IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :07.03.2024
DELIVERED ON : **03.06.2024**

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

**W.P.Nos.14649, 16404,16407, 16409, 16414, 16420,
17014, 17019, 17023, 17026, 17028 of 2022**

W.P.No.14649 of 2022

C.Selvaraj ...Petitioner

Vs.

1.The Managing Director,
Tirupattur Co-op., Sugar Mills Ltd.,
Kethandapatti,
Thirupattur District-635 815.

2.The Commissioner,
Sugar Corporation,
No.690, Anna Salai,
Nandanam,
Chennai-600 035. ...Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to issue the balance 8 days gratuity amount with interest to the petitioner.

For Petitioner : Mr.S.Ezhilraj
For R1 : Mr.R.Neethiperumal
For R2 : Mr.P.Sanjaygandhi, Govt., Advocate

COMMON ORDER

The management of Tirupattur Co-operative Sugar Mill has filed the above writ petitions, except W.P.No.14649 of 2022, which is filed by the workman.

2.The Management will be referred to as Petitioner and the 3rd Respondents as the Workmen.

3.The petitioner is a Sugar Mill and it is stated that the third respondents were seasonal workman engaged by it. It is the case of the petitioner that the workmen were all employed as NMR/ casual employees and were paid daily wages for the services rendered by them during the crushing season and no time scale of pay was fixed for them. On the basis of the services rendered by the

Workmen, gratuity was calculated for the period of service as NMR and Seasonal Employer on the basis of the Circulars issued by the Commissioner of Sugar and Sec. 2A (3) and Sec. 4 of the Payment of Gratuity Act. Aggrieved by the gratuity amount paid by the petitioner, the Workmen filed applications before the controlling authority under the payment of gratuity Act in PG 120/16 etc., claiming difference of gratuity. The controlling authority vide order dated 28.04.2017 allowed the applications of the workmen. Aggrieved by the award of the PG authority, the petitioner filed appeals before the appellate authority in PGA 172/17 etc. The appellate authority, in the appeals confirmed the order of the PG authority vide award dated 03.09.2021. Aggrieved by the award of the appellate authority, the writ petitions are filed by the petitioner.

4.The learned counsel for the petitioner submitted that both the authorities ie., respondents 1 and 2 without considering that the sugar mill was a seasonal establishment and without properly considering the Government circulars, issued by the Commissioner of Sugar and the Provisions of Payment of Gratuity

Act as to continuous service erroneously allowed the applications.

5.The learned counsel for the respondents submitted that both the authorities on the facts of the case and the evidence on record found that the workmen were not seasonal employees. The learned counsel further submitted that the Workmen worked for more than 40 years and that they were continuously employed during their service. The learned counsel therefore, submitted that the authorities had rightly calculated gratuity at 15 days wages for every year of service.

6.I have heard both the learned counsels and I have perused the materials on record.

7. The petitioner states that there are 3 categories of employees in its Mills. The three categories are regular, seasonal and nominal muster roll. The petitioner states the NMR's were paid on daily wages basis for the days they

actually worked. The petitioner states that the workmen who were NMR's were absorbed as seasonal employees by issuing appointment orders and thereafter time scale of pay was determined and service book maintained. Depending on the number of years of service rendered by the Workmen as seasonal employees the gratuity was calculated as per the last drawn salary and on the basis of the circulars issued by the Commissioner of Sugar at 7 days wages per year. As the Workmen did not complete 20 year of service as seasonal employees, gratuity was calculated at 7 days wages per year, further as the Workmen worked during the crushing season only for 75% of the days in the season the gratuity was fixed at 7 days wages for each season.

8. The Workmen state that though they were engaged as NMR's, they also worked as maintenance workers and were continuously engaged even beyond the crushing season. The Workmen therefore claimed that they were entitled to gratuity @ 15 days wages for the entire service period.

The following provisions of the Act are relevant: Section 2A(3) of the Payment of Gratuity Act 1972:

> *"(3) where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent of the number of days on which the establishment was in operation during such period."*

Section 4(2) of Payment of Gratuity Act, 1972:

> *"(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:*
>
> *Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:*

Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year][Substituted by Act 25 of 1984, Section 3, for " an employee employed in a seasonal establishment" (w.e.f. 1.7.1984).], the employer shall pay the gratuity at the rate of seven days' wages for each season.

[Explanation .-In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.]"

9.Section 2A (3) speaks on how to construe continuous service. If a Workman had actually worked for not less than seventy five percent of the number of days on which the establishment was in operation during such period, he shall be deemed to be in continuous service. It is the specific case of the petitioner that the Workmen worked for more than 75% days only for 3 years. When the petitioner seeks to deprive the Workmen of the benefits of gratuity, the burden is on the Petitioner to produce the NMR Register and Wage register etc., to show the period of crushing season in a year and the number of days on which the Workmen actually worked. In my view, the production of the aforesaid documents is indispensable because the petitioner has not disputed the number of years of service rendered by the Workmen. When the petitioner has categorised the workers and on the basis of such category, gratuity was paid, then it is incumbent on the petitioner to produce the documents in support of its calculation. It is seen that no evidence was adduced to establish that the third respondents were employed only during crushing season, and they had not worked for more than 75% of the days. The reliance placed by the petitioner on the consolidated statements, in the absence of the registers like muster roll, wage register, etc., in my view, are of no avail. In the absence of any supporting documents, the authorities rightly rejected the contentions of the petitioner. Hence no fault can be found with the orders passed by the authorities.

