



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order :20th February, 2024.**

+ **W.P.(C) 6271/2019 and CM APPL. No.26817/2019**

TV TODAY NETWORK LTD.

..... Petitioner

Through: Mr HrishikeshBaruah, Mr Nirmal
Mishra, Mr Anurag Mishra, Mr
Kumar Kshitij, Ms Naisargika Singh,
Advocates

versus

ANKITA SODHI AND ANR.

..... Respondents

Through: Mr. Manish Mohan CGSC with
Mr.Vishal Tewari, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition under Article 226 & 227 of the Constitution of India has been filed by the petitioner seeking the following reliefs:

It is, therefore, most respectfully prayed that in view of the facts and circumstances this Hon'ble Court may be pleased to:

- i) Issue a writ(s)/order(s)/direction(s) setting aside, order dated 17/10/2018 passed by Deputy Chief Labour Commissioner (Central) in Gratuity Appeal No. 36 (40)/2018 PADYC and order dated 07/01/2019 passed by Controlling Authority and Assistant Labour Commissioner;*
- ii) Pass any such order or further orders that this Hon'ble Court may deem fit and proper in the interest of justice."*



2. The respondent no. 1 ('respondent workman' hereinafter) was engaged in the petitioner entity *vide* a service agreement dated 7th August, 2006, on contractual basis for a period of 3 years which was subsequently extended for another 3 years *vide* agreement dated 7th August, 2009.
3. It is stated that the respondent workman voluntarily left the job by tendering her resignation on 26th July, 2011, however, the petitioner has contended that she was removed from the job due to her alleged involvement in forgery, cheating and fabrication of documents.
4. Thereafter, the respondent workman filed an application dated 10th June, 2016, through an authorized representative claiming Rs.60,000/- and another application dated 7th July, 2017 claiming Rs.1,87,038/- accrued towards gratuity.
5. In pursuance of the said applications, the respondent no. 2 i.e. the Assistant Labour Commissioner ('respondent ALC' hereinafter) passed an order dated 21st May, 2018 directing the petitioner to pay a sum of Rs.57,375/- to the respondent workman along with 10% interest per annum accrued from 26th July, 2011 till the time of payment.
6. The petitioner entity appealed against the order to the respondent no. 3 ('respondent Labour Commissioner' hereinafter), whereby, the said appeal was dismissed *vide* impugned order dated 17th October, 2018.
7. Aggrieved by the same, the petitioner has approached this Court by filing the instant petition.
8. The learned counsel appearing on behalf of the petitioner submitted that the learned Court below failed to appreciate that the claim application of



the respondent workman was filed through an allegedly authorized representative wholly on a false and frivolous premise and the respondent workman did not even appear before the learned Court below.

9. It is submitted that the learned Court below failed to appreciate the circumstances of the termination of the services of the respondent workman where she was removed due to forgery and a criminal investigation regarding the same is going against her.

10. It is submitted that the claim application filed by the respondent workman was barred by limitation as no sufficient cause was shown for condonation of delay, therefore, allowing the said application had led to gross abuse of law.

11. It is submitted that the learned Court below failed to appreciate the fact that whereabouts of the respondent workman remained untraced and her non-appearance during the course of the proceedings raises serious question regarding the veracity of the claim made by her authorized representative.

12. It is also submitted that the learned Court below erred in not appreciating the fact that the authorized signatures of the respondent workman varied in two different documents i.e., the letter of authority and application filed before the respondent ALC.

13. It is further submitted that the respondent was paid Rs.1,28,813/- as full and final settlement at the time of her removal, moreover, she chose not to raise any grievance about the gratuity at the time of payment thereby, waiving her right to claim the same.

14. In view of the foregoing submissions, the learned counsel for the



petitioner submitted that the present petition be allowed, and reliefs as prayed, be granted.

15. *Per Contra*, the learned counsel appearing for the respondent workman vehemently opposed the present petition submitting to the effect that the respondent workman had voluntarily resigned from the services and was duly issued the experience certificate dated 25th August, 2011, whereby, her *bona fide* conduct was expressly identified.

16. It is submitted that she had requested for the payment of her gratuity for the first time *vide* email dated 29th March, 2012, however, the same was denied by the petitioner *vide* email dated 26th April, 2012, wherein, the reason for such rejection was that the respondent workman had fallen short of 8 days of services for maturity of the gratuity.

