



W.P. No.26020 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2025

WEB COPY

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THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.26020 of 2023

S. Prabu S/o. P. Sankaralingam

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Petitioner

Vs.

1. The Additional Commissioner of Labour
Appellate Authority under the Payment of Gratuity Act,
Coimbatore.

2. The Deputy Commissioner of Labour,
Controlling Authority of Payment of Gratuity Act,
Salem.

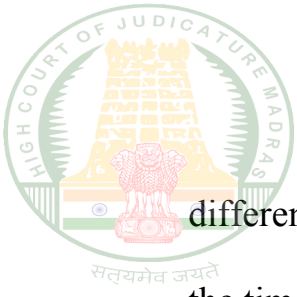
3. The Management,
S.P. Apparel Limited,
Cuddalore Main Road, Kalpaganur,
Athur Taluk, Salem District.

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Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of

India praying to issue a Writ of Certiorarified Mandamus calling for the concerned records from the 1st respondent, to quash the order of the 1st respondent dated 18.05.2023 in so far as treating the period from 07.02.1997 to April 2000 as one of an apprentice service and declining gratuity as illegal, arbitrary and contrary to law and consequently, direct the 3rd respondent to calculate the gratuity for the entire period of service i.e., from 07.02.1997 to 31.12.2019 on the basis of the last drawn of Rs.23,300/- and pay the



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difference in gratuity along with interest at the rate of 10% per annum within the time frame stipulated by this Court.

For Petitioner : Mr. Balan Haridas

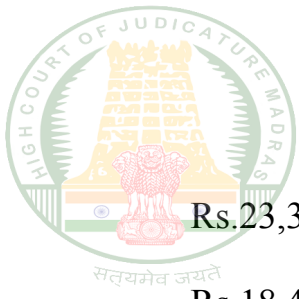
For Respondent :
For R1 & R2 Mr. P. Ananda Kumar,
Government Advocate.

For R3 Mr. R. Jayaprakash.

ORDER

This Writ petition has been filed to quash the order of the 1st respondent dated 18.05.2023 in so far as treating the period from 07.02.1997 to April 2000 as one of an apprentice service and declining gratuity as illegal, arbitrary and contrary to law and consequently, direct the 3rd respondent to calculate the gratuity for the entire period of service i.e., from 07.02.1997 to 31.12.2019 on the basis of the last drawn pay of Rs.23,300/- and pay the difference in gratuity along with interest at the rate of 10% per annum within the time frame stipulated by this Court.

2. The learned counsel appearing for the Writ petitioner would submit that the petitioner had joined in the 3rd respondent Management on 07.02.1997 in the post of 'Assistant Labour Officer'. After rendering 23 years of service, he resigned his job on 31.12.2019 and his last drawn basic pay was



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Rs.23,300/-. While so, the 3rd respondent Management reduced basic pay as Rs.18,444/- from Rs.23,300/-. But the net salary remained the same. After resigning his employment, he requested the 3rd respondent to pay gratuity amount, but he refused to pay the amount. Therefore, he approached the Controlling Authority under the Payment of Gratuity Act and filed an application in P.G. Case No.236 of 2021 claiming gratuity of Rs.3,47,824/- along with interest at 10% per annum. The Authority, who is the 2nd respondent herein, computed the gratuity amount payable as Rs.3,09,173/- and the Authority held that the Management had paid Rs.1,91,538/- and the balance payable is Rs.1,17,635/- and the same has to be paid along with interest @ 10% per annum. The 3rd respondent preferred an appeal against the order passed by the Controlling Authority under the Payment of Gratuity Act before the 1st respondent in P.G. Case No.34 of 2022. The 1st respondent erroneously held that the period from 07.02.1997 to 07.03.2000 was the apprenticeship period and the same cannot be taken into account for calculating the gratuity, thereby, computed the balance gratuity amount of Rs.77,308/-. Aggrieved by the said order, the petitioner preferred this Writ petition.