10. The details of the gratuity amount payable to the workmen are as follows:

S.No	W.P.No.	Respondent	Date of joining	date of superannuation	No. of years of service	Gratuity paid	Gratuity payable	Gratuity awarded
1	17014/22	3rd respondent employed as NMR/ Casual employee	20.11.1973	31.12.14	40 years	21,000/-	3,07,869/-	2,94,566/-
2	17019/22	3rd respondent employed as NMR/ Casual employee	03.06.1975	31/01/15	40 years	49,671/-	3,52,731/-	3,03,060/-
3	17023/22	3rd respondent employ	November 1971	31/05/14	42 years	3,19,766/-	4,33,232/-	1,13,466/-

		ed as NMR/ Casual employee						
4	17026/ 22	3rd respondent employed as NMR/ Casual employee	23.04.1964	31/08/09	40 years	1,27,804/-	2,01,808/-	74,004/-
5	17028/ 22	3rd respondent employed as NMR/ Casual employee	21.08.1968	30/07/08	40 years	1,01,600/-	1,79,653/-	78,053/-
6	16404/ 22	3rd respondent employed as NMR/ Casual	26.06.1968	31/01/09	40 years	1,65,000/-	2,12,446/-	47,446/-

		employee						
7	16407/22	3rd respondent employed as NMR/ Casual employee	10.01.1972	31/01/14	41 years	45,287/-	3,13,200/-	2,75,553/-
8	16409/22	3rd respondent employed as NMR/ Casual employee	22.12.1971	30/06/14	42 years	59,124/-	3,20,839/-	2,61,715/-
9	16414/22	3rd respondent employed as NMR/ Casual employee	02.03.1965	30/09/08	42 years	1,74,870/-	2,60,432/-	91,764/-

10.	16420/22	3rd respondent employed as NMR/ Casual employee	03.01.1968	30.06.2008	40 years	93,000/-	2,40,507/-	1,47,507/-

11. This Hon'ble Court in a catena of cases where similar objections were raised has consistently rejected the same by upholding the award of the authorities. I am bound by the Division Bench Judgment of this Court in WA Nos.950 to 954 of 2016. The Hon'ble Division bench held as follows:

> *"6. .....Furthermore, we have noticed that the respondents/workmen are working in the Mill for more than 10 years and it is nothing but camouflage to give benefits and exploit the service of the workmen under the guise of casual employees. Hence, we do not appreciate the stand of the appellant in these Writ Appeals. Accordingly, the Writ Appeals are dismissed. No costs. Consequently, connected CMPs are dismissed."*

In the present cases the authorities have factually found that the 3rd respondent continuously worked in the Mills even after the crushing season and the said finding has not been dislodged by any reliable evidence on the petitioners side. Hence in the light of the factual finding as well as the aforesaid judgment of the Hon'ble Division Bench, I find that the Contentions of the Petitioner are not sustainable and hence the calculation of Gratuity at 15 days wages for each year of service is valid and hence not interfered with.

12.Similar view was taken in the following judgments of this Court.

1. W.P.Nos.18079 & 15858/2016, dated 11.03.2021.

2. W.P.No. 9599/19, dated 29.10.2021.

3. W.P.Nos.17795 etc. Batch of 2022, dated 06.11.2023.

4. I have taken similar view in W.P.No.32422/2018, dated 07.03.2024

In the light of the facts of this case and the consistent view adopted by this Court, I find no justifiable reasons to interfere with the impugned orders.

13.W.P.No.14649 of 2022

This writ petition is filed by the workman for a writ of mandamus to direct the respondents to issue the balance 8 days gratuity amount with interest to the petitioner. The petitioner joined service in the first respondent and worked as NMR since 31.12.1987 under Employment Code No.5156. The petitioner was retired from service on 31.08.2019 from the respondent Mill. It is seen that the first respondent paid the gratuity to the petitioner of an amount of Rs.1,00,259/-, calculating at the rate of 7 days wages per year as the petitioner worked for more than 240 days only 5 years and the gratuity was calculated at 15 days wages at 5 years only. From the counter of the respondent it is clear that the very same objections that were raised in the aforesaid batch of writ petitions were raised in the counter filed in this writ petition. The said objections of the respondent are already rejected in the aforesaid batch of writ petitions and the same will cover this writ petition also. The petitioner is aged about 65 years and completed 37 years of service with the respondent mill. The respondent in their counter have not taken the plea of alternative remedy and therefore, I am not inclined to drive the petitioner to the authorities for the relief. Therefore, the prayer in the writ petition is allowed and the respondent is directed to pay the balance of the gratuity amount to the petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order.

14. In view of the above discussions I find no reason to interfere with the orders of the first respondent, and hence the same are confirmed. The Writ petitions are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

03.06.2024

Index:Yes/No
Speaking Order: Yes/No
Neutral Citation:Yes/No
Ns/dsn

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2.The Commissioner,
Sugar Corporation,
No.690, Anna Salai,
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N.MALA.J,

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