



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 26.06.2025

Pronounced on : 04.07.2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.4820 of 2023

and

C.M.P.No.28604 of 2023

R.Saravanan

.. Petitioner

Versus

1.Tecknoweld Alloys (India)
Pvt. Ltd., Rep by its Director
No.114, Developed Plots
Industrial Estate, Perungudi
Chennai – 600 096

2.Tecknoweld Alloys (Overseas)
Pvt. Ltd., Rep by its Director
No.114, Developed Plots
Industrial Estate, Perungudi
Chennai – 600 096

3. The Controlling Authority
Under the Payment of Gratuity Act
The Deputy Commissioner of Labour -2

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 02.11.2022 passed in I.A.No.54 of 2022 in O.S.No.46 of 2022 on the file of the District Court No.II at Kancheepuram.



For Petitioner : Mr.R.Krishnasamy
For Respondents : Mr.P.Raghunathan
for M/s.T.S.Gopalan @ Co for R1 & R2
Mr.D.Gopal, Government Advocate for R3

ORDER

Challenging the order passed by the Trial Court directing the respondents 1 and 2/plaintiffs to deposit a sum of Rs.6,75,000/- in to court deposit and also directing the third respondent/second defendant not to take any action against the respondents 1 and 2 for non depositing the gratuity amount, the present revision has been filed by the revision petitioner/first plaintiff.

2. The revision petitioner is the first defendant and the third respondent is second defendant. The respondents 1 and 2 are the plaintiffs in the suit in O.S.No.46 of 2022.

3. Brief background in filing the revision is as follows:

3.a. The suit has been originally filed by the respondents 1 and 2 for the recovery of a sum of Rs.10,05,637.98/- due by the 1st Defendant to the 1st plaintiff and Rs.4,57,652.24/- interest at 12% p.a. from the date of claim



to the date of realization. It is the case of the plaintiffs that the revision petitioner originally appointed as Deputy General Manager Marketing, later in the year 2007 as General Manager-Marketing, in November 2009, as Vice President Operations, in August 2011, as Senior Vice President-Sales and Marketing, in 2015, as President & CEO In-charge of the entire operation of the plaintiffs. In this connection, the revision petitioner was permitted to travel abroad for promoting the sales of the plaintiffs' products. As per the Staff Operating Guidelines, all expense statements in respect of travel in India and abroad was required to be submitted within a week of the completion of travel. According to the plaintiff, the revision petitioner drew travel expenses from the plaintiffs during the years 2014-2015, 2015-26, 2016-17 and 2017-18. Though the revision petitioner was obliged to submit his travel expenses statement and square up the expenses towards advances availed and also account of the expenses incurred by him, he was never regular prompt in submission of the accounts towards advances drawn for travel expenses.

3.b. Due to his proximity with the Managing Director of the plaintiffs company, the officials of the plaintiffs company were generally reluctant to



press for submission of account statement, except to remind him from time to

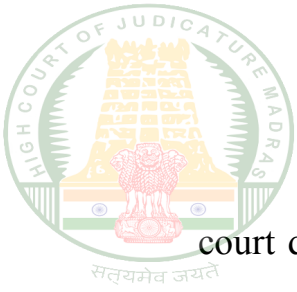
time that such submission was required in accordance with the accounting practices and also the staff operating guidelines. The revision petitioner used to randomly submit accounts of travel expenses bills, that were never squared and the same were never used to tally with the travel advances drawn. The auditors pointed out that unless the expenses were squared up appropriately from time to time, balance sheets could not be prepared or authenticated by the auditors and the amounts standing to debit of travel advances are to be treated as expenses attracting payment of income tax @ 30% per annum. The revision petitioner undertook to furnish bills, however, he did not do so and kept dodging the submission of the bill. On enquiry, it came to the light that the revision petitioner had undertaken certain travels without the knowledge of the company's Managing Director. Though revision petitioner has tendered resignation, the same was not accepted and he was dismissed vide communication on 02.03.2019. Hence, the plaintiff sought for a decree for recovery of money.

3.c. In the meanwhile, the revision petitioner had approached the second defendant/third respondent, the Authority under the Payment of



Gratuity Act in P.G.Case No.132 of 2018 claiming Rs.6,75,000/- as due by way of Gratuity contending that he was resigned from the plaintiffs company after 12 years and 7 months continuous service. The plaintiff had taken a stand that the revision petitioner has taken advance of Rs.14,63,290/- and the he has not rendered accounts for the said advance and that the gratuity was withheld for time being pending submission of the accounts. The Controlling Authority vide order dated 30.03.2021 directed the respondent to pay the gratuity amount of Rs.6,75,000/- with simple interest of 10% from the date on which the gratuity becomes due till the date of payment to the petitioner within 30 days from the receipt of the order. This order has not been challenged by the respondents by way of appeal and the said amount is not paid to the petitioner.

