



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 01.07.2025

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

W.P.No.1592 of 2022
and WMP.No.1727 of 2022

M/s.Salona Cotspin Limited
SF.No.74/12, 75/3, Sathy Road,
Pungampalli, Valipalayam(PO),
Sathyamangalam Taluk,
Erode-638 402
Rep by its General Manager Finance,
M.S.Selvaraj

... Petitioner

Vs

1. The Hon'ble Appellate Authority,
Under the Payment of Gratuity Act, 1972
The Additional Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore-641 018.
2. The Deputy Commissioner of Labour (Gratuity)
The Controlling Authority,
Under the Payment of Gratuity Act, 1972,
Yercaud Main Road, Gorimedu,
Salem-636 008.
3. T.Shanmugavel,
No.1/303, Thenkumarapalayam (PO)
Pollachi-642 107.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in AGA.No.05/2021 and quash the order dated 29.09.2021 passed in AGA.No.05/2021 by the first respondent Additional Commissioner of Labour, Coimbatore- The Appellate Authority established under the payment of Gratuity Act, 1972.

For Petitioner : Mr.S.Ravi, Senior Counsel
for Gupta and Ravi
For Respondents : Mr.V.Vijayakumar for R3

ORDER

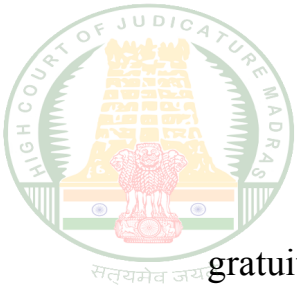
This petition has been filed by the petitioner to quash the order passed by the first respondent in A.G.A. No.5 of 2021 dated 29.09.2021, wherein, the writ petitioner has challenged the order passed by the Controlling Authority under the payment of gratuity Act, Salem in P.G. No.109 of 2019 dated 16.09.2020.

2. The learned counsel appearing for the petitioner would submit that the petitioner has an establishment engaged in the manufacture of carded and combed-ring spun grey yarns for knitting and weaving applications from cotton, both for export and domestic markets. The third respondent joined the petitioner company in the year 1997 as Factory Manager and was subsequently promoted to General Manager and thereafter promoted to



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Vice-President. The third respondent committed many mistakes which are clear misconducts and the petitioner/management became aware of them during the month of July 2017. While so, when the petitioner/management was started making preliminary enquiries, the third respondent left the office at mid day on 05.08.2017 without informing anyone. Later, the third respondent informed that he had suffered from dengue fever and was admitted to the intensive care unit for treatment. Thereafter, he informed the H.R. Department that he was undergoing physiotherapy treatment and was absent from attending to the works of the petitioner's company. Thereafter, the petitioner/management called him to explain the allegations made against him, but it ended in vain. Subsequently, the petitioner / management sent a show cause notice on 05.04.2019, seeking an explanation as to why the petitioner/management should not initiate legal action against him for the mistakes. No reply was sent by the third respondent, and thereafter the domestic enquiry was conducted. As per the enquiry report, the charges against the third respondent were proved. The third respondent caused a huge loss and lost export orders worth more than Rs.10 crores. The third respondent did not participate in the enquiry proceedings, and the enquiry officer passed an exparte order. Thereafter, the petitioner/management imposed the punishment of forfeiture of the



gratuity amount. In the meanwhile, the third respondent filed a petition in P.G. No.109 of 2019 before the Controlling Authority, Salem under the payment of Gratuity Act for the period from 1997 to 2017. The Controlling Authority without appreciating the submissions of the petitioner passed the order dated 16.09.2020, allowing the gratuity petition and directed the petitioner to pay a sum of Rs.6,98,077/- with interest at 10% per annum to the third respondent. Aggrieved by the same, the petitioner preferred the appeal before the first respondent in A.G.A.No.5 of 2021 and it was dismissed by confirming the order of the Controlling Authority, through an order dated 29.09.2021.

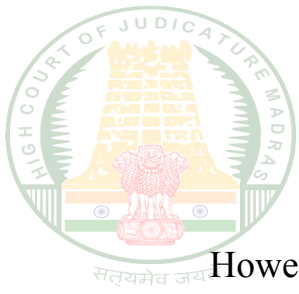
3. He would further submit that as per Section 4 of the Payment of Gratuity Act, the gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service of not less than 5 years ; (1) On employee's superannuation; (2) On employee's retirement or resignation; (3) On employee's death or disablement due to accident or disease. Therefore, the third respondent employee continued to be on the rolls of the petitioner company on the date of filing of the gratuity application, hence the said gratuity petition is not maintainable. But the Controlling Authority failed to consider the same



and the Appellate Authority also without considering the above said facts erroneously dismissed the appeal filed by the petitioner./management.

4. He would further submit that as per Section 4 (6) (a) of the Payment of Gratuity Act, the gratuity of an employee whose services have been terminated for any act, willful 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 damages or loss so caused. Further, as per Section 4(6)(b), the gratuity payable to an employee may be forfeited if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude.

5. He would further submit that in the case on hand, the third respondent was charge sheeted for the loss caused by him. Therefore, he is not entitled to receive gratuity amount. Therefore, the authorities had passed the erroneous orders. Further, as per Section 2(s) of the Payment of Gratuity Act, wages, paid to an employee does not include bonus, commission, house-rent allowance, overtime wages and any other allowance. The third respondent, employee apart from being paid basic wages, was paid various allowances which do not constitute wages.