17. It is submitted that the respondent workman had made various efforts to get her gratuity and the failure of such efforts led to filing of the application before the controlling authority.

18. It is submitted that the allegations of financial misappropriation against the respondent workman are belated, unsubstantiated and nothing but an act of vengeance and the same is evident from the fact that the FIR bearing no. 0405/2018 u/s 465, 478 and 471 r/w 34 of the Indian Penal Code, 1860 was filed after a lapse of 7 years of the alleged offence committed by the respondent workman.

19. It is also submitted that the counter affidavit was filed by the respondent workman through her duly appointed representative (attorney) and a power of attorney dated 17th January, 2018 was executed at Seattle,



Washington, USA for the same.

20. It is further submitted that even though the respondent workman is currently living in United States, she had duly appeared physically before the controlling authority and the same can be proved from the visitor pass issued to her, however, inadvertently, her personal appearance was not marked in the order dated 9th October, 2019.

21. In light of the foregoing submissions, learned counsel appearing for the respondent workman submitted that the present petition, being devoid of any merits, may be dismissed.

22. Heard the learned counsel for the parties and perused the records.

23. It is the case of the petitioner that the respondent workman was duly given payment as full and final settlement at the time of her alleged termination from the services and therefore, raising a belated claim for gratuity does not hold in law for two reasons, *namely*, non-completion of the minimum period for being eligible for the gratuity, and secondly an inordinate delay in filing of such a claim. Furthermore, it has been contended that the gratuity has not been paid on account of her alleged involvement in the act of forgery and fabrication of documents.

24. In rival submissions, the learned counsel for the respondent workman has opposed the said claims by referring to numerous authorities with regard to delay and arising of cause of action for filing of the claim application. Apart from the said authorities, the learned counsel for respondent workman also relied upon the visitor pass issued to her, proving her appearance before the Court below, therefore, rebutting the allegations of impersonation as



alleged by the petitioner.

25. As per settled position of law, under the powers conferred to the writ Courts, the Courts cannot become an investigating agency, rather need to only determine whether the Court below had duly appreciated the material facts and evidence to arrive at a conclusion and therefore, determine as to whether the impugned award is legally tenable or not.

26. Therefore, the limited question before this Court is whether there is any illegality with the impugned order. The relevant extracts of the impugned order read as follows:

“This memorandum of appeal was filed on 13/07/2018 under sub section (7) of Section (7) of the P.G. Act, 1972 (hereinafter referred to as 'Act') by TV Today Network Ltd, F-26, 1st Floor, Connaught Circus, New Delhi-110001. (hereinafter referred to as 'Appellant') against Ms. Ankita Sodhi, F-1502, J.M. Aroma, Sector-75, Noida, Distt- Gautam Buddh Nagar, Uttar Pradesh-201307. (Here-in-after referred to as 'Respondent') assailing the order dated 21.05.2018 of the Controlling Authority & Assistant Labour Commissioner (C), Delhi-III (hereinafter referred to as 'CA') in Claim Application No. ALC-III/36(101)/2016 directing the appellant to pay the gratuity amount of Rs 57,375/- along with simple interest @ 10% per annum for delayed payment w.e.f. 26.07.2011 till the date of actual payment.

The hearing in the above appeal was held on several dates and finally on 08.10.2018. The appellant stated that the respondent initially filed a claim application before the Controlling Authority for Rs. 60000/- on 10.06.2016 but subsequently on 07.07.2017 a fresh application claiming Rs. 187038/- toward gratuity was filed. The appellant further stated that signature on the application did not tally with the signatures on the



