IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2025

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THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

Writ Petition No. 3339 of 2020
and
W.M.P.No.3870 of 2020

Sri Akilaa Spinning Mills Private Ltd.,
Unit – II, Kapparathampatti,
Jalakandapuram, Salem – 636 501. … Petitioner

Vs.

1. The Appellate Authority
   Under Payment of Gratuity Act, 1972
   Additional Commissioner of Labour,
   Coimbatore.
2. The Controlling Authority
   Under Payment of Gratuity Act, 1972
   Salem.
3. Thiru.D.Mani,
   S/o. Duraisamy,
   No.17/14, Methai street,
   Ammapet, Salem – 636 003.

.... Respondents

Prayer: To issue a Writ under Article 226 of the Constitution of India in the nature of Writ of Certiorari or other appropriate writ or order or direction, call for the records in AGA 76/2019 on the file of the Appellate authority Under Payment of Gratuity Act, 1972 / Additional Commissioner of Labour, Coimbatore, the first respondent herein, quash the order dated 31.12.2019.

Prayer in W.M.P.No.3870 of 2020: Writ Miscellaneous Petition is filed praying to grant interim stay of the order dated 31.12.2019 passed by the Appellate Authority Under Payment of Gratuity Act, 1972 / Additional Commissioner of Labour, Coimbatore, the first respondent herein in AGA 76/2019 pending disposal of the writ petition.

For Petitioner : Mr.M.R.Raghavan
For R1 & R2 : Mr.K.Suresh,
Government Advocate
For R3 : Mr.S.V.Navin Prabhu
for K.V.Shanmuganathan

O R D E R

The writ petitioner, a textile mill management in Salem, has filed the present writ petition challenging the order of the 1st Respondent – Appellate Authority under the Payment of Gratuity Act, 1972. The impugned order modifies the decision of the 2nd Respondent – Controlling Authority under the P.G. Act, before whom the 3rd Respondent – employee had initially filed an application for gratuity.

2. The 3rd Respondent – employee filed an application under Section 7 of the Payment of Gratuity Act before the 2nd Respondent, seeking gratuity amounting to Rs. 3,67,500/-, along with interest at 24%. He claimed that he was appointed by the Petitioner Management on 15.01.2003 and that his services were terminated on 16.04.2017. He further stated that his last drawn salary was Rs. 45,000/-.

3. The Petitioner Management contested the claim, stating that the 3rd Respondent was employed only from 01.05.2006 and had stopped reporting to work from 01.04.2017. It was further contended that his last drawn wages were Rs.28,500/-, along with a special allowance of Rs.10,000/-. The 3rd Respondent had already received gratuity advances of Rs.52,530/- in 2013, Rs.41,680/- in 2014, Rs.26,990/- in 2015, and Rs.46,200/- in 2016, totaling Rs.1,67,400/-.

4. However, the 2nd Respondent – Controlling Authority determined that the 3rd Respondent was entitled to a total gratuity of Rs. 2,30,192/-. After deducting the gratuity advance of Rs. 1,67,400/- already received, the authority directed that the balance amount of Rs. 62,792/- be paid to him.

5. Aggrieved by the order, the 3rd Respondent appealed before the 1st Respondent – Appellate Authority, which allowed the appeal and held that the 3rd Respondent was entitled to Rs.2,30,192/- without any deductions, as per the order dated 31.12.2019.

6. The Petitioner contended that the Appellate Authority should not have disregarded the relevant records concerning the gratuity advance

payments made to the 3rd Respondent – employee. It was argued that the amounts paid to the 3rd Respondent should have been adjusted against the total gratuity payable, treating them as adjustments rather than deductions.

7. The learned counsel argued that the two judgments relied upon by the Appellate Authority were erroneous and not applicable to the facts of the present case. In the Allahabad High Court judgment in *Bankey Bihari Chauhan v. State of U.P. & Ors.* (MANU/UP/0219/2015), the Court explicitly held that any adjustment or recovery made without following statutory requirements would be contrary to Section 4(6) of the Payment of Gratuity Act. Based on this, the authority concluded that the adjustment of gratuity advances in the present case was also not permissible.

