BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On	Judgment Pronounced On
02.11.2022	***24.01.2023***

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)Nos. 20497 to 20506 of 2017
and
W.M.P(MD)Nos. 16771, 16773, 16775, 16777, 16779, 16781, 16783, 16785, 16787, 16789 of 2017 and 13475 of 2018

W.P.(MD)No. 20497 of 2017
The Management, Represented,
The Managing Director,
N.P.K.R.R. Cooperative Sugar Mills Limited. ... Petitioner

vs.

1. The Appellate Authority,
   Joint Commissioner of Labour (Gratuity),
   Khajamiyan Street,
   Mannapuram, Tiruchirapalli – 20

2. The Controlling Authority,
   Assistant Commissioner of Labour (Gratuity),
   No.26, Abdul Salam Street,
   Khaja Nagar, 3rd Cross,
   Mannapuram, Tiruchirapalli – 20.

3. V.Selvaraj ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the entire records relating to order of 1st in Respondent passed in PG.A.No.12 of 2017 dated 27.04.2017 and quash the same and pass such further or other orders(s) as this Court may deem fit and proper in the facts and circumstances of the cases and render justice.

In all Writ Petitions

For Petitioners	:	Mr. R. Rajaram
For R-1 & R-2	:	Mrs.D.Farjana Ghousia Special Government Pleader
For R-3	:	M/s.D. Geetha

COMMON ORDER

These writ petitions have been filed to quash the order, dated 27.04.2017 passed by the 1st respondent.

2. The issues involved in the writ petitions are one and the same and hence, both the Writ Petitions are taken up and this common order is passed.

3. The contention of the petitioners is that the petitioner Mill was established in the year 1987, under the Co-operative Societies Act, 1983 and involved in the manufacture of sugar. The mill is solely dependent on the sugar cane cultivation and the crushing period of sugar would last 6 months and for the remaining period the Mill would undergo maintenance work. At present, due to financial constraints, the Petitioner Mills is not functioning. The sugar industry is a 'Seasonal' industry. The individuals who are sponsored through Employment Exchange are appointed as NMR (Non-Muster Roll) employees and thereafter, they are confirmed as 'Regular' and 'Seasonal' employees. The regular employees would work throughout the year and 'Seasonal' employees would work during the crushing season and are laid off during the non-crushing season on payment of retaining allowance. The Mill has 93 'Regular' employees and 95 'Seasonal' employees. The Mill had framed a Group Gratuity Scheme linked with Life Insurance Corporation of India. The premiums are paid for the respective employees depending upon their period of service. The calculations for entitlement of gratuity are determined and are paid to the employees. The employees of the unskilled category, on promotion to semi-skilled grade are allotted either in Engineering Section or Manufacturing Section. Whenever the vacancy arises, the further promotions from semi-skilled are compartmentalized i.e., if an unskilled employee is promoted to semi-skilled category and allotted to

Engineering Section, his further promotion would be in the Engineering Section only. Based on the existing staffing pattern in the Cooperative and Public Sector mill, nearly 70% of the total number of posts in Engineering Section are permanent. On the other hand, only 19% of the total number of posts are permanent in the manufacturing section.

4. The Union made demands to rectify the discrepancies as stated above. The Commissioner of Sugars by a Circular RC.22452/E3/90 dated 25.07.1990 ordered that the employees of the Cooperative and Private Sugar Mills, who retire as 'Seasonal' employee will be paid gratuity at the rate of 15 days wages, per year of service provided they have put in a minimum period of twenty years of service in the mills. Further, it is stated that the service as NMR/Casual will not be counted for calculating the twenty years of service. Thereafter the Commissioner of Sugars, by Circular No.35640/C3/89 dated 31.07.1991 gave clarifications in respect of employees who have not completed 20 years of service on the date of termination of service, wherein it is categorically stated that the 'Seasonal' employee during their entire service is eligible for gratuity at the rate of 7 days wages per year of service rendered as

'Seasonal' employee. Subsequently, the Commissioner of Sugars, by circular dated 01.08.1993 a partial modification was granted wherein it is stated the 'Seasonal' employee may be paid 15 days as gratuity provided that they are employed for more than 240 days in each year, as per proviso to Section 4 of the Payment of Gratuity Act, 1972. Hence, the revised circular, dated 20.08.1997 was issued, as a result, implication of the above modification is that the employee who works throughout their service 'Seasonal' employees are entitled to gratuity calculated at the rate of 7 days for each year of completed service as provided under Section 4 Payment of Gratuity Act, 1972, except, for the years where they worked for not less than 240 days in a year for which they have to be paid gratuity calculated at the rate of 15 days wages for that year as per the Section 4 of the Payment of Gratuity Act, 1972, irrespective of his date of death or retirement.

