whereas the decision in *Steel Authority of India's case (supra)* was delivered by three Hon'ble Judges of the Hon'ble Supreme Court of India. Thus, the decision in *Steel Authority of India's case (supra)* rendered by a larger bench would be binding on this Court. If that be so, denial of interest on the gratuity amount computed by the authority solely on the ground that the family of the late employee have failed to vacate the official quarters, cannot be found fault



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with. As such, no interference is required to the orders passed by the original authority, as well as the appellate authority.

10. Accordingly, the Writ Petition stands dismissed. No costs.

11. At this juncture, the learned counsel for the petitioners submitted that certain back wages are yet to be paid by the management. If that be so, liberty is hereby granted to the petitioners to give a representation to the management, seeking for payment of the back wages and on receipt of the same, the management shall consider it on its own merits and take necessary course of action, atleast within a period of 8 weeks from the date of receipt of the representation.

26.10.2022

Index:Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

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M.S.RAMESH,J.

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