2.1. In fact, the 2nd respondent passed a reasoned order by



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holding that the petitioner was not working as an apprentice and there are no records to show that the petitioner was appointed as an apprentice. However, the Appellate Authority, who is the 1st respondent herein, without any records, erroneously held that the petitioner was working as 'apprentice' till 17.03.2000. Therefore, that period was included. The petitioner was appointed as an 'Assistant Labour Officer' and there is no any training given to him. Being the 'Assistant Labour Officer', he cannot be termed as apprentice. Therefore, only for the name sake, they issued the appointment order as apprentice. Even according to the 3rd respondent, the apprenticeship period was only for 2 years and thereafter, the period of 2 years was not extended. Though as per the standing orders, the apprenticeship period is 3 years, even as per the appointment, the period of apprenticeship is only one year. Therefore, it shows that only for the name sake, the appointment order was issued as apprentice. In fact, the petitioner was appointed as 'Assistant Labour Officer'. Therefore, the order passed by the 1st respondent has to be set aside and the order of the 2nd respondent has to be restored.

3. The learned counsel appearing for the 3rd respondent would submit that the petitioner was initially appointed by S.P. Super Fine Cotton Mills (P) Ltd., Salem as an Apprentice Assistant Labour Officer on 03.02.1997 for the proposed new Unit to be set up at Kalpaganur, Salem District. In the said



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appointment order, it was clearly mentioned that the petitioner will be undergone apprenticeship at Perumal Spinning Mills (P) Ltd., Seshanchavadi, Salem District. The period of apprenticeship will be initially for 2 years, which may be extended for further period and in the absence of further communication from the Management, the petitioner will be deemed to be on apprenticeship only. At the time of appointment, he accepted the above said period of apprenticeship and signed in the appointment order and also joined the duty. Therefore, the said period cannot be taken for calculating payment of gratuity. Subsequently, the S.P. Superfine Cotton Mills (P) Ltd., was taken over by the 3rd respondent S.P. Apparel Limited. S.P. Super Fine Cotton Mills, Kalpaganur commenced as a new spinning mill and trial production was commenced on 22.10.2001 and commercial production was started from 26.10.2001.

3.1. The service of the petitioner was absorbed by S.P. Super Fine Cotton Mills Private Limited after the commencement of commercial production and the petitioner was confirmed in service and enrolled in EPF from April 2002 onwards. Therefore, the petitioner was an apprentice prior to April 2002 and he will not come under the definition of 'employee' as per Section 2(3) of the Payment of the Gratuity Act. Therefore, the



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apprenticeship period from 03.02.1997 to April 2002, cannot be equated for calculating the gratuity amount. But the 2nd respondent without considering the above said aspects, wrongly held that he comes under the definition of employee under Section 2(e) of the Payment of the Gratuity Act, thereby computed the amount and the same was challenged by way of an appeal by the 3rd respondent and the Appellate Authority / 1st respondent came to a conclusion that as per the Standing Orders the apprenticeship period is only for 3 years and the same can be extended and therefore, calculated the gratuity amount by deducting 3 years period from total service period as apprenticeship period. Therefore, the 1st respondent Appellate Authority has passed a reasoned order and the present Writ petition is liable to be dismissed.

4. Heard both sides and perused the entire materials available on record.

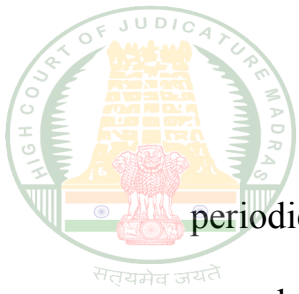
5. In this case, there is no dispute that the petitioner was appointed as an Apprentice Assistant Labour Officer, however no training was given and for name sake, it was mentioned in the order as 'apprentice' by the erstwhile employer namely S.P. Super Fine Cotton Mills (P) Limited and thereafter, the said mill was taken over by the 3rd respondent and the petitioner was retired



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from service on 31.12.2019. According to the petitioner, he was appointed as an Assistant Labour Officer and thereby, he is entitled to gratuity amount from the date of his appointment dated 07.02.1997. According to the 3rd respondent, the petitioner was appointed in the apprentice Assistant Labour Officer and till April 2002, he was working as an Apprentice Assistant Labour Officer. In support of his contention, the learned counsel for the 3rd respondent relied upon the appointment order issued by S.P. superfine Cotton Mills (P) Limited, on 03.02.1997, wherein it has been mentioned that the petitioner was appointed as an apprentice Assistant Labour Officer for their proposed new unit to be set up at Kalpaganur, Salem. Till such time, he will be undergoing apprenticeship at Perumal Spinning Mills (P) Ltd., Seshanchavadi, Salem District.

