IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 07.03.2024

ORDER PRONOUNCED ON : 05.04.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.32422 of 2018
and W.M.P.Nos.37617 & 37618 of 2018

Management,
Amaravathi Co-operative Sugar Mills Ltd.,
Krishnapuram – 642 111,
Tirupur (Dt.). ... Petitioner

/Vs./

1.Joint Commissioner of Labour/
Appellate Authority,
Coimbatore – 641 018.

2.Assistant Commissioner of Labour/
Controlling Authority,
Coimbatore – 641 018.

3.K.Selval … Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the First respondent relating to his order in PGA.No.01/2018 dated 30.04.2018 confirming the second respondent's order in GA.75/14 dated 27.04.2017 and quash both the orders.

For Petitioner : Mr.P.Anbarasan

For R1 & R2 : Mr.P.Sanjay Gandhi
Government Advocate
For R3 : Mr.S.Saravanan

* * * * *

ORDER

This writ petition is filed to call for the records of the First respondent relating to his order in PGA.No.01/2018 dated 30.04.2018 confirming the second respondent's order in GA.75/14 dated 27.04.2017 and quash both the orders.

2.The petitioner is a Co-operative Sugar Mill registered under the Co-operative Societies Act as a Co-operative Society. The objective of the society is to produce sugar cane, to crush the cane in its mill and sell the sugar for public distribution and other markets. The petitioner has challenged the order passed by the Joint Commissioner of Labour in PGA.No.01/2018 dated 30.04.2018 confirming the order dated 27.04.2017 of the second respondent in G.A.75/14. Vide impugned order the appellate authority dismissed the appeal filed by the petitioner mill and held that the third respondent's Late husband viz., Kittan was entitled to Rs.1,48,695/- as the difference in gratuity along with 10% interest from 24.12.2013 till the date of payment. Challenging the said order the petitioner mill has filed the above writ petitioner.

3.The third respondent filed an application for Gratuity which was due and payable to her Late husband Kittan and the said application was taken on file by the second respondent. In the said application, the third respondent contended that her husband was employed as a General Worker in the petitioner mill from 21.06.1982. She further stated that her husband died on 10.12.2012 and he had completed 31 years of continuous service before his death. She therefore claimed Gratuity under Section 4 of the Payment of Gratuity Act, 1972, on the basis of her husband's last drawn salary of Rs.13,494/- per month and 31 years service. She further stated that she applied to the petitioner mill for gratuity, but as the petitioner mill failed to pay the gratuity, she filed the application. According to the third respondent, her husband put in 31 years of service and he was entitled to claim gratuity at the rate of 15 days for every completed year of service. On notice by the authority, the petitioner filed a counter stating that as the Sugar mill was a seasonal industry, the third respondent's claim for gratuity at the rate of 15 days wage for every completed year of service was untenable. The petitioner disputed that the third respondent's husband was in continuous service.

4.According to the petitioner, the third respondent's husband was engaged as a Non-Muster Roll (NMR) from 21.06.1982 to 31.08.2012. Thereafter, the third respondent's husband did not come to the petitioner mill, due to ill health and he subsequently died on 10.12.2012. The petitioner stated that the 3rd respondent's husband attended duty for more than 75% of the number of days on which the Co-operative Sugar Mill was in operation. As the petitioner Mill was a seasonal industry, the third respondent's husband worked for only 15 years in the entire period of 30 years. The petitioner further stated that the 3rd respondent's husband's daily wage was only Rs.431/- per day and not Rs.13,494/- as claimed by the third respondent. It was the further case of the petitioner that the third respondent and her daughter as the legal heirs of the deceased Kittan received the gratuity of Rs.1,48,695/- along with the interest at the rate of 10% from 24.12.2013 without any protest or objection. According to the petitioner nothing more was payable to the third respondent towards Gratuity. The original authority allowed the claim petition and aggrieved by the order passed by the original authority in G.A.No.75/14, the petitioner filed an appeal in PGA.No.1 of 2018. The appellate authority dismissed the appeal confirming the order of the original authority. Aggrieved by the order passed in PGA.No.1 of 2018, the petitioner has filed the above writ petition.