5. An application came to be filed on 28.12.2015 and was erroneously entertained by the 2nd respondent (Controlling Authority Gratuity) as Gratuity Application No.348 of 2016, claiming gratuity at the rate of 15 days per year of service. The petitioner had filed counter stating that the 3rd respondent is only entitled as per the circular dated 20.08.1997, wherein it was in definite terms stated that the 3rd respondent was paid gratuity in terms of the Circular in the Group Gratuity Scheme linked with LIC of India. Further that any employees who works as 'Seasonal' employees throughout their service and retire as 'Seasonal' employees are entitled to gratuity calculated at the rate of 7 days, except for the years worked for not less than 240 days. The burden is on the 3rd respondent to prove the same, however, the 2nd respondent on erroneous application of facts and without proper application of mind further relying on the self-serving statement given in the application had come to a conclusion that the 3rd respondent had been in continuous service for a period of 26 years and he is entitled for 15 days per year and accordingly passed an order, dated 08.07.2016, directing to pay Rs. 2,15,040/-with interest of 10% from the actual date of payment of gratuity. Aggrieved over the same, a statutory appeal was filed. After fulfilling the statutory application of depositing Rs.1,49,423/-. In the said appeal, the petitioner mill had substantiated that the 3rd respondent in entitled as per Circular. The 1st respondent contrary to the pleadings, materials placed on record and without appreciation of evidence and facts has passed the impugned order in the appeal. Aggrieved over the same, the present Writ Petition is filed.

6. The 3rd respondent had filed written argument wherein it is stated that the 3rd respondent joined service on 09.03.1988 as NMR and become a 'Seasonal' employee and he retired from service on 28.02.2013 and his last drawn salary was Rs.14,336/-. At the time of retirement, he was paid Rs.65,617/-as Gratuity. The 3rd respondent has completed 26 years of service but, he was paid less amount as gratuity. Hence, he demanded the difference of money, by approaching the 3rd respondent authority in P.G.No.348 of 2016 seeking difference of gratuity to the tune of Rs.1,49,423/- and hence prayed to dismiss the writ petition.

7. Heard Mr. R. Rajaram, the Learned Counsel appearing for the petitioner mill, Mrs.D.Farjana Ghousia, the Learned Special Government Pleader for the 1st and 2nd respondents and Ms.D. Geetha, the Learned Counsel appearing for the 3rd respondent and perused the material documents available on record.

8. The contention of the petitioner Mill is that based on the Circular, dated 20.08.1997 issued by the Commissioner of Sugar, the 3rd respondent is entitled to the gratuity and the petitioner cannot claim beyond the Circular.

Moreover, the circular was issued after the negotiations with the Union by considering the demands of the seasonal workers. The further contention of the petitioner is that the 3rd respondent was initially appointed as NMR and was serving as NMR from 1988 to 11.12.1995. Thereafter the 3rd respondent was serving as "Seasonal" employee from 12.12.1995 until the date of retirement on 28.02.2013. Since the 3rd respondent has not completed 20 years as "seasonal" employee, the 3rd respondent is not entitled to claim the 20 years gratuity.

9. However the 3rd respondent submitted that considering the facts and evidence produced before the authority, the impugned order was passed and the same was confirmed by the Appellate Authority. Further, the Circular, dated 20.08.1997, it is clearly mentioned that, if a person completing 20 years of service, he is entitled for gratuity at the rate of 15 days wages. The petitioner did not dispute the 3rd respondent continuous service of 20 years, since the petitioner mill failed to prove by producing necessary documents, particularly, when the petitioner's custodian documents. Non-failure of producing documents is affecting their case. But at this stage the petitioner mill cannot be permitted to produce the documents. Therefore, the 3rd respondent prays to dismiss the writ petition.

10. The petitioner mill submitted that the 3rd respondent is making claim without referring to any of the documents and the 3rd respondent is bound to make his claim based on any statutory rule or circulars. However, the 3rd respondent submitted that the petitioner is bound to produce the documents if the petitioner is relying on the Circular. It is seen from the impugned order that the petitioner mill has not produced any documents before the original authority and Appellate authority. The 3rd respondent has marked two documents and on the side of the petitioner mill no documents were marked. In the present case, both the petitioner as well as the 3rd respondent have not produced the relevant Circular covering the issue before the authorities. The 3rd respondent has produced the circular, dated 25.07.1990, but failed to produce the other circulars which has modified the earlier Circulars.

11. Be that as it may, it is an admitted fact that the 3rd respondent has served as NMR from 1988 to 11.12.1995. From 12.12.1995 until the date of retirement on 28.02.2013, the petitioner has served as 'Seasonal' employee. The 3rd respondent has not served 20 years in the category of seasonal employee. On perusal of the impugned order, it is seen that the authority has taken the entire period, including NMR service and had granted gratuity. The petitioner and the 3rd respondent accepted the period of NMR cannot be calculated for gratuity. In such circumstances, the period of service mentioned as 26 years is erroneous. Therefore, this Court is inclined to interfere with the order passed by the authorities, where it is taking 26 years of service. The 3rd respondent is entitled to calculate the seasonal service from 1995 to 2013 and the NMR service period from 1988 to 11.12.1995 cannot be taken into account for calculating the gratuity.

12. Therefore, this Court is passing the following order:

i. The 3rd respondent has worked as NMR from 1988 to 11.12.1995 and for this petitioner he is not entitled to any gratuity.

ii. The 3rd respondent has worked as seasonal employee 12.12.1995 until the date of retirement on 28.02.2013 and he is entitled to gratuity for this period.

iii. The 3rd respondent is entitled to gratuity based on the Circulars issued covering this issue.

iv. The petitioner mill is directed to calculate as per the Circulars and if any amount is payable, the same shall be paid with applicable rate of interest.

13. With the directions, the Writ Petitions are allowed. No Costs. Connected miscellaneous petitions are closed.

24.01.2023

Index : Yes / No
Internet : Yes
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S.SRIMATHY, J

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W.P.(MD)Nos.20497 to 20506 of 2017

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