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W.P.No.23865 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.23865 of 2014

The Management,
Ramlax Roadlines,
Pudhchampalli (P.O.)
Mettur,
Salem – 636 008.

...Petitioner

-Vs-

1. The Joint Commissioner of Labour,
(Appellate Authority under Payment
of Gratuity Act, 1972)
Coimbatore – 18.

2. The Assistant Commissioner of Labour,
(Controlling Authoirty)
Salem.

3. V.Nanjappan

... 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 in P.G.Appeal No.57/2012 on the file of the Joint Commissioner of Labour, (Appellate Authority under Payment of Gratuity Act, 1972) Coimbatore- 18, the first respondent herein to quash the order dated 16.06.2014 passed therein confirming the order of the Assistant Commissioner of Labour,



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(Controlling Authority), Salem, the second respondent herein in P.G.No.49/2008 dated 22.11.2011.

For Petitioner : Mr.M.R.Raghavan
For Respondents
For R1 & R2 : Mr.L.S.M.Hasan Fizal
Additional Government Pleader
For R3 : No appearance

ORDER

The writ petition has been filed challenging the order passed by the first respondent dated 16.06.2014, thereby confirming the order passed by the second respondent dated 22.11.2011, directing the petitioner to pay gratuity amount to the third respondent herein.

2. The third respondent filed application under Section 4 of Payment of Gratuity Act, claiming gratuity amount on his retirement on 05.09.2005, after completion of 30 years of continuous service from 13.12.1975. The third respondent submitted application under Order 7 of the Payment of Gratuity Act, 1972. But the petitioner refused to entertain the claim of the third respondent. Therefore, the third respondent caused notice and filed application before the second respondent. According to the third respondent, he was working as Driver under the petitioner and he was drawn monthly salary of Rs.6,000/-.



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3. The petitioner filed counter stating that the third respondent was not employed by the petitioner at any point of time and there is no relationship of employer and employee between the petitioner and the third respondent herein. The petitioner does not own any lorry and it is a partnership firm and it is only booking agent. It arranged lorries on hire for various parties and gets commission for the lorries. Therefore, the claim made by the third respondent is false and the petitioner is not liable to pay any gratuity. However, the second respondent without considering the same allowed the application filed by the third respondent and ordered to pay gratuity. Aggrieved by the same, the petitioner also filed an appeal and the same was also dismissed by the first respondent confirming the order passed by the second respondent. Hence, the petitioner filed this present writ petition with the above said prayer.

4. The learned counsel appearing for the petitioner submitted that the petitioner never owned any lorry to engage the third respondent as its driver. The petitioner is a partnership firm. They are functioning as booking agent and arranged lorries for various parties and get



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commission for the lorries. Therefore, the petitioner refused to entertain the application submitted by the third respondent under Order 7 of the Payment of Gratuity Act, 1972.

4.1. He further submitted that the third respondent also failed to prove that there is a relationship of employer and employee between the petitioner and the third respondent. The third respondent categorically admitted in his cross-examination that the petitioner never paid any salary and the third respondent was never engaged by the petitioner. He also admitted that the petitioner never owned any lorry. The permit was not in the name of the petitioner. Therefore, the petitioner is acted as an agent and he had booked lorry for commission. Hence, he prayed to set aside the impugned order.

5. Heard the learned counsel appearing on either side and perused the material placed before this Court. Though notice served on the third respondent and his name also printed in the cause list, no one is appeared either in person nor through pleader.



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6. On perusal of the cross examination of the third respondent, he categorically admitted that he was never engaged by the petitioner and the third respondent was not paid any salary by the petitioner. He also admitted that the petitioner never owned any lorry. Further the petitioner also produced partnership deed and registration certificate and the same were marked as Ex.R1 & Ex.R.2. The petitioner also produced wage register which was marked as Ex.R3, in which no where, the third respondent's name is found in the register. Likewise, the petitioner also produced Attendance Register and Permits which were marked as Ex.R.4 and Ex.R.5. It doesn't contain the name of the petitioner and it was issued in respect of the owner of the lorry. In order to deny the claim of the third respondent, the petitioner also produced income tax returns before the second respondent.

7. Further, the petitioner also had examined R.W.1 and he categorically deposed that the claim of the third respondent is false since the third respondent never worked under the petitioner. The petitioner is a partnership firm and they arranged lorry from the respective owner for the parties. For that booking, the petitioner was paid only commission.



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Therefore, the third respondent was engaged by the respective owners and the owners paid commission as such, the petitioner are not at all liable to pay gratuity amount.

8. In view of the above discussions, the impugned order dated 16.06.2014 passed by first respondent in P.G.Appeal No.57/2012, thereby confirming the order dated 22.11.2011 passed by the second respondent in P.G.No.49/2008 is hereby quashed. What ever the amount deposited by the petitioner before the second respondent is permitted to with draw, by filing proper application. The second respondent is directed to return the amount, without ordering notice to the third respondent, with accrued interest if any.

9. With the above directions, the Writ Petition stands allowed.
There shall be no order as to cost.

21.09.2023
(2/4)

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
rts



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