3.d. In the pending suit, the respondents 1 & 2 filed an application under Order 39 Rule 1 & 2 of CPC and Section 151 of CPC to restrain the third respondent authority from disbursing the Gratuity amount to the revision petitioner and issue a direction to deposit the same in interest bearing account in a Nationalised Bank. The Trial Court allowed the petitions directing the respondents 1 and 2 to deposit the sum of Rs.6,75,000/- in to



court deposit and also directed the third respondent/second defendant not to take any action against the respondents 1 and 2 for non depositing the gratuity amount, the present revision has been filed by the revision petitioner/first plaintiff. Aggrieved, the revision petitioner/employee has come up with this revision.

4. It is the contention of the learned counsel for the revision petitioner that the gratuity payable cannot be attached or withheld without any disciplinary proceedings, therefore, despite the order passed by the Controlling Authority which has not been challenged, the Trial Court ought not to have directed the respondents to deposit the amount in the Court deposit. Though the revision petitioner tendered resignation, no disciplinary proceedings initiated as against the revision petitioner and the petitioner was terminated. Therefore, when no disciplinary proceedings initiated against the revision petitioner in this regard, the amount has not been quantified, the employer has no right to retain the Gratuity amount. As per Section 13 of the Payment of Gratuity Act, no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company



or shop exempted under Section 5 shall be liable for attachment in execution

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of any decree or order of any civil, revenue or criminal court. Similarly,

Section 60 of Code of Civil Procedure also prohibits such attachment.

Despite the statutory provisions, the Trial Court has directed to deposit into the Court. Therefore, according to him, the order of the Trial Court is liable to be set aside.

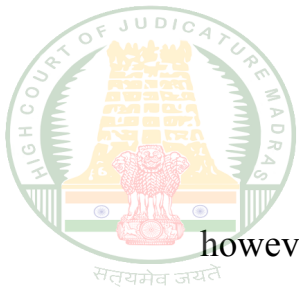
5. In support of his submissions, he placed reliance on the following judgments:

(a) The Management, Coimbatore District Central Co-operative Bank Ltd., vs. N.Somasundaram and others made in W.A.No.1558 of 2011 dated 23.08.2021

(b) Radhey Shyam Gupta vs. Punjab National Bank and another reported in (2009) 1 SCC 376

(c) Calcutta Dock Labour Board and another vs. Smt.Sandhya Mitra and another reported in (1985) 2 SCC 1

6. Whereas, it is the contention of the learned counsel for the respondents 1 and 2 that though gratuity cannot be attached as per statute,



however, the employee is entitled to withhold the gratuity amount to recover the loss caused by the employee. According to him, the prohibition contained in the statute will apply only against the creditor not against the employee to recover the legal dues. The learned counsel also tried to distinguish that the adjustment is totally different from attachment. According to him, when the employee caused misappropriation or loss to the establishment, the employer is entitled to withhold the gratuity amount to recover the loss caused by the employee. Further, when the plaint was originally rejected by the Trial Court, the same was challenged before this Court in CRP.(NPD).No.3043 of 2021, this Court vide order dated 25.01.2022 has clearly held that the employer has a right to retain the gratuity till such time the legal dues are recovered. Therefore, according to him, the above revision is binding on the parties. Therefore, submitted that the order of the Trial Court does not require interference from the hands of this Court.

7. In support of his submissions, he placed reliance on the following judgments:

(a) M. Azeez vs. Union of India reported in 2012 SCC OnLine Mad 1490

(b) State Farm Corporation of India, Ltd. vs. Regional Labour Commissioner



and another reported in 2007 (3) L.L.N.854

WEB COPY (c) Chairman-cum-Managing Director, Mahanadi Coalfields Ltd vs.

Rabindranath Choubey reported in (2020) 18 SCC 71

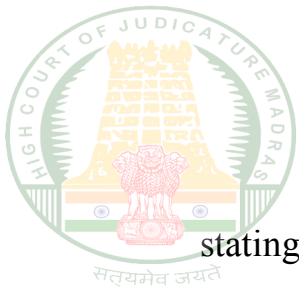
8. Heard both sides and perused the materials placed on record.

