



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

W.P.No.34772 of 2013

M/s.P.A.Security Force
Rep by its Chief Executive
M.P.Karthick

... Petitioner

Vs

1.M.Mallika

2.The Assistant Commissioner of Labour
cum The Controlling Authority under the
Payment of Gratuity Act, 1972,
O/o. The Deputy Commissioner of Labour-I,
Chennai – 06.

3.The Commissioner of Labour,
cum Appellate Authority under the
Payment of Gratuity Act, 1972,
DMS Campus, Chennai – 06.

4.The District Collector,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in impugned order dated 10.05.2013 in P.G. No.194/2009 passed by the 2nd



respondent which was received on 06.06.2013 and quash the same.

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For Petitioner : Mr.A.P.Venkatesh Prasad for
M/s.Agam Legal Advocates

For Respondents : No Appearance for R1
Mr.M.Murali, Government Advocate
for R2 to R4

ORDER

This writ petition has been filed challenging the impugned order dated 10.05.2013 in P.G.No.194/2009 passed by the second respondent and to quash the same.

2. A short facts necessary to dispose of this writ petition are as follows:

The husband of the first respondent namely Mohan, had worked under the writ petitioner. While so, on 20.09.2006, the said Mohan died. Therefore, the first respondent made a representation to pay the gratuity amount of her husband through a letter dated 10.11.2008. But the petitioner refused to pay the gratuity amount. Therefore, she filed a petition in P.G.No.194 of 2009 before the Commissioner of Labour for the payment of



the gratuity amount of Rs.19,694/- along with interest. The writ petitioner also filed a counter stating that the said Mohan was appointed as Security on 27.03.2006 and he worked under him till 20.09.2006. Therefore, he worked only for 147 days, until his death. Therefore he is not entitled to gratuity as stated by the petitioner. The salary of the husband of the petitioner was only Rs.2,000/- per month. After hearing both sides, the second respondent herein passed the order directing the writ petitioner to pay the gratuity amount of Rs.19,694/- along with 10% interest. Challenging the said order, the Management has filed his writ petition.

3. The learned counsel for the petitioner would submit that the husband of the respondent, namely, Mohan was appointed as a Security on 27.03.2006 and he died on 20.09.2006, therefore, he only worked for 6 months and 21 days. During his employment, he drawn the salary of Rs.2,000/- per month. In order to prove the same, the petitioner has produced Ex.M1- recommendation letter by one S.Viswanathan dated 26.03.2006 and the appointment letter-Ex.M2 and the last drawn particulars, attendance register particulars viz., Exs.M3 to Ex.M6. But the second respondent without considering the same, allowed the petition by holding that the first respondent has not produced any documents to prove



the number of days worked by said Mohan. Even assuming that the said Mohan was working from 20.02.1998 to 20.09.2006, he is only entitled to Rs.10,385/-. But the petitioner has already deposited Rs.35,000/- through a Demand Draft dated 26.12.2013. Therefore, the order passed by the second respondent is liable to be set aside and the remaining amount has to be returned to the writ petitioner.

4. Today, there is no representation for the first respondent. Therefore, this Court after hearing the petitioner's side, inclined to pass order based on the available records.

5. In this case, there is no dispute that the husband of the first respondent namely Mohan was an employee of the petitioner. According to the first respondent, the said Mohan had worked for more than 9 years from 20.02.1998 to 20.09.2006. Thereafter, he died on 20.09.2006. The death of said Mohan is not denied by the writ petitioner. According to the petitioner, the said Mohan was appointed as Security only on 27.03.2006 and thereafter he worked up to 20.09.2006. The petitioner being an employer, once admitted the employment of the deceased employee for a particular period it is for him to produce the documents to prove the contrary, that he



was not worked from 1998 and he was appointed only in the year 2006.

During the examination, they also assured to produce documents in respect of salary particulars and the attendance particulars but they could not produce them. It is a well settled law that a person who claims a period of working, it is his duty to prove the same. In order to prove the same, the petitioner examined witnesses and also produced some documents. Therefore, the petitioner has proved the employment of the deceased. Since the documents are only available with the writ petitioner that is salary particulars, attendance registrar, it is the duty of the writ petitioner to produce the documents, but they failed to produce the documents. Therefore, the second respondent had to take adverse action against the writ petitioner and allowed the petition by directing the petitioner to pay a sum of Rs.19,694/-, taking the salary of the petitioner as Rs.3,793/-. In the written arguments, the petitioner also stated that even assuming the eligibility of the gratuity for the period from 20.02.1998 to 20.09.2006, he would be entitled to only Rs.10,385/-, since the salary is only Rs.2000/-. According to the first respondent, his last drawn salary was Rs.3,793/-, but according to the writ petitioner, his salary was Rs.2000/-. It is seen that though the salary particulars of the deceased employee is being under the custody of the writ petitioner, he has not chosen to produce any documents



regarding the same. Therefore, the salary stated by the first respondent has to be taken into account. Accordingly, the second respondent has rightly taken into account the salary mentioned by the first respondent and also calculated the gratuity amount on the basis of the salary stated in the petition. Moreover, the writ petitioner has also already deposited Rs.35,000/- through a Demand Draft dated 26.12.2013. Therefore, the order passed by the second respondent is in order and there is no infirmity or illegality found in the order of the second respondent.

6. In view of the above said discussion, this Court is of the opinion that this petition has no merits and deserves to be dismissed. No costs.

31.01.2025

drl

Speaking/Non Speaking

Index : Yes / No

Internet : Yes / No



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8

P.DHANABAL, J.,

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