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W.P.No.25896 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.25896 of 2023

and

W.M.P.No.25338 of 2023

M/s.SP Apparels Limited,
Cuddalore Main Road,
Kalpaganur,
Attur Taluk,
Salem District – 636 109.
Rep. by its Managing Director

... Petitioner

Vs.

1.The Appellate Authority under the
Payment of Gratuity Act, 1972 cum
Additional Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore – 641 018.

2.S.Prabhu

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for records relating to the impugned order dated 18.05.2023 passed by the first respondent in A.G.A.No.34 of 2022 insofar the findings relating to the quantum of “last drawn wages” for the purpose of calculation of the gratuity payable to the 2nd respondent is concerned and to quash the said part.



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For Petitioner : Mr.R.Jayaprakash
For Respondents : Mr.M.S.Prem Kumar
Government Advocate [R1]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for records relating to the impugned order dated 18.05.2023 passed by the first respondent in A.G.A.No.34 of 2022 insofar the findings relating to the quantum of “last drawn wages” for the purpose of calculation of the gratuity payable to the second respondent is concerned and to quash the said part.

2. Mr.M.S.Prem Kumar, learned Government Advocate accepts notice for the first respondent. In view of the consent expressed by the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the second respondent, this petition is taken up for final disposal.

3. Since no adverse order has been passed as against the second respondent, notice to the second respondent is dispensed with.



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4. The case of the petitioner is that, the second respondent was initially appointed by S.P.Super Fine Cotton Mills Private Limited, Salem in the year 1997 and his employment is a managerial cadre. Subsequently, the said company was taken over by the petitioner herein. In the month of June 2019, basic salary of the second respondent was Rs.23,300/- per month, subsequently, the salary of the second respondent was restructured without detriment to the total salary with allowances, as a result of which, his basic wages became Rs.18,444/- with effect from July 2019. Thereafter, he submitted resignation letter dated 27.12.2019 and resigned from the service of the petitioner and list last working day was 31.12.2019. After his resignation, the second respondent filed a gratuity application before the original authority for claiming differential basic pay. However, the original authority allowed the application and the same was confirmed by the first respondent/appellate authority. Aggrieved by the same, the present writ petition is filed.

5. The learned counsel for the petitioner submits that, the second respondent received a sum of Rs.23,300/- as basic pay in the month of June, 2019, however, after the petitioner herein took over the S.P.Super Fine



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Cotton Mills Private Limited, there was a wage deviation as against the second respondent basic salary with effect from July, 2019. Though the second respondent received the basic pay without any protest, however, after resignation, the second respondent filed a gratuity application claiming gratuity amount, which is impermissible. He further submits that, the second respondent has not given any objection for revision of basic pay, however, later, filed an application for differential basis pay is not sustainable. Accordingly, he prays for allowing the writ petition.

6. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the first respondent and perused the materials available on record.

7. This Court perused the order of the original authority as well as the appellate authority and it reveals that, admittedly, the second respondent received basic pay of Rs.23,300/- till the month of June, 2019. Thereafter, the basic pay was altered by the petitioner and reduced the same from Rs.23,300/- to Rs.18,444/-. However, that revision is without issuing any notice to the second respondent and the petitioner unilaterally revised the



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revision of wages, which is impermissible and the said fact was properly adjudicated by the original authority as well as the appellate authority.

Therefore, the concurrent factual findings rendered by the statutory authority cannot be interfered by this Court under Article 226 of the Constitution of India and the writ petition is liable to be dismissed.

8. Accordingly, this Writ Petition is dismissed. However, the petitioner is directed to pay the differential basic pay amount to the second respondent as ordered by the original authority, which was confirmed the appellate authority, within a period of four (4) weeks from the date of receipt of a copy of this order, if not already deposited. Further, the second respondent is permitted to withdraw the amount already deposited by the petitioner before the original authority and balance amount, if any, that may be deposited, shall be disbursed in favour of the petitioner. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order / Nonspeaking order
Netrual Citation Case : Yes / No
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M.DHANDAPANI, J.

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To

The Appellate Authority under the
Payment of Gratuity Act, 1972 cum
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