5.The learned counsel for the petitioner submitted that the petitioner mill was a seasonal industry. The learned counsel further submitted that the Second Proviso to Sub Section (2) of Section 4 of the Payment of Gratuity Act stipulate that in case of seasonal employee who was not employed throughout the year, the employer shall pay gratuity at the rate of 7 days' wages for each season. The learned counsel further submitted that where an employee, employed in a seasonal establishment, was not in continuous service, he shall be deemed to be in continuous service if he had actually worked for not less than 75% of the number of days on which the establishment was in operation. Therefore, according to the petitioner's counsel the third respondent's husband was deemed to be in continuous service only for 15 years and his entire 30 years of service could not be reckoned for the purpose of calculating the gratuity, as his employment was seasonal and not continuous.

6.The learned Government Advocate and the learned counsel for the respondents on the other hand submitted that it was admitted by the writ petitioner that the third respondent's husband served in the petitioner Mill for 30 years from

21.06.1982 to 31.08.2012. The learned counsel submitted that the burden of proof lay on the petitioner to prove that the third respondent's husband was entitled to gratuity only under the Second Proviso to Sub Section (2) of Section 4 of the Payment of Gratuity Act. The learned counsel also submitted that the concurrent factual findings of the authorities that the petitioner mill failed to prove that it was a seasonal mill could not be interfered by this Court as the said factual finding was based on the evidence adduced before them. The learned counsel further submitted that in the absence of any documentary evidence to prove and substantiate the petitioner's case that the third respondent's husband was employed as a seasonal employee, the contention of the learned counsel for the petitioner that the third respondent's husband worked for only 15 years should not be entertained. The learned counsel therefore submitted that this Court should not interfere with the well considered orders of the authorities and hence prayed to dismiss the writ petition.

7.The issue to be decided in this writ petition is whether the third respondent and her daughter are entitled to gratuity under Section 4 (2) of the Act or the Second Proviso to Sub Section (2) of Section 4 of the Payment of Gratuity Act. The relevant portion of the section is extracted as follows:

> “*(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.] [Inserted by Act 22 of 1987, Section 4 (w.e.f. 1.2.1991).]"

8.The contention of the petitioner is that it is a seasonal industry and therefore, the Second Proviso to Sub Section (2) of Section 4 of the Payment of Gratuity Act is applicable and hence the third respondent was eligible only for 7 days wages for every completed year of service. Hence, the Gratuity paid to the third respondent and her daughter by taking 15 years of service was valid and proper.

9.The learned counsel for the respondent on the other hand submitted that the petitioner failed to prove before the authorities that the petitioner mill was a seasonal industry and therefore, the gratuity payable to the third respondent was only under Section 4(2) of the Act at the rate of 15 days wages for every completed year of service of 30 years.