authority letter executed in favour of Sh. Sushant Mehra on 10.04.2017 and claimed that she no longer resides in India but there is no supportive document that application was actually filed by Ankita Sodhi who was employee of the appellant by way of attestation from the embassy or notary. The respondent was engaged by the appellant under service agreement dated 07.08.2006 on a contractual basis for a period of 3 years which was further extended vide service agreement dated 07.08.2009 for another 3 years. The said agreement with respondent was terminated on 26.07.2011 as she was found indulging in financial wrong doing. During internal enquiry, she was suspended from work. After enquiry she was confronted with findings and accepted her guilt and requested that instead of taking further coercive action against her, she may be permitted to resign. The respondent was asked to tender her resignation and was paid one month's basic salary in her full and final settlement as per clause 6(i) of the service agreement. The police is also investigating into the matter with FIR bearing no 0405 dated 30.12.2017 against her under section 465, 468 ad 471 read with 34 of IPC. The respondent was paid Rs. 128813/- in full and final settlement towards all sums receivable from the appellant. It is further stated that the respondent is not entitled to claim gratuity as did not complete 5 years of continuous service. She has filed the present claim application after 6 years. Thus order passed by the CA is arbitrary, illegal and time barred who failed to appreciate the element of moral turpitude and is a result of non-application of mind, hence, the same is liable to be set aside.

The Respondent has submitted that the order of the CA is just and fair as he is entitled for gratuity as determined by the CA as per provisions of the Act. It is submitted that the respondent had executed the power of attorney dated 17.01.2018 at Seattle, Washington State USA in favour of Mr. Chetan Nangia which was apostilled and certified by the Secretary of the State of Washington, USA and further attested by the Consulate



General of India, San Francisco, USA on 31.01.2018. The present appeal has been filed without any authorization of M/s TV Today Network. The contents of the appeal as alleged by appellant, there is no single evidence provided in support of the contention for financial embezzlement, disciplinary enquiry, suspension, termination etc. It is submitted that the FIR was registered on 30.12.2017 i.e. after almost seven years of the alleged incident of forgery is nothing more than misuse and abuse of process of Law. The appellant neither state an amount of loss suffered nor produced any document pursuant to disciplinary enquiry, like show cause notice, charge-sheet, termination letter has been brought on record by the appellant. The respondent has sent numerous emails, made telephone calls and also sent a legal notice demanding her rightful gratuity amount before filling claim application before the Controlling Authority. The respondent has further stated that the Appellant intentionally delayed the payment. The claim of interest on late payment of Gratuity is well within rules. The appeal has been filed on false and frivolous grounds and without any cause of action, hence, liable to be dismissed on this ground alone.

It is evident from the perusal of relevant records submitted by both the parties during the hearing of appeal and arguments thereto along with the original file ALC III/36(101)/2016 that the CA has condoned the delay in filing the claim application by exercising his discretion in a judicious manner and I don't find any compelling reason to differ. The appellant has himself stated that the respondent worked with the appellant from 7/8/2006 to 26/7/2011, therefore she is not entitled for gratuity for want of mandatory period of 5 years as per provisions under section 4(2) of the Act as this provision is not subject to section 2A of the Act. The contention of the appellant is not tenable as the CA has rightly held that the shortage of 11 days is covered under the provisions of section 2A by completing more than 240 days in a year required for one year continuous service with the appellant. The contention of the appellant that



no disciplinary action was taken by him on the request of the respondent for the alleged misconduct that involved financial irregularities and accepted her resignation under an understanding with her in lieu of payment of Rs 128813/ in full and final settlement as benevolent gesture is not tenable for want of any disciplinary action. Moreover the contention of the appellant that a payment of Rs 128813/ at the time of termination of service included the gratuity amount is also not tenable in view of the subsequent statement of the appellant that the respondent was not entitled to gratuity for not completing the mandatory period of 5 years. The appellant has also stated that that an FIR, was also lodged against the respondent for financial irregularities on 30.12.2017, therefore the respondent is not entitled to gratuity as it is liable to be forfeited as per provisions under section 4(6) (a & b) of the Act. This contention is devoid of any merit as no such action has been taken by the appellant. The difference in claim amount in two claim applications of the respondent is of no significance as the determination of gratuity is done by the CA on the basis of facts of the case. The apprehension of the appellant with respect to the authenticity of the claimant is unfounded as the respondent appeared in person before the CA during the hearing on 22/9/2016. Hence, in view of the above facts, I am of the considered opinion that the CA has addressed all the issues raised by the appellant by elaborating judiciously and I find no reason to differ with the findings held by the CA. The facts of the case are not covered under the citations submitted by the appellant during the hearing proceedings of the appeal. The order of the CA is confirmed. Though the appellant has acknowledged the employee respondent as Ms. Ankita Sodhi and the CA has determined the gratuity in favour of Ms. Ankita Sodhi, yet in order to avoid any possibility of impersonation as apprehended by the appellant, the CA is directed to assure the identity of the respondent before releasing the gratuity amount as determined by him. The appeal is thus disposed off."



