



W.P.No.875 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 09.12.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.875 of 2005
and W.P.M.P.No.967 of 2005

THE DEPUTY GENERAL MANAGER,
HUMAN RESOURCES DEVELOPMENT DIVISION,
HINDUSTAN PHOTO FILMS MANUFACTURING
COMPANY LTD.,
NOW REPRESENTED BY ITS DIRECTOR
(FINANCE AND ACTING CHAIRMAN CUM
MANAGING DIRECTOR),
INDU NAGAR,
OOTACAMUND - 643 005. .. Petitioner

Versus

1. THE REGIONAL LABOUR COMMISSIONER
(CENTRAL), CHENNAI-600 001,
THE APPELLATE AUTHORITY UNDER
THE PAYMENT OF GRATUITY ACT, 1972.
2. THE ASSISTANT LABOUR COMMISSIONER
(CENTRAL)
CONTROLLING AUTHORITY UNDER THE
PAYMENT OF GRATUITY ACT, 1972.
- 3 A.RAJA
- 4 K.VISWANATHAN
- 5 A.LAZAR
- 6 R.DURAISWAMY
- 7 K.GOPAL
- 8 M.KRISHNAMOORTHY



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- 9 P.SELVARAJ
10 P.DURAIRAJAN
11 S.A.ABDUL RAVOOF
12 M.KRISHNAN
13 S.KUPPUSWAMY
14 A.SHIVASHANMUGAM
15 M.AMANHALLAH KHAN
16 P.SREEDHARAN
17 M.RAJENDRAN
18 N.PARATHASARADHI
19 R.DORAISWAMY
20 S.SUNDARAMOOTHY
21 M.VAIJAYANTHI
22 ESLY JACOB
23 K.SAGUNDALAMANI
24 K.CHANDRAN
25 N.MAHESWARAN
26 R.MUTHULAKSHMI
27 R.PERIASWAMY
28 P.THANGAVELU
29 K.THIRUGNANASAMBANDAM
30 G.CHANDRASEKAR
31 P.T.NATARAJAN
32 N.ISHWARAPPA
33 G.SUNDARI
34 M.GANESAN
35 M.SIVARAMAN
36 S.DEVIKARANI
37 H.SUNANDA RAO
38 T.BHUVANESWARI
39 C.SANTHOSAM
40 P.ELUMALAI
41 P.UDAYAKUMAR
42 T.N.USHA
43 R.SEETHALAKSHMI
44 P.PALANISWAMY
45 R.SARADHA
46 N.SENGOTESWARAN



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- 47 J.N.CHRISTY
48 M.BALAN
49 J.RAJU
50 A.DILSHED BEGAM
51 V.SURYANARAYANAN
52 K.NATAYANA
53 S.S.THAMBI
54 A.SRINIVASAN
55 PAKKIT NAINA MOHAMED
56 R.ACHUDHA NARAYANAN
57 L.VIJENDER RAO
58 A.MICHEAL RAJ
59 R.SRINIVASAN
60 V.SHANMUGASUNDARAM
61 A.SARASWATHI
62 S.R.CHANDRAN
63 M.SRINIVASA RAO
64 V.GANESAN
65 T.R.VENKATARAMAN
66 S.LAZAR
67 N.V.KAMALAKSHMI
68 K.VETRIVEL
69 N.RAGHU
70 R.VENKATESAN
71 Y.KRISHNAN
72 P.V.PICHUMANI
73 SHOBAPRASAD
74 V.P.KANCHI
75 P.MANOHARAN
76 P.RAJU
77 M.RAMASWAMY
78 N.M.THUKKARAM
79 R.VISWANATHAN
80 J.PETER
81 R.ANNAMALAI
82 P.MANGALARAJ
83 DHANKASHNAMOORTHY
84 A.SATHYABAMA



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- 85 T.BALARAMAN
86 N.BALASUBRAMANI
87 M.KRISHNAN
88 S.KUPPUSWAMY
89 S.KANAKARAJ
90 R.SAMRAJ
91 S.SATHASIVAM
92 A.SATHYANATAYANAN
93 ANNAMMA JOHN
94 K.ANANDARAJ
95 N.SUKANYA
96 N.RAMAKRISHNAN
97 S.ALBERT RAVI
98 MD.MOHIDEEN THAMBI
99 VARALAKSHMI SHARAM
100 A.ELANGO
101 V.BALASUBRAMANIAN
102 A.KUPPUSWAMY .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari Mandamus calling for the records pertaining to the order, dated 25.11.2004 passed by the 1st respondent in Appeal Nos.10 of 2004, 213 to 309 of 2004 and quash the same and consequently direct the 1st respondent to refund the sum of Rs.9,65,024/- deposited by the petitioner.

For Petitioner : Mr.A.G.Sathiyarayanana

For Respondents : Mr.M.Prabakar, for RR-1 and 2

: Mr.K.Elango,
for RR-3, 5, 7 to 9, 17 to 23, 27 to
31, 35, 36, 38, 38, 41, 47, 48, 50 to 53, 55,



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56, 58 to 60, 64 to 74,
to

100, 102

77 to 84, 86, 88 to 90, 94, 98

ORDER

Heard *Mr.A.G.Sathiyanaarayana*, learned Counsel representing the liquidator on behalf of the petitioner Company, *Mr.M.Prabakar*, learned Counsel for the respondent Nos.1 and 2 and *Mr.K.Elango*, learned Counsel for the workmen.

