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W.P.No.11136 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.11136 of 2016

A.Murthy

... Petitioner

Vs.

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

2.The Assistant Commissioner,
Controlling Authority under the
Payment of Gratuity Act, 1972,
Salem.

3.P.Balasubramaniam,
Proprietor,
S.P. Palaniappa Mudaliar & Sons,
12, NGGO Colony 4th Street,
Erode – 638 009.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 29.01.2016 made in AGA No.27 of 2015 passed by the 1st respondent, quash the same, consequently, direct the 3rd respondent to settle the gratuity as per the order dated 18.02.2015 made in PGA No.47 of 2013 passed by the 2nd respondent.



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For Petitioner : Mr.N.Manokaran
For Respondents : Mr.S.John T. Raja Singh
Additional Government Pleader
[R1 & R2]
Mr.C.E.Pratap [R3]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 29.01.2016 made in AGA No.27 of 2015 passed by the first respondent and quash the same and consequently, to direct the third respondent to settle the gratuity as per the order dated 18.02.2015 made in PGA No.47 of 2013 passed by the second respondent.

2. The case of the petitioners is that, in the year 1992, the petitioner was appointed as a Cashier in the wholesale textile shop of the third respondent on payment of salary of Rs.1,000/- per month and his last drawn wages was Rs.8,715/- per month. All of a sudden, the petitioner was orally terminated from service on 15.12.2002. Therefore, the petitioner filed an application for gratuity amount of Rs.87,150/- and compensation of Rs.1,83,015/- for denial of employment and one month salary of Rs.8,715/-, totally a sum of Rs.2,78,880/- in PGA No.47 of 2013 under Section 7(4)(b) of the Payment of Gratuity Act,



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1972 (in short 'the Act') before the second respondent as if the petitioner rendered service of 21 years. However, the third respondent Management resisted his claimed as if the petitioner entered the service in the year 2002 and the third respondent Management is not coming under the purview of the Act, since they have employed less than eight persons only. However, the second respondent refused to accept the said submissions made by the third respondent and arrived a conclusion that the petitioner rendered service of 20 years by order dated 18.02.2015. Accordingly, they calculated the gratuity amount at Rs.1,00,558/-. Aggrieved by the same, the third respondent filed an appeal in AGA No.27 of 2015 on the file of the first respondent under Section 7(7) of the Act and the said appeal was allowed in part by reducing the period of employment of the petitioner from 20 years to 11 years and the first respondent reduced the gratuity amount from 1,00,558/- to Rs.55,307/- by order dated 29.01.2016. Challenging the same, the petitioner filed the above writ petition before this Court.

3. The learned counsel for the petitioner submits that, the petitioner entered the service in the year 1992, however, the documents to prove the same is available only with the third respondent Management. Hence, he is not able to substantiate the claim that he entered the service in the year 1992 itself, since



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the third respondent Management made a plea before the authorities that the petitioner had entered the service in the year 2002. Based on the said plea, the first respondent reduced the gratuity amount, which is not sustainable, even though the petitioner is entitled for gratuity amount for a period of 20 years as ordered by the second respondent. Accordingly, he prays for appropriate orders.

4. The learned counsel appearing for the third respondent Management submits that, the third respondent Management is not an 'Establishment' as defined under the Act, since the employees of the third respondent Management does not exceed the maximum of eight employees at any point of time. He also submits that, the first respondent has rightly reduced the gratuity amount for a period from 20 years to 11 years by considering the stand taken by the third respondent Management that the petitioner joined the service in the year 2002, which is sustainable. Accordingly, he prays for dismissal of the above writ petition.

5. Heard the learned counsel appearing for the parties and perused the materials available on record.



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6. A perusal of the available records reveals that, the petitioner raised a claim before the second respondent for payment of gratuity amount as if he had rendered service from the year 1992 to 2012. The second respondent by accepting the said plea raised by the petitioner, awarded gratuity amount to the tune of Rs.1,00,558/- as if the petitioner rendered service for a period of 20 years, even though the petitioner has not produced any documents before the authorities to substantiate the same. Therefore, the third respondent Management preferred an appeal before the first respondent and the first respondent, by considering the submissions made by the third respondent Management that the petitioner had entered the service in the year 2012, has rightly reduced the gratuity amount from Rs.1,00,558/- to Rs.55,307/-. On the score, this Court is not inclined to interfere with the order passed by the first respondent.

7. Accordingly, the writ petition is dismissed. No costs.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.

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