



W.P.No.1399 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.1399 of 2016

and

W.M.P.No.1176 of 2016

A.N.Nachimuthu
Proprietor,
Padmanabha Theatre,
Kuruchi, Sundarapuram,
Coimbatore - 641 024.

...Petitioner

Vs

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

3.A.L.Sevugan

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the entire records of the 2nd respondent in G.A.No.101 of 2012 including the order dated 05.03.2015



W.P.No.1399 of 2016

and the entire records of the 1st respondent in A.G.A.No.21 of 2015 including the order dated 05.10.2015 and quash the same.

For Petitioner : Mr.V.G.Suresh Kumar
For R1 & R2 : Mr.K.H.Ravikumar,
Government Advocate
For R3 : Mr.T.Sivagnanasambandam

ORDER

Heard Mr.V.G.Suresh Kumar, learned counsel for the petitioner, Mr.K.H.Ravikumar, learned Government Advocate for the respondents 1 and 2 and Mr.T.Sivagnanasambandam, learned counsel for the third respondent.

2. The third respondent herein claims to be an employee in the petitioner Cinema Theater as a Projector Operator from 01.04.1981 to 05.11.2011. Claiming that his last drawn wages was Rs.8,000/-, he had claimed payment of gratuity for the entire period of 30 years, together with interest. The original authority, in his order dated 05.03.2015, had computed the last drawn wages at Rs.4,021/-, together with interest at the rate of 10% and the period of service as 22 years and computed the



W.P.No.1399 of 2016

gratuity amount payable at Rs.51,036/-. On appeal, the first respondent herein, in his order dated 05.10.2015, had reduced the gratuity amount to Rs.42,369/-, together with interest at the rate of 10%. Challenging these two orders, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that as per Ex.R6, which is an information received under the Right to Information Act, the third respondent seems to have worked elsewhere for the period between 2004 and 2009 and therefore, the authority has not considered this document. Since the third respondent was not in continuous service for more than 5 years, he is not entitled for payment of gratuity amount. He further submitted that Ex.P8 is a photocopy and the petitioner had raised objections for marking of the same before the authority. In spite of the same, the authority had placed reliance on Ex.P8 and had come to the conclusion that the third respondent was in employment from 08.07.1987, which is not based on proper evidence.

4. The learned counsel for the third respondent submitted that before the original authority, the management had not examined any oral



W.P.No.1399 of 2016

witnesses and therefore, cannot now take a plea that the documents produced before the authority is sufficient for disproving the third respondent's service in their Theater.

5. The original authority, in the impugned order dated 05.03.2015, had placed reliance on Exs.P1 to P6, which are the licenses for a Projector Operator and its subsequent renewals, in which, the petitioner Theater address has been mentioned and thereby had found that the third respondent was under the services of the petitioner herein. Furthermore, reliance has been placed on Ex.P8 also, which is the letter dated 06.06.2007 written by the Manager of the petitioner Theater to the licensing authority, which states that the third respondent herein was employed in their Theater from 08.07.1987 onwards.

6. There is nothing on record to show that the representative of the petitioner Theater had raised their objections before the original authority with regard to marking of Ex.P8. Even otherwise, the original authority/ second respondent herein is a quasi judicial authority and hence, the strict law of evidence cannot be applied in such proceedings. When there



W.P.No.1399 of 2016

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were documents in Exs.P1 to P5, as well as Ex.P6, which indicates that the third respondent was an employee of the petitioner Theater from 08.07.1987, the findings of the second respondent with regard to his employment cannot be found fault with. Even otherwise, the petitioner had not let in any oral evidence to prove the contents of the documents produced by them in Exs.R1 to R6.

7. The Hon'ble Supreme Court, in the case of ***Roop Singh Negi Vs. Punjab National Bank and others*** reported in **2009 (2) SCC 570**, has clearly held that whenever the documents are produced before a quasi judicial authority, the contents of such documents requires to proved through oral witnesses and in the absence of the same, no reliance can be placed on such documents.

8. Since the petitioner has not let in any oral evidences to prove the contents of the documents produced by them, placing reliance on the same, before this Court, is opposed to the aforesaid law position in ***Roop Singh Negi's case***.



W.P.No.1399 of 2016

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9. The learned counsel for the petitioner submitted that before the first respondent/appellate authority, the petitioner had raised objections with regard to marking of Ex.P8. Such a ground is a factual aspect, which requires to be established through perusal of the original records. The petitioner ought to have taken steps in order to substantiate that such an objection was raised before the authority. Even otherwise, as observed earlier, the second respondent herein was only a quasi judicial authority and therefore, such strict law of evidence cannot be applied with regard to the objections raised for marking of documents. As such, I do not find any infirmity in the findings of the appellate authority as well.

10. It is now brought to the notice of this Court that the gratuity amount computed, together with interest and modified by the first respondent in his order dated 05.10.2015, is now lying in deposit before the second respondent herein. Since no interference is made to the orders of the first and second respondents herein, the third respondent herein would be entitled for withdrawing the same.



W.P.No.1399 of 2016

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11. In the light of the above observations and findings, the writ petition stands dismissed. Consequently, the third respondent herein is at liberty to make an appropriate application before the second respondent herein, seeking for withdrawal of the amount deposited by the petitioner herein in connection with the impugned proceedings in G.A.No.101 of 2012, dated 05.03.2015 and A.G.A.No.21 of 2015, dated 05.10.2015 and on receipt of such an application, the second respondent shall pass appropriate orders, preferably on the same day, by permitting the third respondent to withdraw the entire amount lying in deposit. No costs. Consequently, connected miscellaneous petition is closed.

10.01.2023

Index:Yes/No

Neutral Citation:Yes/No

Speaking order/Non-speaking order

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W.P.No.1399 of 2016

M.S.RAMESH,J.

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To

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The Controlling Authority under the
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W.P.No.1399 of 2016

10.01.2023