8. In the Calcutta High Court judgment relied upon by the authority, in *United Bank of India v. Bidyut Baran Haldar & Ors.* (MANU/WB/0051/2018), it was explicitly stated in paragraph 27 as follows:

> *" It is abundantly clear that the gratuity payable to a superannuated employee cannot be withheld or adjusted or forfeited except in the circumstance mentioned in the said Act. .... circumstances are mentioned in* Sec. 4(6) *of the said Act."*

9. Therefore, the authority rightly relied on the said judgment. The learned counsel referred to the following two judgments of this Court in support of their contention:

1. The Nagapattinam Import and Export Corporation, Nagapattinam, Thanjavur District. Vs. K.Lakshmi reported in 1993 (1) LLJ 873
2. Madesh & Ors. Vs. Krishnan & Anr. reported in 1998 (2) LLN 930

10. In the first case, the subject matter fell under the Workmen's Compensation Act, 1923 (now Employees' Compensation Act, 1923). In that case, the learned judge also relied on Section 28 of the Act, and based on the facts, the deduction was credited, as the employee had acknowledged it through a receipt.

11. In the second case, the matter once again arose under the same Act, and it was specifically determined as follows:

> "The employer has let in evidence by examining witnesses who were witnesses to O.Ps 1 and 2 and therefore a total sum of Rs.5,000 has been proved. Therefore, the claimant will be entitled to the amount awarded minus Rs.5,000 which has

been already paid by the employer towards compensation."

12. However, under the Gratuity Act, Section 4(6) permits only limited instances of denial or recovery of gratuity. Section 14 of the Act overrides any of the contract or a law contrary to the scheme of the Act. The Act explicitly states that gratuity becomes payable only upon the employee's superannuation, termination, or resignation after completing five years of service. There is no provision for an advance payment of gratuity, as the right to receive gratuity arises only when one of these three conditions is met.

13. The 3rd Respondent argued that the Appellate Authority had thoroughly examined the evidence on record and correctly computed the gratuity amount payable as Rs.2,30,192/-, based on the admitted monthly wages. It was further contended that the authority rightly disregarded Ex. M1 to Ex. M4, which were submitted by the Petitioner Management, as the 3rd Respondent – employee had not admitted the signatures on the vouchers and had denied receiving any gratuity advance from the employer. Accordingly, the 3rd Respondent sought the dismissal of the writ petition.

14. The 3rd Respondent approached the Appellate Authority

challenging the findings of the Controlling Authority regarding both the last drawn wages and the alleged advance payments received from the employer. In its order, the Appellate Authority upheld the Petitioner Management's stance that the last drawn wages of the 3rd Respondent were Rs.28,500/- and that the Rs.10,000/- paid as a special allowance could not be considered as wages under Section 2(s) of the Payment of Wages Act.

15. Regarding the deductions/adjustments of Rs.1,67,400/-, the Appellate Authority referred to Section 4(6) of the Payment of Gratuity Act, and held that there can be deductions/adjustment or forfeiture made on the gratuity amount of the employee whose services are terminated for any act as stipulated under Section 4(6) of the Act. Accordingly, the Appellate Authority set aside the order of the Controlling Authority directing payment of Rs.62,792/- payable after deduction of Rs. 1,67,400/- from the computed gratuity amount of Rs. 2,30,192/- and ordered for payment of Rs. 2,30,192/- .

16. The order of the Appellate Authority does not suffer any error, the writ petition is misconceived. Therefore the Writ Petition in WP.No.3339 of 2020 is dismissed. Consequently WMP. No.3870 of 2020 is

also dismissed. No costs.

17.02.2025

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

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DR. A.D.MARIA CLETE, J.

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Copy to

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