



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 18.04.2022
DELIVERED ON : 23.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.24691 OF 2014
AND
M.P.NO.1 OF 2014

The Manager,
Century Plaza Commercial Complex
Owners' Association,
New No.526 (Old No.560-562)
Teynampet, Chennai - 600 018.

...Petitioner

Vs

1.The Joint Commissioner of Labour,
Appellate Authority under the Payment
of Gratuity Act,
DMS Compound, 6th Floor,
Teynampet, Chennai - 600 006.

2.The Assistant Commissioner of Labour,
Controlling Authority under Payment
of Gratuity Act, 1972,
DMS Compound, Chennai - 600 006.

3.C.A.Natarajan

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the 1st respondent order passed in PGA No.2 of 02014 confirming the order of 2nd respondent in P.G.No.19 of 2012 dated 28.11.2013 and quash the same.

For Petitioner : M/s.Kavya Silambannan for
M/s.Profexs Associates

For Respondents : Mr.P.Ganesan,
Government Advocate for R1 & R2
M/s.M.D.Leelavathi for R3

ORDER

The third respondent herein, claims that he has been appointed as a Lift Operator by the petitioner Association and



on 01.09.2003, he was promoted to the post of Supervisor. On the allegation that he had indulged himself in an unruly manner, he was dismissed from service on 17.02.2011. The third respondent on the other hand claims that he had been on the employment of the petitioner Association from the year 1990 onwards, based on which, he made an application under Rule 7(1) of 'The Payment of Gratuity Act, 1972' (hereinafter referred to as 'the Act'). The Authority had passed an order on 28.11.2013, computing the gratuity amount of Rs.90,865/-. By taking into account the third respondent's service as 21 years, his last drawn salary was determined as Rs.7,500/- per month and the amount was also subjected to interest @ 10% per annum. The appeal before the first respondent was rejected on 10.07.2014. Challenging these orders, the present writ petition has been filed.

2. The primary contention raised by the learned counsel for the petitioner is that since the services of the third respondent was terminated for his involvement in the offence of moral turpitude, he is not entitled for any gratuity at all. According to the learned counsel for the petitioner, the salary certificate dated 06.06.2007 produced by the third respondent is fabricated.

3. On the other hand, the learned counsel for the third respondent submitted that the third respondent has been employed since 1990 and his salary certificate dated 06.06.2007 evidences that he was in service for more than 20 years. Therefore, the Authority had rightly computed the gratuity payable to him. It is also her submission that the petitioner Association had not claimed in the counter affidavit that the salary certificate was fabricated and such a ground was raised only in the written arguments.

4. I have given careful consideration to the submissions made by the respective counsel.

5. The Original Authority dealing with the application made by the third respondent under Section 7 of the Act, had relied upon the documents before him, in particular Ex.B6 which evidences that the petitioner was employed between May 1990 to 16.02.2011 with the petitioner association. On the basis of the salary certificate marked as Ex.A3, issued by the petitioner association, his salary was determined at Rs.7,500/- per month. On these basic factors, the Authority have worked out the total gratuity payable to the third respondent herein at Rs.90,865/-. The Appellate Authority had also considered these points and had taken into account the number of permanent employees and come to the conclusion that the petitioner association is amenable to the provisions of the Act. It was



further held that no new grounds were raised in the appeal to interfere with the order of the Original Authority and rejected the petitioner's appeal. I do not find any infirmity in the orders passed by the Original Authority as well as the Appellate Authority in this regard.

6. Insofar as the award of interest at the rate of 10% p.a. on the gratuity amount payable is concerned, Section 7(3-A) of the Act provides for payment of simple interest from the date on which the gratuity becomes payable to the date on which it is paid. The proviso to sub-Section (3-A) states that if the delay in the payment is due to the fault of the employee, no such interest shall be payable. In the instant case, the learned counsel for the petitioner submitted that the service of third respondent was terminated since he had involved in the offence of moral turpitude and owing to his bad conduct, he was terminated from service. This aspect was not taken into consideration by the Original Authority while computing the gratuity together with interest.

7. Furthermore, Rule 7 of the Payment of Gratuity (Central) Rules, 1972 provides for a limitation of 30 days in making an application for payment of gratuity under the Act, from the date the gratuity become payable. Admittedly, the petitioner herein had belatedly approached the Authority and by invoking Rule 7(5) of the Payment of Gratuity (Central) Rules, 1972 had filed an application seeking to condone the delay in approaching the Authority under Section 7 of the Act. The delay has been condoned by the Authority, as reflected in the Original Order dated 28.11.2013. In other words, this delay is totally attributable on the employee. While that being so, the Original Authority ought to have invoked the proviso to Section 7(3-A) of the Act, while awarding the interest. However, such an exercise was not undertaken, but the interest at the maximum rate of 10% came to be awarded.

8. This Court is of the view that in these circumstances, if the rate of simple interest payable to the third respondent herein pursuant to the impugned order dated 28.11.2013 passed in P.G.No.19 of 2012 is reduced from 10% to 6%, the ends of justice will be secured.

9. For all the forgoing reasons, no interference is required to the impugned orders awarding gratuity. However, insofar as the payment of interest on computing the gratuity amount is concerned, the order passed in P.G.No.19 of 2012 on the file of the second respondent herein dated 28.11.2013, is reduced from 10% to 6% p.a. All other findings in the impugned order does not warrant interference.



10. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

11. At this juncture, it is now brought to the notice of this Court that pursuant to the interim order dated 27.01.2016 passed in this Writ Petition, the petitioner herein had deposited a sum of Rs.90,000/- out of which a sum of Rs.45,000/- has already been withdrawn by the third respondent. The balance amount is now said to be lying in a fixed deposit before the Indian Bank, Madras High Court Branch. The third respondent herein shall be entitled to withdraw the gratuity amount together with interest at the rate of 6% p.a. calculated on the basis of this order, together with the proportionate accrued interest accumulated in the fixed deposit account with the Indian Bank, Madras High Court Branch. In this regard, the third respondent shall make an appropriate application before the first respondent herein for such withdrawal and on receipt of such application, the first respondent shall pass necessary orders, in the light of the directions given in this order, permitting the third respondent to withdraw the deposited amounts, preferably on the same day on which the third respondent makes the application.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

vsm

To

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of Gratuity Act,
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2.The Assistant Commissioner of Labour,
Controlling Authority under Payment
of Gratuity Act, 1972,
DMS Compound, Chennai - 600 006.

+1cc to M/s.Profex Associates, Advocate Sr.No.38708

W.P.No.24691 of 2014
and M.P.No.1 of 2014

SKM(CO)
RVM(06/07/2022)