



W.P. No. 9891 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

**W.P. No.9891 of 2016
and W.M.P. No.8878 of 2016**

The Management,
M/s.Koduvai Sarvodaya Sangam,
Rep. by its Secretary,
Vinoba Nagar,
Tirupur Main Road,
Koduvai Post,
Tirupur.

... Petitioner

-VS-

1. The Appellate Authority in Payment of Gratuity Act,
Joint Labour Commissioner,
Coimbatore.

2.G.Nagendran

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records of the first respondent in its impugned order dated 17.12.2015 in A.G.A.No.63/2015 consequential to the order of the Gratuity Authority/ Assistant Commissioner of Labour in G.A.No.255 of 2013 dated 08.04.2015 and quash the same.

For Petitioner : Mr.K.Sathiyamurthi

For Respondents : Mr.S.John J.Raja Singh, AGP (R1)
Mr.R.Prabakaran (R2)



W.P. No. 9891 of 2016

ORDER

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This petition has been filed seeking to quash the impugned order dated 17.12.2015 in A.G.A.No.63/2015 passed by the first respondent and the order of the Gratuity Authority/ Assistant Commissioner of Labour in G.A.No.255 of 2013 dated 08.04.2015.

2. It is the case of the petitioner that the second respondent submitted application in Form-I claiming Gratuity from the petitioner wherein he has stated that he joined as employee of the petitioner Sangam on 02.09.1991 and resigned on 07.04.2010 as such he has worked for about 19 years and his last drawn salary was Rs.5,200/- and claimed gratuity of Rs.57,000/-. The petitioner has denied the same and hence, the second respondent has filed a petition before the Commissioner of Labour (Gratuity) claiming Gratuity and the same was dismissed vide order dated 08.04.2015 as the second respondent failed to produce documents to prove his claim. Challenging the same, the second respondent preferred appeal in AGA.No.63/2015 on the file of the Joint Commissioner of Labour, Coimbatore and the same was allowed on 17.12.2015. Challenging the above said orders dated 17.12.2015 and 08.04.2015, the petitioner Sangam has filed the present writ petition.



W.P. No. 9891 of 2016

3. The learned counsel for the petitioner submitted that admittedly the second respondent has not filed any document to substantiate his claim that he has appointed in the year 1991 and he resigned a job in the year 2010. The second respondent himself admitted that he entered into service in the year 1991 and therefore, it is the duty of the second respondent to produce necessary documents with regard to the appointment in the petitioner sangam and further he claims that he has not marked any document with regard to the resignation before the Labour Court. In the absence of any documents, the appellate authority passed the present impugned order, which is not sustainable one. Hence, the learned counsel prays that this Court may set aside the same and allow this petition.

4. The learned counsel for the second respondent submitted that though the second respondent was working in the petitioner sangam in the year 1991 and he voluntarily retired from service on 07.04.2010. In order to substantiate his claim, there is no document available with the second respondent. However, the petitioner examined as RW1 before the original authority. In his deposition, he has stated that the second respondent is the employee of the petitioner as coolie and the second respondent was engaged as and when required and he has also admitted that the second respondent was working continuously minimum



W.P. No. 9891 of 2016

100 days without any break. Considering all these aspect, the appellate authority has rightly passed an order in favour of the second respondent, which does not warrant any interference.

5. Heard the learned counsel for the petitioner and the learned counsel for the second respondent and perused the materials available on record.

6. It is the grievance of the second respondent that he entered into service in the petitioner Sangam in the year 1991 and he voluntarily retired in the year 2010. To claim the Gratuity amount, a dispute arose.

7. It is the main grievance of the petitioner that in order to prove the employment, the second respondent has not produced any documents either before the original authority or before the appellate authority. According to the petitioner, the second respondent is not all the employee of the petitioner and he was not employed for more than 480 days. The petitioner Sangam is governed by Bye-laws and all the recruitments have made by the competent authorities. In the absence of any employee and employer relationship, awarded gratuity amount in favour of the second respondent, which is not sustainable one.



W.P. No. 9891 of 2016

8. This Court carefully perused the original records. On perusal of the deposition of the petitioner, it is seen that the second respondent has been engaged by the petitioner as and when required and on the same day, he has collected his wages. Though such plea was admitted by the second respondent, he has to prove that he has been working continuously for more than 240 days. To that extent, he has not filed any document for his employment and resignation.

9. In the absence of any proof, the order passed by the appellate authority is in question and the same is perverse. Therefore, this Court has no hesitation to quash the same. Accordingly, the order in A.G.A.No.63/2015, dated 17.12.2015 passed by the first respondent is hereby set aside.

10. Accordingly, the writ petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs. However, the second respondent is directed to return the entire amount to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

26.07.2023

Rli



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W.P. No. 9891 of 2016

M.DHANDAPANI, J.

Rli

Index: Yes/No

NCS : Yes/No

To

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W.P. No. 9891 of 2016

26.07.2023