9. The revision petitioner was employee of the respondents 1 and 2 company and he was permitted to go abroad by drawing travel advance. The dispute raised by the respondents 1 and 2 as to the bills submitted by the revision petitioner. In this regard, when the proper bills was sought from the revision petitioner, the same have not been filed then and there. According to them, bills submitted by the revision petitioner is not tallying with the travelling advances drawn by him from to time and there was a due of Rs.14,63,290/-. Though it is stated by the learned counsel for the revision petitioner that he has resigned from service, it is the contention of the respondents 1 and 2 that revision petitioner was dismissed from service on 02.03.2019. Though it is pleaded in the plaint as if he was dismissed from service, absolutely, there is not mention whatsoever as to the nature of the disciplinary proceedings initiated against him for such dismissal. Whether



any proceedings concluded in favour of the employer or any amount has been quantified with regard to the alleged due payable by the revision petitioner absolutely there is not materials anywhere placed or pleaded. The entire plaint filed by the plaintiff indicate that dispute with regard to the adjustment of the travel advance and bills submitted by the revision petitioner. The issue raised in the plaint clearly indicate that the amount has not been quantified and debt has not been ascertained to hold that such amount is legally recoverable.

10. It is relevant to note that Section 4 of the Payment of Gratuity Act makes it clear that sub-section (5) is a non-obstante clause of the entire section. Sub section (5) has overriding effect on all other sections of the Act. Even under sub section (6)(i)(a), the gratuity can be forfeited only to the extent of damages or loss caused to the employer. The above makes it clear that in the event of withholding any gratuity for the alleged omission or any act or negligence causing damage to the employer's properties ought to have been ascertained before the employee was terminated for any act or wilful omission or negligence by causing such damages. On perusal of the entire materials in this case particularly plaint filed by the respondent 1 and 2



stating that he was terminated from service, there was no indication as to

what was the alleged loss occurred to the company. Therefore, to comply the

sub section (6)(i)(a) to Section 4 of the Payment of Gratuity Act, it must be

shown that he has been terminated for causing loss. From the entire

pleadings, it would clearly indicate that though he has submitted the

resignation same has not been accepted. Further, it is pleaded in the plaint as

if he was dismissed, but there was no evidence or pleadings to the effect that

there was any disciplinary proceedings initiated which culminated into the

ascertainment of the so-called loss to the employer to plead that employer has

right to withhold the gratuity amount. The entire pleadings and written

statement indicate that the plaintiff claims certain money on the basis of

excess drawal of advance, whereas, the defendant disputed the same.

Therefore, when there are disputed facts which has not culminated, at this

stage, the employer has no right to withhold the gratuity. Therefore, the

contention of the learned counsel that they have right to withheld the gratuity

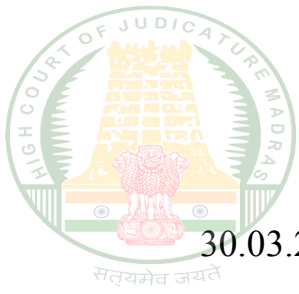
cannot be countenanced. Therefore, the contention of the learned counsel for

the respondents 1 and 2 that they have right to withhold the gratuity cannot

be countenanced. The Controlling Authority has passed order in this regard

directing the respondents 1 and 2 to pay the gratuity amount by order dated

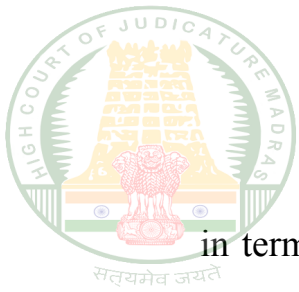
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30.03.2021, the same has not been challenged by the respondents 1 and 2, whereas, applications have been filed before the Trial Court.

11. Though, the learned counsel for the respondents 1 and 2 has brought to the notice of this Court about the judgment of the judgment of the Delhi High Court in the case of State Farm Corporation of India, Ltd. vs. Regional Labour Commissioner and another reported in 2007 (3) L.L.N.854. On careful perusal of the said judgment, it would indicate that excess amount has been to the employee, therefore, the amount admittedly excessively paid permitted to be recovered from the gratuity amount. Such judgment cannot be applied to the present case.

12. Similarly, the judgment of this Court made in W.P.No.8450 of 2012 in the case of M.Azeez vs. Indian Bank, wherein, the regulations of the Indian Bank were challenged in writ petition. The regulation restricted the payment of gratuity when the judicial or departmental proceedings are continued. This Court further held that the regulations framed by virtue of Indian Bank by virtue of the power conferred on it under the Banking Companies Nationalization Act. The regulations framed by the Indian Bank



in terms of the Nationalization Act is the law within the meaning of Article 13 of the Constitution. Only in that context, the writ petition was dismissed.

Therefore, the above judgment also cannot be applied for the present case.

