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W.P.No.34105 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.34105 of 2014
and M.P.No.1 of 2014
and W.M.P.No.8098 of 2017

Ambur Co-operative Sugar Mills Limited,
Vadapudupet Post,
Ambur Taluk,
Vellore District - 635 812.
Represented by its
Special Officer/presently Managing Director

... Petitioner

Vs.

1.D.Vijayarangan

2.The Assistant Commissioner of Labour I,
(Controlling Authority under the Payment of Gratuity Act, 1972),
Office of the Deputy Commissioner of Labour-I,
D.M.S.Compound, Chennai - 600 006.

3.The Joint Commissioner of Labour,
(Appellate Authority under the Payment of Gratuity Act, 1972)
Office of the Deputy Commissioner of Labour-I,
D.M.S.Compound, Chennai - 600 006.

... 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 relating
to the impugned order dated 27.08.2014 passed by the third respondent in



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P.G.A.No.1 of 2014 and quash the same.

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For Petitioner : Mr.R.Bala Ramesh
For R1 : Mr.S.Anbalagan
For R2 & R3 : Mr.T.M.Rajangam
Government Advocate

ORDER

This writ petition has been filed calling for the records relating to the impugned order dated 27.08.2014 passed by the third respondent in P.G.A.No.1 of 2014 and quash the same.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioner herein, which is a Co-operative Sugar Mill, have challenged the order of the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as “The Act”), whereby the Authorities had ordered for payment of gratuity to the first respondent, (herein after called as “workman”). The main ground taken by the petitioner/Management is that the petitioner/Co-operative Sugar Mill is a Seasonal Establishment and the Workman was Non Mazdoor Roll employee and therefore could be entitled for



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gratuity at the rate of seven days wages for each season, as per the second proviso to Section 4 of the Act. Another ground raised is that, the onus of proving the completion of 240 days of continuous service was on the workman and since he has not produced any documents to substantiate such continuous service, he is not entitled for 15 days wages for each complete year of service under Section 4(2) of the Act.

4. The learned counsel appearing for the respondents on the other hand, would submit that, the first respondent was not under seasonal employment at all and the petitioner/Co-operative Sugar Mill was also not a Seasonal Establishment and therefore there was no infirmity in the order of the Authority. At the outset, it requires to be mentioned here that admittedly, the Government had neither declared the petitioner/Cooperative Sugar Mill as a Seasonal Establishment nor was the employment of any section of their employees declared as seasonal workers. Since the petitioner's claim that the workman is entitled for only seven days wages, per season as provided under the second proviso to Section 4 of the Act, it is crucial that the nature of the petitioner Co-operative Sugar Mill should be substantiated.



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5. Under Section 25(A)(2) of the Industrial Disputes Act, 1947, whenever a question arises as to whether an Industrial Establishment is a seasonal character or whether the work performed therein, is only intermittent or not, it is the Government which requires to declare that particular Industrial Establishment or the work performed therein as 'seasonal'. When the petitioner had not obtained any such orders from the Government with regard to the nature of their Co-operative Sugar Mill or the work performed therein, the very basis on which they claim that the workman is entitled for seven days wages, cannot be substantiated. It requires to be reiterated that the second proviso to Section 4 of the Act applies only to seasonal establishments. When the petitioner has not been declared by the Government to be a Seasonal Establishment, they would automatically entitled for payment of gratuity under Section 4(2) of the Act at the rate of 15 days wages for every completed year of service. This is precisely the computation made by the Original Authority, as confirmed by the Appellate Authority. As such, the first ground raised by the learned counsel for the petitioner does not require consideration.

6. The petitioner herein had relied upon various decisions to show that



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since the workman had taken a stand that he is in continuous service in the Co-operative Sugar Mill and sought for payment of gratuity, the onus is on them to prove the same. The decisions relied upon by the learned counsel need not be addressed since even in Labour Laws, there is an initial burden cast on the workman to prove the claim of continuous service. In the present case in hand, such initial burden has been complied with by them and therefore, it is for the Management to substantiate that the workman was not in continuous service at all. In this background, when the impugned order was perused, it is seen that apart from the attendance register, the petitioner had not produced any other documents like the salary disbursement registers, bonus payment registers, minimum wages registers, etc. The Original Authority had concluded that, the documents which they had not produced would substantiate the factum of continuous service and thereby had come to the conclusion that the workman was in continuous service under the petitioner Management. Having failed to produce the relevant documents to substantiate their claim and when the workman had already established their initial burden of proving the case, I do not find any reason to interfere with the impugned order on this ground also.

7. In the case on hand, the Appellate Authority, had rendered findings by holding that the workman is entitled for payment of gratuity for the respective



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period of continuous services. This Court exercising its powers under Article 226 of the Constitution of India, will not interfere with such concurrent findings or re-appraise the evidences, unless such findings are “perverse” or based on “No Evidence”. None of the grounds raised by the petitioner Management are questioning the perversity in the impugned order or that the order is based on “No Evidence”. As such, I do not find any merits in the present Writ Petition.

8. Accordingly, this Writ Petition stands dismissed. In view of the dismissal of the present Writ Petition, the workman is at liberty to approach the appropriate authority seeking for withdrawal of the amounts deposited by the petitioner Management, by filing appropriate application. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

14.09.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
rjr/mn



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To

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G.K.ILANTHIRAIYAN, J.

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