



WEB COPY



W.P.No.3233 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.3233 of 2018

and

W.M.P.No.3967 of 2018

1.M/s.Cognizant Technology Solutions
India Pvt. Ltd., India Operations,
Regd. Office at No.5/535, Old Mahabalipuram Road,
Okkiam, Thoraipakkam,
Chennai – 600 096
Rep.by its Director – Legal.

2.M/s.Cognizant Technology Solutions India Pvt. Ltd.,
Payroll & Benefits Shared Services Department,
Phase II, III Floor, No.1, Veeranam Road,
Perungudi Bye-Pass,
Perungudi, Chennai – 600 016.
Rep.by its Director – Legal.

... Petitioners

Vs

1.The Deputy Chief Labour Commissioner (Central),
Appellate Authority under the
Payment of Gratuity Act,
No.26, Haddows Road, Sastri Bhavan,
Chennai – 600 006.
2.The Assistant Labour Commissioner (Central),

1/11



W.P.No.3233 of 2018

WEB COPY

Controlling Authority under the
Payment of Gratuity Act,
No.26, Haddows Road, Sastri Bhavan,
Chennai – 600 006.

3.Aravind Sen

... Respondents

Prayer : Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of the first respondent in Gratuity Appeal No.126/2015 dated 30.01.2018 and quash the same.

For Petitioners	:	Mr.Srinath Sridevan, SC for Mr.Bhagavath Krishnan
For R1 & R2	:	Mr.T.V.Krishnamachari, SPC
For R3	:	No appearance

ORDER

This Writ Petition has been filed by the petitioners seeking to quash the order dated 30.01.2018 passed by the first respondent in Gratuity Appeal No.126/2015.

2. The third respondent joined the petitioner company as Associate Consultant in April 2008 and was working from Pune. The petitioner company also paid the statutory dues to him when he was working in India.

2/11



W.P.No.3233 of 2018

WEB COPY

Thereafter, the third respondent took up an assignment with the Cognizant Technology Solutions US Corporation (in short 'CTS-US Corp.') pursuant to the order issued to him. Based on that, the services of the third respondent came to be suspended from the petitioner company from 11.10.2010 and the third respondent moved to the pay rolls of the CTS-US Corp. from 11.10.2010. Later, it came to light that the third respondent joined some other company in the USA during April 2013 after the termination of his services from the CTS-US Corp.

2.1. Thereafter, the third respondent approached the petitioner company by making a representation seeking gratuity. But, the petitioner company denied their liability. After continued persuasion, the petitioner company agreed to pay gratuity to the third respondent based on the last drawn salary in India including the period, for which, he worked in the CTS-US Corp. Subsequently, the third respondent filed an application before the second respondent seeking gratuity for the period from 09.04.2008 to 25.04.2013 based on the salary drawn by him with the foreign company. In



W.P.No.3233 of 2018

that, the petitioner company filed a counter. However, by order dated 07.11.2014, the second respondent directed the petitioner company to pay a sum of Rs.9,07,404/- towards gratuity to the third respondent together with penal interest at the rate of 10%. Aggrieved by that, the petitioner company filed an appeal before the first respondent. After contest, it was dismissed by the first respondent by the impugned order on the ground that in the transfer order dated 28.9.2010, the petitioner company stated that for associates relocating to work for the petitioner company in the US from the petitioner company in India, the benefit under the heads such as personal accident, insurance and gratuity scheme would be applicable during this overseas assignment. Challenging the same, the petitioner company is before this Court.

3. The learned counsel appearing for the petitioner submitted that the third respondent was appointed in the petitioner company on 03.04.2008. Thereafter, on his request, he was transferred to the Rolls of CTS-US Corp., however, lien of the third respondent service was retained in the post in



W.P.No.3233 of 2018

WEB COPY

India. In India, he received a monthly salary of Rs.32,100/- from the petitioner company, whereas, after transfer, he received salary from CTS-US Corp. to the tune of US \$ 7,508/- p.m. from 28.09.2010. On 25.04.2013, the respondent quit the employment of CTS-US Corp. and he stayed in USA and did not return to India. Thereafter, on 06.06.2013, he filed a gratuity application against the petitioner and CTS-US Corp. seeking gratuity on the basis of last drawn salary drawn by him in US Dollars in CTS-US Corp. During the pendency of the application, the third respondent deleted CTS-US Corp. and pursued his remedy only against the petitioner and the controlling authority awarded gratuity equivalent to the last drawn salary drawn by him in CTS-US Corp., which is not sustainable and the salary in India and USA is completely different. If at all the third respondent has any grievances, he has to workout his remedy as against the CTS-US Corp., since he lastly received salary from the CTS-US Corp. Though the petitioner company retained lien of the third respondent in order to protect his employment, however, even if he returned to India, it does not mean that he is entitled for gratuity amount as per the last drawn wages received from