13. In the other judgment passed by Bench of three Hon'ble Judges of the Hon'ble Supreme Court in the case of Chairman-cum-Managing Director, Mahanadi Coalfields Ltd vs. Rabindranath Choubey reported in (2020) 18 SCC 71, wherein, it is held that withholding of gratuity after superannuation because of pendency of disciplinary proceedings is permissible depending on the relevant rules governing the service conditions of an employee. It would be against public policy to permit an employee to go scot-free after collecting various service benefits to which he is not entitled, and the event of superannuation cannot come to his rescue and would amount to condonation of guilt. Further, the Hon'ble Supreme Court has adverted to Section 4(6) of the Payment of Gratuity Act and held that in the case of service of employee was terminated for wilful omission or negligence causing damage or loss to, or destruction of property belonging to employer, gratuity shall be forfeited to extent of damage or loss so caused under Section 4 (6)(a). Further, even in absence of loss or damage, gratuity can be wholly or partially forfeited under



Section 4(6)(b) in case of termination of service for disorderly conduct or act of violence or offence involving moral turpitude committed during the course of employment. Admittedly, in this case, there is no materials placed to show that disciplinary proceedings have been initiated and concluded ascertaining the nature of damages or loss, therefore, when no disciplinary proceedings initiated against the revision petitioner in this regard and the amount has not been quantified, the employer has no right to retain the Gratuity amount.

14. Section 13 of the Payment of Gratuity Act makes it clear that no gratuity payable under this Act [and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under section 5] shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court. Similarly, there is a bar for attachment under Section 60 (1) (g) of the Code of Civil Procedure.

15. It is relevant to note that the Hon'ble Supreme Court in the case of Radhey Shyam Gupta vs. Punjab National Bank and another reported in (2009) 1 SCC 376 has held as follows:



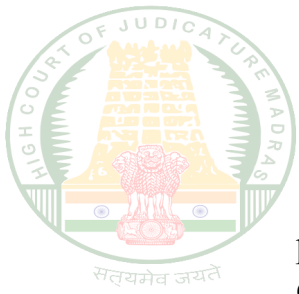
*"33. However, we are also of the view that having regard to proviso (g) to Section 60(1) of the Code, the High Court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank. The High Court also erred in placing the onus on the appellant to produce the Matador in question for being auctioned for recovery of the decretal dues. In other words, the High Court erred in altering the decree of the trial court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into fixed deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in *Jyoti Chit Fund case* [(1976) 3 SCC 607] has been considerably watered down by later decisions which have been indicated in para 22 hereinbefore and it has been held that gratuity payable would not be liable to attachment for satisfaction of a court decree in view of proviso (g) to Section 60(1) of the Code."*

17. In *Calcutta Dock Labour Board and another vs. Smt. Sandhya Mitra* and another reported in (1985) 2 SCC 1, the Hon'ble Supreme Court has held as follows:

" 6. We may point out that by Central Act No. 25 of 1984 Section 13 has been amended with effect from July 1, 1984 and the amended section reads thus:

"No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under Section 5 shall be liable to attachment in execution of any decree or order of any civil, revenue, or criminal court."

In the absence of any notification within the meaning of Section 5 of the Act the amendment is not relevant for consideration. Section 14 has overriding effect and Section 13 gives total immunity to gratuity from attachment. The preamble of the Act clearly indicates the legislative intention that the Act sought to



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provide a scheme for payment of gratuity to all employees engaged in, inter alia, ports and under this Act gratuity was payable to workers like Md. Safiur Rehman. The gratuity which was payable to him squarely came within the purview of the Act and, therefore, became entitled to immunity under Section 13 thereof."

18. Therefore, merely, filing the suit for recovery of certain amounts based on the so-called excess advance and claim not been crystalised, now, it cannot be said that based on the said suit, employer is entitled to withhold the gratuity. It is relevant to note that even assuming that the respondents 1 and 2 succeed in the suit and decree being passed in their favour, still decree cannot be enforced as against the gratuity. Since, there is a total bar not only under Code of Civil Procedure for attachment under Section 60 (1) (g) but also under Section 13 of Payment of Gratuity Act. Therefore, this Court is of the view that when the Controlling Authority had already passed the order directing the payment of gratuity amount, the respondents 1 and 2 has not challenged that order, without filing appeal under the relevant statute, interim applications are filed before the Trial Court in the pending suit, thus, the order of the Controlling Authority cannot be questioned. Therefore, without there being any disciplinary proceedings and amount being ascertained, merely, on the basis of the suit pending for unascertained claim, the employer cannot withhold the gratuity. Therefore, the Trial Court ought not to have



directed the gratuity amount payable by the employer namely the respondents

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1 and 2 to be deposited in the Court. Such view of the matter, the impugned order is liable to be set aside and the same is hereby set aside. The Trial Court is directed to refund the amount to the revision petitioner, on application, without any further delay. In the event, the respondents 1 and 2 obtains a decree in their favour, it is for them to recover the amount in the manner known to law.

19. Accordingly, this revision stands allowed. No costs. Consequently, connected miscellaneous petition stands closed.

04.07.2025

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Internet : Yes/No

Index : Yes/No

Neutral Citation : Yes/No

To

1. The District Judge

District Court No.II

Kancheepuram

2.The Section Officer

VR Section, Madras High Court

N.SATHISH KUMAR, J.



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