



W.P.No.23580 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

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Syman & David
Proprietor
M/s Reliable Equipments
Site No:7, S.F.No.186/4,
Private Industrial Estate,
South Block, Sidco,
Coimbatore-641 921

... Petitioner

Vs.

- 1.The Joint Commissioner of Labour Cum
Appellate Authority under the payment of Gratuity Act,
Coimbatore.
2. The Assistant Commissioner of Labour cum
authority under the Payment of Gratuity Act,
Coimbatore.

3.M.Mani

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 2nd respondent in G.A.No.329/2012 dated 22.09.2014 and consequential order



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of the 1st respondent in A.G.A.No.26 of 2015 dated 28.12.2015, quash the same.

For Petitioner : Mr.G.Rajkumar
For Respondents : Mr.T.M.Rajangam
Government Advocate
For R.1 and R.2
No representation
For R.3

ORDER

The third respondent herein, by claiming that he was an employee of the petitioner Company from 01.08.1999 onwards as a Welder, had filed an application under Section 7(4)(B) of Payment of Gratuity Act, 1972 for determination of the gratuity amount payable to him. He had resigned his job on 18.02.2012 and had completed 12 ½ years 18 days of service. According to the second respondent herein, his last drawn salary was Rs.10,400/-. The authority under the Payment of Gratuity Act, 1972 had determined the gratuity amount as Rs.78,000/- together with interest at the rate of 10% p.a., by calculating the same for a period of thirteen years. However, in the order passed by the appellate authority, the amount was reduced to Rs.56,250/-. Challenging both these orders, the Management has



filed the present writ petition.

2. Learned counsel for the petitioner submits that the onus lies on the third respondent herein to prove before the authority that he was the employee of the petitioner Management and that the Management cannot prove the negative. In support of said submission, learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Surendranagar District Panchayta vs Dahyabhai Amarsinh*** reported in ***(2005) 8 SCC 750***.

3. No representation for the third respondent herein. The only ground raised by the Management is that the onus of proving that the third respondent was the employee of the petitioner Management is on the workman. In the decision of ***Surendranagar District Panchayta vs Dahyabhai Amarsinh*** reported in ***(2005) 8 SCC 750***, relied upon by the learned counsel for the petitioner, the following findings were stressed upon:-



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“ 16. In Range Forest Officer vs. S.T. Hadimani, (2002) 3 S.C.C. 25 - (At Page 26, Para 3), this Court held that "In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."



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17. More recently, in *Rajasthan State Ganganagar S. Mills Ltd. vs. State of Rajasthan & Another*, (2004) 8 S.C.C. 161, *Municipal Corporation, Faridabad vs. Siri Niwas*, (2004) 8 S.C.C. 195 and *M.P. Electricity Board vs. Hariram*, (2004) 8 S.C.C. 246, this Court has reiterated the principal that the burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is for the workman to adduce an evidence apart from examining himself to prove the factum of his being in employment of the employer.

18. In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced;



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no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer.

4. In the aforesaid decision, which was relied on by the learned counsel for the petitioner, the workman therein who had claimed to be in possession of that status had not produced even a single document in support of his claim apart from his own affidavit and his statement. The Hon'ble Supreme Court had taken note of the fact that such affidavit and statement would only be of his own version and that he was required to prove his employment through documents relating to his salary etc.,.

5. In the present case on hand, the third respondent herein had produced his salary certificate as Ex.P.3 and on the basis of salary certificate, the competent authority had determined the gratuity amount. Thus, when the workman had produced one of the relevant documents



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which is his salary certificate issued by the petitioner Management, in the decision relied upon by the learned counsel for the petitioner, there was not a single document produced by the workman, which was the basis for the Hon'ble Supreme Court to come to such a conclusion. Therefore, this decision may not be of any help to the petitioner Management.

6. On the other hand, the Hon'ble Supreme Court in the case of ***Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya and Others*** reported in ***(2013) 10 SCC 324***, had held that the initial burden to prove the claim before the Labour Court would be on the workman and thereafter, it is for the Management to disprove the same. The relevant portion of the order reads as follows:

33. iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to



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prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

7. By applying the aforesaid ratio, the facts involved in the present case, the third respondent herein did produce a document in Ex.P.3 to substantiate that he was the employee of the petitioner Management. Therefore, having satisfied his initial burden of proof, the onus thereafter shifts on the management to substantiate that the third respondent was not under their employment or any other relevant matter.

8. This apart, according to the original authority, the establishment had more than 10 employees and under the Labour Regulations, they ought



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to have maintained various statutory registers for compliance of the statutory requirements of the provisions of the Payment of Gratuity Act, 1972; The Employees State Insurance Act, 1948 etc., as well as the attendance register, nominal muster roll, etc., which could have been produced before the Authority to substantiate that the third respondent was not the employee of the petitioner management. Having failed to discharge their subsequent onus, it may not be correct to shift the onus totally on the workman to substantiate his claim, who had satisfied his initial onus of burden of proof.

9. As such, I do not find any merit in the writ petition. Accordingly, the writ petition stands dismissed. No costs.

13.02.2023

Speaking
Neutral Citation: Yes
Index: Yes
Internet: Yes
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M.S.RAMESH,J.

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To

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