W.P.No.3233 of 2018

WEB COPY

CTS-US Corp.. If at all he wants gratuity in terms of CTS-US Corp., he has to implead the CTS-US Corp. and workout the remedy only before the USA Court not before this Court as against the petitioner. Accordingly, he prays for allowing the writ petition.

4. Further, he submitted that, the gratuity amount based on the salary paid by the petitioner company to the third respondent to the tune of Rs.32,100/- per month, was paid to him. However, he is not entitled for the differential amount based on the last drawn wages in US Dollars.

5. The learned Senior Panel Counsel appearing for the respondents 1 and 2 submitted that the controlling authority has considered the issue elaborately and passed an order, which was confirmed by the appellate authority, which cannot be interfered with and the same does not suffers any perversity. Hence, the fact findings rendered by the original authority as well as the appellate authority cannot be re-appreciated by this Court under Article 226 of Constitution of India. Accordingly, he prays for dismissal of



6. Though the third respondent entered appearance through a counsel, there is no representation on behalf of him when the case is called. Considering the pendency of the writ petition, this Court is inclined to dispose of this writ petition based on the available records.

7. Admittedly, the third respondent was appointed in the petitioner company on 03.04.2008. Thereafter, he was transferred to the rolls of CTS-US Corp. on 28.09.2010. However, the fact remains that his lien was retained with the petitioner company in order to protect his employment. It is also equally undisputed fact that, the salary received by the third respondent in the petitioner company is Rs.32,100/- per month, whereas, his salary with the CTS-US Corp. was US \$ 7,508/- p.m. On 25.04.2013, he quit his employment with the CTS-US Corp. and thereafter, he filed gratuity application on 06.06.2013 before the second respondent/controlling authority claiming gratuity amount as per the last drawn wages in US



W.P.No.3233 of 2018

WEB COPY

Dollars. However, the controlling authority failed to consider the last drawn wages of the third respondent in petitioner company in India and in the CTS-US Corp. It is seen that the petitioner company has paid a sum of Rs.32,100/- per month as salary to the third respondent prior to his employment with CTS-US Corp.

8. Initially, the third respondent impleaded the CTS-US Corp. as party in the gratuity application filed before the controlling authority and subsequently, the CTS-US Corp. was deleted. At the relevant point of time, the third respondent was not an employee of the petitioner company and he is the employee of CTS-US Corp. While such being the position, making claim before the controlling authority seeking gratuity amount based on the last drawn wages received from CTS-US Corp. in US Dollars is *per se* unsustainable. If at all the third respondent claims for gratuity, he is entitled only for gratuity amount based on the monthly salary of Rs.32,100/- which was received by him from the petitioner company prior to his employment in CTS-US Corp. Hence, the impugned order passed by the first respondent is



W.P.No.3233 of 2018

not sustainable and the same is liable to be set aside.

WEB COPY

9. Accordingly, the writ petition is allowed and the impugned order dated 30.01.2018 passed by the first respondent in G.A.No.126 of 2015 is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

13.09.2023
(2/2)

Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No
sp

To

- 1.The Deputy Chief Labour Commissioner (Central),
Appellate Authority under the Payment of Gratuity Act,
No.26, Haddows Road, Sastri Bhavan,
Chennai – 600 006.
- 2.The Assistant Labour Commissioner (Central),
Controlling Authority under the Payment of Gratuity Act,
No.26, Haddows Road, Sastri Bhavan,
Chennai – 600 006.

M.DHANDAPANI,J.,

9/11



WEB COPY



W.P.No.3233 of 2018

sp

W.P.No.No.3233 of 2018

13.09.2023
(2/2)



WEB COPY



W.P.No.3233 of 2018

W.M.P.No.18567 of 2022

in

W.P.No.3233 of 2018

M.DHANDAPANI,J

The present writ miscellaneous petition has been filed seeking to permit the petitioner to raise additional ground in the above writ petition, is ordered as prayed for.

13.09.2023

sp

($\frac{1}{2}$)