IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20/11/2023
Pronounced on	28/11/2023

C O R A M

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.13097 of 2014

R.Leonard … Petitioner

Vs

1. The Regional Labour Commissioner (Central)
   No.26 Haddows Road, Shastri Bhavan
   Nungambakkam
   Chennai 600 006.

2. The Managing Director
   Technip India Limited
   19 Velachery Road, Guindy
   Chennai 600 032. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records in G.A.No.150 of 2012 on the file of the first respondent and set aside the order dated 30/8/2013.

For Petitioner ... Mr.V.Govardhanan

For respondents ... Mr.A.Murugan
Central Government Counsel
for R.1

Mr.Sushanth
for M/s.T.S.Gopalan
for R.2.

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O R D E R

This writ petition is filed to quash the order dated 30/8/2013 passed in G.A.No.150 of 2012 by the first respondent.

2. The facts in brief as per the affidavit enclosed to this writ petition are that the petitioner has joined the services of SPIC Ltd., on 11/12/1996 as Procurement Engineer. The second respondent has issued an offer letter, dated 14/10/2001 mentioning that the petitioner will be given an appointment in their Company. The petitioner has accepted the offer of the second respondent and resigned from SPIC. The petitioner's services were transferred to the second respondent with effect from 1/10/2001 and was relieved from SPIC on 13/9/2001. The petitioner has also left the services of the second respondent on 31/1/2006, after putting in 9 years and 1 month of service. The petitioner's last drawn monthly salary was

Rs.11,620/- and was entitled to a gratuity of Rs.60,335/- (Rs.11,620 x 9 x 15/26). The petitioner's services was continuous without break until he resigned from second respondent service on 31/1/2006. The second respondent and SPIC have admitted the continuous services of the petitioner for the purpose of computing sick leave, superannuation and terminal benefits.

3. The financial statements of the second respondent and SPIC as per 38th Annual Reports of 2009, both of them form part of the same venture. The length of services of the petitioner in SPIC and second respondent are continuous, thereby for for the purpose of retirement benefits, services rendered by the petitioner in SPIC and second respondent have to be treated as continuous. In so far as gratuity is concerned, the second respondent and SPIC have though considered as separate services, in so far as other retirement benefits are concerned, the second respondent and SPIC have considered the services of the petitioner in both second respondent and SPIC are continuous and therefore, sought for the relief as prayed for.

4. The second respondent Management has filed a counter affidavit,

wherein it is stated that the second respondent was incorporated in June 1998 under the Companies Act as "Technipetrol India Limited" and name of the Company was changed to TECHNIP INDIA LTD (TPIL) during November 1998. The company was a joint venture between Southern Petro Chemical Industries Corporation Limited (SPIC) and Technip Italy S.P.A until 17th March 2010, subsequently, Company became wholly owned subsidiary of Technip since mid March 2010.

5. Employees of the second respondent are having separate service Rules including extension of certain Employees Welfare Benefits, viz., contributory provident fund, non-contributory gratuity fund, non-contributory superannuation fund which are formed and administered by separate Trusts for each such benefit.

6. The petitioner was appointed in SPIC as a Procurement Engineer on 11/12/1996 and resigned from service on 30/9/2001 which was accepted and relieved from the service and he was issued with a service Certificate by the SPIC Limited on 21/3/2002. Subsequently, the petitioner had joined the second respondent. The petitioner has not rendered five years of service

continuously in second respondent and hence he is not eligible for gratuity.

7. The petitioner has preferred an application before the Controlling Authority constituted under the Central Government (Assistant Labour Commissioner (Central) in P.G.No.M/48/99 claiming gratuity for the period from 11/12/1996 to 31/1/2006. By an order, dated 14th August 2012, the Controlling Authority, under the Payment of Gratuity Act, rejected the claim of the petitioner on the ground that the service rendered by the petitioner with the erstwhile employer viz., SPIC Limited cannot be counted for claiming gratuity. The petitioner preferred an appeal before the first respondent in G.A.No.150 of 2012. By an order, dated 30th August 2013, the first respondent confirmed the orders of the Controlling Authority under the Payment of Gratuity Act. Being aggrieved by the same, the petitioner has preferred the instant writ petition praying for the relief as stated therein.