2. This Writ Petition is filed challenging the order passed by the appellate authority under the Payment of Gratuity Act, 1972, by which, a batch of Gratuity Appeals, filed in respect of the claims of the workmen, who are arrayed as the respondent Nos.3 to 102, were dismissed by the appellate authority, confirming the award passed by the authority under the Payment of Gratuity Act, 1972. All these workmen, totalling to 100 in number, originally were working in the petitioner Company. They came to be retired through Voluntary Retirement Scheme. However, when the gratuity was calculated and paid to them, the interim relief amount, which was granted to them, was not included and as such, they approached the authority. The original authority and the appellate authority have held that the said interim relief amount should also be included.



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3. As a matter of fact, it is brought to the notice of this Court that the petitioner management namely, Hindustan Photo Films, has since become sick and the process of liquidation is now on. The amount of Rs.9,65,024/-, which is the amount covering all the 100 workmen is also deposited to the credit of the appellate authority at the time of filing of the appeals itself. In that background, when the matter came up for hearing, the learned Counsel appearing on behalf of the petitioner would submit that firstly, the interim relief should be treated only in the form of an incentive/allowance which would not form part of the definition of wages as contained in the Payment of Gratuity Act, 1972.

4. As per the definition of wages, which is contained in Section 2(s) of the Payment of Gratuity Act, 1972, it is very clear that it is only the emoluments, earned by the employee in terms and conditions of his employment, which are paid to him in cash and the Dearness Allowance, alone can be taken and it will not include the other benefits such as bonus, commission, house rent allowance, overtime wages and any other allowance. This interim relief should also come within the term 'any other



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allowance' only. As a matter of fact, when the interim relief was ordered to be paid to the workmen, the same was specifically paid by passing an office memorandum No.2/44/97-DPE(WC), dated 19.08.1998. Clause (g) of the said memorandum categorically states as follows:-

"g) The amount of interim relief will be *sui-generis* viz. it will neither be termed as 'pay' nor 'allowance' nor 'wages'. Accordingly, this amount would not count for any service benefit i.e. computation of house rent allowance, compensatory allowance, over-time allowance, cash compensation, encashment of leave, pay fixation, pension of gratuity, etc."

5. When the order of grant specifically excludes that the interim relief will not be counted for gratuity also, the authority ought not to have included the amount for the purpose of calculation of gratuity. Therefore, the learned Counsel would submit that the workmen are not entitled to claim the said amount also for the purpose of calculation of gratuity as the same will not come within the definition of basic pay or wages.

6. It can be seen that it is specifically made that it would be a *sui generis* and cannot be considered for the payment of gratuity. In view thereof, he would submit that the order of the original authority as well as



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the appellate authority are erroneous in law and prays that the Writ Petition be allowed.

7. Per *contra*, the learned Counsel for the workmen would submit that interim relief was granted, as there was a ban in wage revision and therefore, it is part of the wages only and not an allowance. When the matter was granted as a part of pay, the same has to be included as wages for calculating gratuity and therefore, the authorities are correct in including the same.

8. I have considered the rival submissions made on either side and perused the material records of the case.

9. Even as per the pleadings and the submissions made, the facts that the petitioner management is a public sector undertaking fully owned by the Government of India and that there was a ban on wage revision, are admitted. It is further clear that the workmen had prayed for implementing the wage revisions and have filed W.P.No.15683 of 1996 and W.P.No.15060 of 1996 before this Court which were since transferred to the



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file of the Hon'ble Supreme Court and pending adjudication, by way of interim relief, an additional sum was directed to be paid to the employees by the Hon'ble Supreme Court of India. The said order, however, is not placed on record, but, the pleading on both the sides is that it is in the nature of an interim relief.

10. It can be seen that merely because the wage revision was not granted or implemented, when an additional sum is ordered to be paid as an interim relief, the same cannot be interpreted by the management as an allowance. As a matter of fact, the definition of wages, as contained under Section 2(s) of Payment of Gratuity Act, 1972. It would include all the emoluments within the terms and conditions of the employment which are paid to him in cash and include the Dearness Allowance also and only the bonus, commission, house rent allowance, overtime wages and other allowance are specifically excluded. A reading of the definition, the exclusionary clause is restrictive while the inclusionary clause is expansive as it says that all emoluments will be included. Therefore, whatever is not specifically excluded should be deemed to be included. In that view of the matter, this pay, in the nature of an interim relief, awarded by the Hon'ble



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Supreme Court of India, would naturally be included within the definition of wages.

11. Merely because the petitioner management issues a self-serving memorandum by stating that this will not be included as wages for calculation of gratuity, that will not have the effect of overriding Section 2(s) of the Payment of Gratuity Act, 1972 and the definition of wages under the Act will prevail and accordingly, the original authority as well as the appellate authority are right in awarding the sum. In respect of the 100 workmen, an additional sum, around Rs.9,000/-, each has been awarded and the entire amount, totally amounting to Rs.9,65,024/- is already deposited to the credit of the first respondent. In view thereof, the said sum along with accrued interest, shall be paid out to the workmen.

12. This Writ Petition is disposed of on the following terms:-

(i) The prayer made in the Writ Petition to quash the order, dated 25.11.2004 passed by the first respondent in Appeal Nos.10 of 2004, 213 to 309 of 2004 stands rejected;



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(ii) The sum of Rs.9,65,024/- along with accrued interest shall be accordingly disbursed to the 100 workmen;

(iii) If any workman is no more, the amount shall be disbursed to the legal heirs upon filing appropriate petition and legal heirship certificate;

(iv) These workmen will not be entitled to make any further claim with reference to their gratuity;

(v) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

09.12.2024

Neutral Citation : yes
grs

To

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(CENTRAL), CHENNAI-600 001,
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D.BHARATHA CHAKRAVARTHY, J.

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