10.To determine whether the petitioner sugar Mill is a seasonal establishment or not the provisions of Section 25(a) (2) of the Industrial Dispute Act, have to be worked into. Section 25(a) (2) of the Industrial Dispute Act, 1947 states that if a question arises whether an Industrial Establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final. In case of dispute, it is the Government which requires to declare that particular a Industrial Establishment or the work performed therein is "Seasonal". As the 3rd respondent disputes the seasonal character of the petitioner Mill, in the absence of a Government Order declaring the petitioner mill as a seasonal establishment, the contention of the petitioner that it is a seasonal establishment cannot be countenanced. The appellate authority as well as the original authority on the basis of the evidence adduced before them both oral and documentary, have returned a finding that the petitioner failed to prove that it was a seasonal establishment. In the light of such finding of fact this Court does not deem it fit to interfere with the same, moreso, when no additional materials are placed for interfering with the said finding. The contention of the petitioner that the third respondent's husband was employed as an NMR and that he was employed intermittently and not regularly cannot be accepted in the teeth of the admission of the petitioner in it's counter to the claim petition that the deceased Kittan was engaged as an NMR from 21.06.1982 to 31.08.2012 i.e. a period of more than 30 years with continuous service of 31 years. The reliance placed on the deposition in cross-examination of the third respondent in this regard necessarily deserves to be rejected on the basis of the aforesaid admission in the counter. The petitioner's witness has specifically admitted that there were certain Departments in the mill such as manufacturing of local electricity, engineering and pump house which remained in operation through out the year. The said admission read along with the admissions in the counter that the deceased Kittan was in continuous employment for 31 years is sufficient to reject the contention of the petitioner that the said Kittan was employed seasonally (i.e) during crushing season only. The petitioner produced Ex.R5, the consolidated attendance of the deceased Kittan in support of its contention that the deceased Kittan worked for 75 days in 15 years. In my view, the consolidated statement of attendance cannot be accepted as it gives the over all days of engagement year wise. The Muster roll in my view would be the best evidence to show the number of days actually worked by the deceased Kittan. As the petitioner has failed to produce the Muster roll, in my view an adverse inference should be drawn against the petitioner, more so, when the petitioner has categorically admitted the continuous engagement of the deceased Kittan for 31 years.

11.The evidence of MW1 and EX.M3 belie the contention of the petitioner that the deceased was not employed continuously. The fact that the attendance register though admittedly maintained was not produced leads to drawing of adverse inference against the petitioner. Therefore, the finding of the authorities that the petitioner failed to prove its contention that the workman was not continuously engaged, cannot be faulted. Therefore the contention of the petitioner that the third respondent was entitled to Gratuity, only under Second Proviso to Sub Section (2) of Section 4 of the Payment of Gratuity Act and not under Section 4(2) of the Act cannot be accepted.

12.The learned counsel on both sides relied on several Judgments in support of their case. The learned counsel for the petitioner relied on the Judgment of the Hon'ble Supreme Court in the case of ***Morinda Co-op Sugar Mills Ltd Vs. Ram Kishan and Others Etc.,*** reported in ***1996 AIR 332 : 1995 SCC (5) 653*** in support of his contention that the Sugar Industry was seasonal Industry. In my view, the said Judgment will not apply to the facts of the present case as in that case there was no dispute raised as to the seasonal character of the industry. The Judgments relied on by the learned counsel for the respondent are more appropriate. The learned counsel relied on several Judgments, but it would suffice to refer to the Judgment of the Hon'ble Division Bench in ***W.A.Nos.950 to 954 of 2016 dated 05.08.2016***, wherein under similar facts the Hon'ble Division Bench held that "as the respondents/workmen are working in the Mill for more than 10 years and it is nothing but camouflage to deny benefits and exploit the service of the workmen under the guise of causal employees". In my view, the said Division Bench judgment squarely applies to the facts of the case, the plea of casual employment is only a camouflage to deny the third respondent the benefit of gratuity payable to the said Kittan. The other Judgment that I would like to refer in the context of the case and which I feel squarely covers the issue before this Court is the judgment of the ***Hon'ble Justice Mr.M.S.RAMESH*** in ***W.P.No.9599 of 2019 batch decided on 29.10.2021***, the learned Judge in the said case after referring to Section 25(a)(2) of the Industrial Dispute Act, held that the burden was on the Management to substantiate that the workman was employed seasonally. The learned Judge held that the Management ought to substantiate the plea of seasonal engagement of the workman by producing the relevant records so as to deny the benefits of Gratuity to the workman.

13.Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions stand closed.

05.04.2024

Index : Yes / No
Internet : Yes / No
Speaking Order/Non-speaking order

N.MALA, J.

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To

1.Joint Commissioner of Labour/
Appellate Authority,
Coimbatore – 641 018.

2.Assistant Commissioner of Labour/
Controlling Authority,
Coimbatore – 641 018.

3.Management,
Amaravathi Co-operative Sugar Mills Ltd.,
Krishnapuram – 642 111,
Tirupur (Dt.).

PRE-DELIVERY ORDER IN
W.P.No.32422 of 2018

05.04.2024