8. Heard Mr.V.Govardhanan, learned counsel for the petitioner, Mr.A.Murugan for the first respondent and Mr.Sushanth learned counsel for the second respondent.

9. The petitioner has challenged the orders passed by the Appellate

Authority under the Payment of Gratuity Act in G.A.No.150 of 2012 which was confirmed the orders passed by the Controlling Officer, under the Payment of Gratuity Act in P.G.No.M/48/99.

10. The facts which are not in dispute are that the petitioner has originally joined the service of SPIC as Procurement Engineer on 11/12/1996. He resigned from SPIC on 13/9/2001. The petitioner has received a letter of offer dated 14/9/2001 from the second respondent. The letter of appointment was given on 19/9/2001. When he has resigned from SPIC, he has requested the SPIC to relieve him from the work with effect from 31/1/2006. However, the second respondent has advised the petitioner by way of a letter dated 11/1/2006 to serve a notice to SPIC as per the Service Rules. Accordingly, petitioner submitted an application dated 7/2/2006 requesting leave for 30 days from 3/2/2006 which was not granted by the second respondent by its telegram and confirmed by its letter dated 17/2/2006 asking the petitioner to join duty immediately. The petitioner has ultimately joined the second respondent with an agreement that gratuity payable for the services rendered in SPIC shall be settled by SPIC. The petitioner has also subsequently, resigned from the services of the second respondent.

11. The contention of the petitioner is that SPIC and second respondent are joint ventures and submitting a resignation to the SPIC and joining the second respondent are only for technical reasons and thereby, the services rendered in SPIC will have to be counted along with the services rendered in the second respondent for the purpose of retirement benefits including the gratuity. According to him, he is entitled for Rs.60,335/- for gratuity for the period worked both in the second respondent and SPIC.

12. The contention of the petitioner is not convincing. A bare reading of para No.1 of the affidavit, it is clearly mentioned that second respondent was incorporated in June 1998 under the Companies Act as TECHNIP India Ltd., which is a joint venture between Southern Petrochemical Industries Corporation Limited (SPIC) and Technip Italy S.P.A., until 17th March 2010. The second respondent became wholly owned subsidiary of Technip since mid March 2010 and as per the Scheme of Amalgamation approved by the High Court of Madras, Bombay and Delhi, Technip India Limited/second respondent got merged with Technip KT India Limited on 21st April 2014 and the name of the said

Amalgamated entity was changed from Technip KT India Limited to Technip India Limited w.e.f 19th June 2014, thereby the second respondent Company is a separate legal entity, and the same is distinct from SPIC. According to the petitioner, both SPIC and second respondent are separate entities and originally joint ventures and resigning from SPIC and joining in second respondent are only technical reasons, and that his services were transferred from SPIC to second respondent.

13. Services of the petitioner in the SPIC who subsequently joined the second respondent cannot be treated as continuous. Further, as per letter, dated 14/9/2001 of the second respondent, it is specifically mentioned that gratuity in respect of the services rendered in the SPIC will be settled by SPIC. Though in respect of Provident Fund, etc., it is mentioned that they will be transferred to the second respondent from SPIC, the petitioner is not entitled to claim gratuity because the length of service rendered by the petitioner will not make him eligible to claim the gratuity. However, the services rendered with the SPIC will make him eligible to claim the gratuity which according to the petitioner is not claimed, as long as there is no contract between SPIC and second respondent and when the letter dated

14/9/2001 of the second respondent clearly mentions that the petitioner cannot claim gratuity of SPIC from the second respondent.

14. In view of the above, considering the submissions made by either side and on a careful perusal of the counter affidavit filed by the second respondent, which are in fact admitted by the petitioner that second respondent and SPIC are separate legal entities, **writ petition is dismissed.** However, the petitioner is at liberty to claim gratuity from SPIC for the services rendered by him in SPIC in the manner known to law. No costs.

28/11/2023

mvs.

Index: Yes/No

NCC: Yes/No

To

1. The Regional Labour Commissioner (Central)
   No.26 Haddows Road, Shastri Bhavan
   Nungambakkam
   Chennai 600 006.

Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
W.P.No.13097 of 2014

28/11/2023