27. Upon perusal of the impugned order, it is made out that the learned Court below i.e., the Labour Commissioner, had appreciated the evidence produced by both the parties before the learned ALC.

28. Regarding the issue of condonation of delay, the learned Court below had condoned the delay in filing the claim application by exercising its discretion. Therefore, it is imperative for this Court to determine whether the respondent workman was able to show sufficient cause with regard to the said delay.

29. As per material on record, the respondent workman had reached out to the petitioner entity regarding payment of the gratuity amount due towards the services rendered by her, however, the said request was denied by the petitioner and the evidence supporting the said contention is on record.

30. In *M.C.D v. Nand Kishore*, 2002 SCC OnLine Del 1352, this Court had categorically held that non-payment of gratuity by an employer is a continuous wrong and therefore, the delay in filing a claim application cannot be rejected merely on the said ground.

31. The said reasoning has been given by this Court and other Courts time and again, therefore, the delay in filing of the claim application by the respondent workman cannot be construed as illegal in nature and the learned Court below had rightly condoned the same as the respondent workman had satisfied the learned Commissioner regarding the cause of delay.

32. Now coming to the other issue, i.e., whether the respondent workman had completed the minimum eligible period for maturity of the gratuity or not.



33. In the impugned order, the learned Court below had referred to the relevant evidence placed by the parties to arrive at the conclusion that the respondent workman had rendered her services for 4 years, 11 months and 20 days and therefore, held the fulfillment of continuous service, a condition enshrined under Section 4 of the Payment of Gratuity Act, 1972. The said provision reads as under:

“Section: 4 Payment of gratuity. (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease: Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]

Explanation. : For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he, was capable of performing before the accident or disease resulting in such disablement.

(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 riot so employed throughout the year], 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.

(3) The amount of gratuity payable to an employee shall not exceed three lakhs and fifty thousand] rupees.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited] -



(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

34. Upon perusal of the said provision, it is made out that the completion of the minimum period for being eligible for the gratuity is clearly mentioned i.e. completion of 5 years of continuous services and the said condition need to be met by the employee to claim the gratuity benefits.

35. In the instant case, it is the contention of the petitioner that the respondent workman did not complete the minimum continuous service condition and is not eligible for the grant of gratuity as she falls short of 8 days.

36. The term continuous service as defined under Section 2A has been interpreted by the Madras High Court in ***MetturBeardsell, Ltd. v. Regional Labour Commissioner (Central)***, 1996 SCC OnLine Mad 344, whereby the Court was dealing with a similar issue. The relevant part of the judgment is reproduced herein:

“4. Now I will examine the contentions raised by the learned counsel for the petitioner. Section 2(e) of the Payment of Gratuity Act was as follows, before the amendment.

“‘employee’ means any person (other than an apprentice) employed on wages, not exceeding one thousand rupees per mensem, in any establishment, factory, mine, oil field, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory,



technical or clerical work, whether the terms of such employment are express or implied, but does not include any such person who is employed in a managerial or administrative capacity, or who holds a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950, the Army Act, 1950, or the Navy Act, 1957”.

5. Section 2-A defines continuous service. According to this section, if an employee renders continuous service for a period of 240 days in a year he will be deemed to have continued in service for one year. This deeming provision contained in S. 2-A must be applied in interpreting the period of five years mentioned in S. 4(1). Section 2(b) also supports this interpretation because as per the said section completed year of service means continuous service for one year. Therefore, these provisions are emphatic in stating that if an employee serves continuously for a period of 240 days in a year, he must be deemed to have continuously served for one year. In this case admittedly the third respondent has served for 4 years, 10 months and 18 days. 10 months and 18 days service is definitely more than 240 days. Therefore when the third respondent was relieved from service he has thus completed five years of service. In the decision reported in Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi. [1980 (2) L.L.N. 456], their Lordships have observed as follows, in Para. 13, at page 462:

“... It is sufficient for the purpose of S. 25-B(2)(a)(ii) that he has actually worked for not less than 240 days. It is no longer necessary for a workman to show that he has been in employment during a preceding period of twelve calendar months in order to qualify within the terms of S. 25-B ...”