However, the authorities without appreciating these facts erroneously allowed the applications. As per the third respondent, he was orally terminated from service on 05.08.2017, but he never raised any objection regarding the alleged termination and he remained silent for a period of 1.5 years. Therefore, the order passed by the Controlling Authority as well as the Appellate Authority are not in accordance with law and the same are liable to be quashed.

6. The learned counsel appearing for the third respondent would submit that the third respondent was working under the petitioner establishment and he joined duty on 27.11.1997. Thereafter, the petitioner/management orally terminated him on 05.08.2017, and his last drawn salary was Rs.60,500/-. Therefore, the petitioner has to pay a sum of Rs.6,98,077/- towards gratuity amount, but the petitioner failed to pay the above said amount. Therefore he filed the petition before the Controlling Authority under the payment of Gratuity Act. After filing of the petition, the petitioner without serving any notice to the third respondent, initiated disciplinary proceedings alleging that he caused damages to the petitioner by his unauthorized absent. Once the petitioner was terminated from service, thereafter there was no relationship between the third respondent



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as an employee and the employer. Therefore, the enquiry proceedings itself are not valid under the law, and the consequent order passed for the forfeiture of the gratuity amount is bad in law and will not bind the third respondent. Therefore, the Authority came to the conclusion that there was oral termination by the petitioner, thereby the third respondent was removed from service. The petitioner also denied the salary of the third respondent. Therefore, the authority calculated a sum of Rs.60,500/- as his last drawn salary, and therefore, the gratuity amount was arrived at Rs.6,98,077/-. Further, the Controlling authority passed the order to pay interest at the rate of 10% under Section 7 (3A) of the Act. Therefore, the authorities passed the order after elaborate discussion, held that the gratuity amount has to be forfeited along with the termination order. Whereas in this case, as per the petitioner/management no termination order was passed. Therefore, as per provisions of payment of gratuity act, they cannot forfeit the gratuity amount. As far as the quantum of salary is concerned, the authority calculated Rs.18,500/- as allowance, since there is no mention about the kind of allowance. Therefore, both the authorities have passed reasoned order and the writ petition is liable to be dismissed.



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record.

7. This Court heard both sides and perused the materials available on

8. In this case, according to the petitioner, the third respondent was joined as Factory Manager and thereafter was promoted to Vice-President. He was unauthorizedly absent, and thereafter due to his unauthorized absence, they found some misconducts against the third respondent and issued show cause notice and initiated disciplinary proceedings, and then passed the punishment of forfeiture of the gratuity amount. According to the third respondent, he joined duty in the petitioner's company on 27.11.1997, and thereafter, he was removed from service orally on 05.08.2017, and his last drawn salary was Rs.60,500/-. Therefore, he calculated the gratuity amount as Rs.6,98,077/- and thereafter the third respondent filed an application for the gratuity amount payable to him and the same was submitted in the year 2019. The disciplinary proceedings were initiated after filing of the gratuity application by the third respondent. As per the disciplinary proceedings, the charges against the third respondent were proved. Thereafter, the petitioner has passed the order for the forfeiture of the gratuity amount.



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9. Now, the Court has to decide whether there was any oral termination or not. According to the petitioner, the third respondent was unauthorized absent and the same was brought to the knowledge of the third respondent. In the disciplinary proceedings, he stated that he was unable to appear due to his ill health. The petitioner was absent from 05.08.2017 onwards. Therefore, the petitioner/management has not taken any steps and not filed any documents against the unauthorized absence. Per contra, they initiated disciplinary proceedings for the misappropriation. Even in the petition, there is no whisper about the misconduct committed by the petitioner and in the enquiry report also there is no whisper about the charges. After knowing that the petitioner was unauthorizedly absent, the management has not taken any steps either for the unauthorized absence or for the alleged malpractices, immediately after his absent. It is an admitted fact that the third respondent did not attend duty after 05.08.2017, so it is the duty of the petitioner to prove that he continued in service after 05.08.2017.

10. Even, according to the petitioner/management he availed leave, but no leave applications were produced. Therefore, the contention of the third respondent that he was orally terminated from service is acceptable.



Therefore, the petitioner/management is liable to pay the gratuity amount to the third respondent. According to the third respondent, his last drawn salary was Rs.60,500/-, but according to the petitioner it was Rs.42,000/- and other allowances of Rs.18,500/-. The above said sum of Rs.18,500/- will not come under the pay as per definition of Section 2(s) of the payment of the gratuity act.

11. In this context, as per the records, the basic salary was Rs.42,000/- and other allowances mentioned as Rs.18,500/-, and there is no whisper about the kind of allowances. Therefore, the authority has taken the above said allowances as Dearness allowances, since the Dearness Allowances is inevitable. Therefore, the authority has held that the amount of Rs.18,500/- mentioned is Dearness Allowances, The management also failed to produce the documents to substantiate their contention. Therefore, the authority has passed a reasoned order. The appellate authority also elaborately discussed the matter and dismissed the petition, and therefore there is no infirmity or perversity found in the order passed by the authorities.



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12. In view of the above said discussion this writ petition has no merits and deserves to be dismissed.

13. In the result, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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To

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P.DHANABAL, J.,

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