6. There are no records to show that he had undergone apprenticeship at Perumal Spinning Mills (P) Ltd., as stated in the appointment order. Even as per the appointment order, the apprentice period was initially for 2 years and that may be extended for further period at the discretion of the Management. In the absence of any further communication from the Management, he will be deemed to be on apprenticeship only. The stipend was fixed at Rs.2,250/- per month and the same would be revised



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periodically at the discretion of the Management. While so, there are no records to show as to whether the apprenticeship period was extended or he was undergone apprenticeship at Perumal Spinning Mills (P) Ltd., Seshanchavadi, Salem (District).

7. As per the Standing Orders, the apprenticeship period is 3 years. While so, how, the appointment order was issued for 2 years has to be explained by the Management. Unfortunately, there is no evidence in respect of the apprenticeship actually undergone by the petitioner. In the absence of any explanation from the 3rd respondent, when Standing Orders prescribed the period of apprenticeship as 3 years, how the appointment order was issued only for 2 years, it creates serious doubt over the above said appointment order.

8. As far as the nature of work done by the petitioner is concerned, the competent person is the Management of the S.P. Superfine Cotton Mills (P) Ltd., and the 3rd respondent who has no knowledge about the nature of employment is not a competent person to speak about the nature of work done by the petitioner. Therefore, in the absence of any records, the statement of the petitioner that he was working as Assistant Labour Officer and no training



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was given to him and he was not appointed as apprentice is acceptable. The Appellate Authority has erroneously held that the petitioner was an apprentice from 07.02.1997 to April 2002. Without any records and evidence before the Controlling Authority under the Payment of Gratuity Act, the petitioner was examined as PW1 and marked Ex.P.1 to Ex.P.7 and on the side of the 3rd respondent, one Account Executive was examined as RW1 and marked Ex.R.1 to Ex.R.6. But the Management failed to examine any of the officials and to mark any documents from the erstwhile company namely S.P. Superfine Cotton Mills (P) Ltd. to show that the petitioner was appointed as Apprentice and underwent training. Therefore, the competent person to speak about the nature of employment is the petitioner. Therefore, according to the evidence of the petitioner, he was working as 'Assistant Labour Officer' and he was not appointed as 'apprentice'. Therefore, in the absence of any evidence to show that the petitioner was appointed under apprenticeship, it is not appropriate to held that he was doing apprenticeship from the date of his appointment i.e., 07.02.1997 to April 2002.

9. In the absence of sufficient evidence, it is not appropriate to hold that the petitioner had undergone apprenticeship. In the absence of proof for apprenticeship, as per Section 2(e) of the Payment of Gratuity Act, the petitioner is entitled to gratuity from the date of his appointment. Therefore,



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the petitioner is entitled to gratuity from the date of his appointment and the 2nd respondent / Controlling Authority under the Payment of Gratuity Act has calculated the amount from the date of his appointment till his resignation. Therefore, the order passed by the 1st respondent based on the standing orders, on assumption that the petitioner was appointed as an apprentice, calculated the amount, is without any basis. Therefore, the order passed by the Appellate Authority / 1st respondent herein, in P.G. Case Appeal No.34 of 2022 is set aside and the order passed by the 2nd respondent in P.G. Case No.236 of 2021 is restored. The 3rd respondent is directed to pay the balance of gratuity amount as calculated by the 2nd respondent in P.G. Case No.236 of 2021 dated 28.03.2022.

With the above said observations, the Writ petition is allowed.

There shall be no order as to costs.

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Index : Yes/No

Speaking order/non-speaking order

mjs

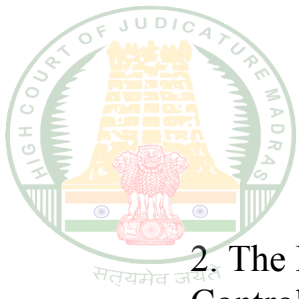
P.DHANABAL, J.,

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10/11



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