BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.3821 of 2016
and
W.M.P.(MD)No.3434 of 2016

M/s.Sri Ganga Mills,
represented by its Managing Partner,
S.Vishnuganga,
2/120, 2/121, Kambikudi,
Meenakshipuram, via Kariapatti,
Virudhunagar District. ... Petitioner

vs.

1.Appellate Authority under Payment of Gratuity Act,
[Joint Commissioner of Labour],
Labour Office, No.142,
Sundaram Theatre Road,
K.K.Nagar, Madurai – 625 020.

2.V.Annamalai ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the impugned order of the first respondent in reference PGA No.5 of 2011, dated 18.06.2015 and to quash the same and to direct the Appellate Authority to refund the deposited amount of Rs.1,11,058/- to the petitioner, and to issue such other appropriate directions or orders to the first respondent and grant such other remedy and relief to the petitioner.

For Petitioner	: Mr.M.N.Ramkumar
For R1	: M/s.D.Farjana Ghoushia Special Government Pleader
For R2	: No appearance

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<u>O R D E R</u>

This writ petition is filed for issuance of Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent in reference PGA No. 5 of 2011, dated 18.06.2015 and to quash the same and to direct the Appellate Authority to refund the deposited amount of Rs.1,11,058/- to the petitioner

2.The brief facts as stated in the affidavit are that the petitioner is a small textile mill run by the partners and it was established from 01.11.1992. The contention of the petitioner mill is that the 2nd respondent was not an employee. The 2nd respondent was a freelancer doing entry in the ledgers of various employers like that of the petitioner mill. The 2nd respondent filed an application vide PG.No.15 of 2006, before the Controlling Authority under Payment of Gratuity Act and stating that the 2nd respondent was working as Accountant for 35 years and claimed gratuity of Rs. 1,11,058/-. In the said application, the 2nd respondent stated that he served 35 years and was terminated from service of Petitioner on 31.07.2006. The petitioner mill filed a counter statement resisting the claim stating that the 2nd respondent was never an employee and hence the question of payment of gratuity does not arise. The original claim application was filed by 2nd respondent only against Sri Ganga Mills represented through its partner P.Sethuraman. The said P.Sethuraman died on 17.06.2008, because of fatal accident. Thereafter, his legal heirs became partners in the said mill. The main objection of the petitioner firm against the gratuity claim was that the firm Sri Ganga Mills was started only during 01.11.1992 and the 2nd respondent's services was availed for an exclusive purpose of writing accounts. The 2nd respondent cannot be brought under the category of employee. The 2nd respondent also admitted during the cross examination that his claim was only against the firm and he has admitted that the firm itself was started only on 01.11.1992. The 2nd respondent had worked in various firms viz., Pothiraj Tex, Raja Tex, Balaji Tex, Sudha yarn which are independent establishments registered under various other enactments. The 2nd respondent also admitted that he has been undertaking works for appearing for other concerns and establishments before the Sales tax and Income Tax authorities and he admitted that remuneration to him was paid by the Appellant firm twice or thrice per annum. Despite this categorical evidence and admission, the appellate authority passed the impugned order awarding Rs. 1,11,058/- as gratuity for the period from the year 1971 to 2006. Aggrieved over the same, the present writ petition is filed.

3. The 2nd respondent in spite of several opportunities did not appear either in person or through his Counsel. Today, ie., on 26.09.2022, the case was taken up in the morning, since none appeared for the 2nd respondent, the case was passed over. Again, it was called by 02:45 p.m. The 2nd respondent did not appear.

4. Therefore, this Court proceeds to decide the case on merits. The *prima facie* contention of the petitioner firm is that the firm itself was started only on 01.11.1992, the Appellate Tribunal has confirmed the award for gratuity for a period from 1971 to 2006. Hence, this Court is of the considered opinion that the claim of the petitioner especially the period of claim is not sustainable.

5.The next contention that is put forth by the petitioner is that the 2nd respondent has worked for various concerns like Pothiraj Tex, Raja Tex, Balaji Tex, Sudha yarn and also other concerns and establishments before Sales Tax and Income Tax. The 2nd respondent has also admitted that he had received remuneration from the petitioner firm twice or thrice per annum. In such circumstances, the 2nd respondent is not an employee receiving monthly salary.

6. It is a practice in all establishments to appoint a person under the category of "accountant" whose work would be making entries in the accounts books and such job is only for a particular period. It is not a continuous work

having daily work in the concern. In short, the 2nd respondent is only a freelancer. Therefore, this Court is of the considered opinion that the claim of the 2nd respondent is on an erroneous footing. Therefore, this Court is of the considered opinion that the order passed by the original authority and the appellate authority is not in accordance with law. The original authority is having the deposit and the original authority is directed to refund the amount to the petitioner.

7.With the above said direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No **26.09.2022**
Internet : Yes

Tmg

To

Appellate Authority under Payment of
Gratuity Act,
[Joint Commissioner of Labour],
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S.SRIMATHY, J

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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.

W.P.(MD)No.3821 of 2016

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