The learned counsel for the petitioner relied upon a case reported in P. Raghavulu and Sons v. Additional Labour Court, [1985 (1) L.L.N. 612]. A Single Judge of the Andhra Pradesh High Court has held that service rendered for 4 years and 11



months and 10 days will not enable an employee to avail gratuity. The said case arises under the Andhra Pradesh Shops and Establishments Act, 1966 The question was whether as per Cl. (d) of explanation to S. 40(1) of the Andhra Pradesh Shops and Establishments Act, 1966, providing for treating a fraction of a year exceeding six months as a year and a fraction of a year less than six months as not a year. The contention that was accepted by the learned Judge was that the aforesaid explanation applies only for calculating the period for which gratuity is payable and not applicable to the qualifying period of years. The learned Judge has probably relied upon the words, “for which gratuity is to be given,” in S. 40(1) of the Andhra Pradesh Shops and Establishments Act, 1966 But this decision is not applicable to our case because as stated above the definitions of “one year”, “completed year,” “continuous year,” under Ss. 2(a), 2(b) and 2(c) go to show that whenever year is mentioned in the enactment, it must be taken as the year defined in the aforesaid provisions. Another contention raised by the learned counsel for the petitioner is that the petitioner-company ceased to exist after it was merged with MetturBeardsell, Ltd., with effect from 1 January, 1983 But this contention is untenable because at the time of entering into partnership the petitioner has not taken any undertaking from the employees that they will become employees of the new partnership firm Mettur Textiles, and cease to be employees of the MetturBeardsell, Ltd. But as found earlier, the third respondent was relieved only by the petitioner. Therefore, I am not convinced with the contentions raised by the learned counsel for the petitioner. Hence the writ petition fails and it is dismissed. However, there will be no order as to costs.”

37. Upon perusal of the above cited extracts, it is clear that the term “continuous services” needs to be interpreted liberally where the services rendered by a labour need to be 240 days in a year to make them meet the criteria as enshrined under Section 4 of the Act.



38. In the instant case, the respondent workman had joined the petitioner entity on 7th August, 2006, and worked there till the time she rendered her resignation dated 26th July, 2011 and had completed services of 4 years, 11 months and 20 days.

39. Therefore, on the basis of same, this Court is of the view that the learned Court below rightly rejected the said contention of the petitioner and held that the respondent workman had duly completed the minimum period for being eligible for the payment of gratuity accrued towards her.

40. At last, the learned counsel for the petitioner has vehemently argued that the gratuity of the respondent workman was denied on account of her alleged involvement in cheating, fabrication of documents etc.

41. The said contention was also taken by the petitioner entity in the Court below, however, they had failed to supplement the said claim with any proof rather, the material on record makes it crystal clear that the petitioner entity had issued an experience certificate to the respondent workman where her character was deemed to be *bonafide*.

42. Apart from issuing the experience certificate to the respondent workman stating her *bona fide*, the petitioner entity also did not dispute the fact that the workman had rendered her resignation voluntarily, therefore, the contention of her removal due to alleged act of forgery cannot be acceptable as the petitioner has failed to provide any evidence for the same.

43. Even though the learned counsel for the petitioner has referred to the FIR bearing no. 0405/2018 registered against the alleged act, however, mere registration of same does not anyhow prove that the respondent workman



had committed the said offence was removed on the basis of the said alleged offenses as there is no proof produced by the petitioner to substantiate the same.

44. Furthermore, the respondent workman had stopped working in the petitioner entity in the year 2011 and the said FIR was lodged after 7 years, therefore, the registration of the same can only be termed as an attempt to cause harm to the case of the workman.

45. In light of the same, this Court is of the view that the learned Court below had rightly rejected the contentions of the petitioner and therefore, allowed the claim application directing the petitioner to pay the amount along with interest.

46. In view of the foregoing discussion, this Court is of the view that there is no illegality with the impugned award as passed by the learned Labour Commissioner in Gratuity Appeal no.36(40)/2018 and therefore, does not deem it necessary to exercise its powers conferred under Article 226 of the Constitution of India.

47. Therefore, the present petition, being devoid of any merits, is dismissed, along with pending applications.

48. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 20, 2024
SV/AV/DA

[Click here to check corrigendum, if any](#)