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W.P.No.21511 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.21511 of 2013
and M.P.No.1 of 2013

The Chief Workshop Manager,
Loco Works, Southern Railway,
Ayanavaram, Chennai 600 023.

... Petitioner

-Vs-

1. S.M.Hussaini
2. The Regional Labour Commissioner (Central),
Appellate Authority under the Payment of Gratuity Act, 1972,
Government of India,
No.26, Haddows Road,
Sastri Bhavan,
Chennai 600 006.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, after calling for the records relating to the order dated 31.10.2012 passed by the second respondent in Gratuity Appeal No.15 of 2011 and quash the same, as being illegal, perverse and unjust, award costs.

For Petitioner : M/s A.Sri Jayanthi

For Respondents

R2 : Mr.T.L.Thirumalaisamy,
Central Government Standing Counsel



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ORDER

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This Writ Petition has been filed challenging the order passed by the second respondent in the appeal preferred by the first respondent to pay the gratuity amount to the first respondent for the service rendered w.e.f 08.12.1948 to 30.11.1986, after deducting the amount already paid under the DCRG Rules.

2. The first respondent was appointed as Apprentice Mechanic on Pay Scale of Rs.55-3-67 with effect from 08.12.1948. Thereafter, he was promoted to the post of Foreman-B and his salary was fixed as Rs.430/- per month with effect from 01.09.1969. However, the first respondent committed misconduct and failed to maintain devotion to duty and he acknowledged receipt of 2 bags containing 2000 numbers of BHT check nuts in the delivery note, without counting the check nuts and processed the bill for payment for 2000 check nuts with undue interest, though the said bags contained only 1,200 check nuts. Therefore, he was served with charge memo. On completion of disciplinary proceedings, he was removed from service with effect from 20.04.1981. On appeal to the Railway Board, the penalty of removal was modified as compulsory retirement from service. Accordingly, the first respondent was paid with all dues.



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3. On review petition, the compulsory retirement was also modified as reduction in time scale of pay by two stages with effect from 20.04.1981, till the date of his normal superannuation. The original pay of Rs.900/- was reduced to Rs.830/- by two stages in scale of Rs.700-900 for the period from 20.04.1981 to 30.11.1986. The intervening period from 20.04.1981 to 30.11.1986 shall be treated as duty for the purpose of pensionary benefits alone and he was not entitled for further increment till his date of retirement. Therefore, his salary was fixed at Rs.2450/- from 20.04.1981 to 30.11.1986. Thereafter, the first respondent was paid death-cum-retirement gratuity in terms of Railway service pension rules. Thereafter, the first respondent filed an application before the Controlling Authority under the Payment of Gratuity Act, 1972, claiming payment of gratuity. According to the petitioner, the first respondent is not an employee as per Section 2(e) of the Payment of Gratuity Act, 1972. All the settlement dues including the gratuity payable under Railway services pension rules had already been paid to the first respondent. Therefore, the application was dismissed by an order dated 29.06.2011. Aggrieved by the same, the first respondent filed an appeal before the second respondent and the second respondent allowed the appeal.



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4. The only contention raised by the petitioner is that the first respondent was holding the post under the Railway Service Pension Rule and he is not covered under Section 2(e) of the Payment of Gratuity Act, 1972. Therefore, he is not entitled to seek with the gratuity amount as per the Act.

5. Admittedly, the petitioner was appointed as Apprentice Mechanic by the petitioner herein. Thereafter, he was promoted and retired as Assistant Shop Superintendent. Thus, the first respondent is very much aware with the definition of the term employee. There is no doubt about the first respondent who was holding the post under the Central Government. At the same time, it is also clarified by the second respondent. He is also qualified to be an employee as defined in the first part of the definition under Section 2(e) of the Payment of Gratuity Act, 1972 by virtue of the performance of the nature of work as laid down under the definition.

6. Therefore, the contention of the learned counsel for the petitioner cannot be accepted as the first respondent was not an employee.



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7. Hence, this Court finds no infirmity or illegality in the order passed by the second respondent. The writ petition is devoid of merits and liable to be dismissed. Accordingly, this writ petition stands dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

03.07.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

1. The Regional Labour Commissioner (Central),
Appellate Authority under the Payment of Gratuity Act, 1972,
Government of India,
No.26, Haddows Road,
Sastri Bhavan,
Chennai 600 006.
2. The Public Prosecutor,
High Court, Madras.

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