



W.P(MD)No.18902 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2025

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.18902 of 2020

and

W.M.P.(MD)No.15835 of 2020

The Management,
The Rathna Fire Works Company,
No.312/42C,
P.K.S.A.Arumuga Nadar Salai,
Sivakasi – 626 189,
Virudhunagar District.

... Petitioner

Vs

A. Seenivasan

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari or any other appropriate writ or order or Direction particularly in the nature of writ calling for the records pertaining to the impugned order passed by the Additional Commissioner of Labour Madurai (Appellate Authority under the Payment of Gratuity Act, 1972) in P.G.A.No.02/2020 dated 16.09.2020 partly modifying the order passed by the Deputy Commissioner of Labour Madurai (Controlling Authority under the Payment of Gratuity Act 1972) in P.G.No.28/2017 dated 22.07.2019 and quash the same.



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For Petitioner : Mr.M.Saravanan
For Respondent : Mr.D.Sivaraman
Legal Aid Counsel

ORDER

The petitioner a Fire Works Company has filed this writ petition as against the orders passed by the authority under the Payment of Gratuity Act.

2.The respondent, an employee of the petitioner company has filed an application before the Controlling Authority claiming Rs.65,925/- as arrears of gratuity liable to be paid by the petitioner Company to the respondent by filing an application in P.G.No.28 of 2017 and the same was allowed by the controlling authority by order dated 22.07.2019 directing the petitioner Management to pay a sum of Rs.65,986/- as gratuity to the respondent. Aggrieved by the order, dated 22.07.2019, the petitioner Company preferred an appeal before the appellate authority under the Gratuity Act in P.G.A.No.2 of 2020. The appellate authority considered the case of the petitioner by considering the documents relied by them in Ex.R10 and Ex.R11 and has reduced the quantum of gratuity awarded by the Controlling Authority from Rs.65,986 to Rs.50,309/- by



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adjusting the amount of Rs.15,677/- paid by the petitioner Company to the respondent under Ex.R10 and Ex.R11. As against the order of the appellate authority, dated 16.09.2020, this writ petition has been filed by the Management.

3.The learned Counsel for the petitioner submitted that the respondent has retired from service even in the year 2007. However, he has been reinstated in the year 2010. Though the gratuity is liable to be paid on attaining the superannuation, the gratuity has already been paid in the year 2014 - 2015 on compassionate ground vide Ex.R10 and Ex.R11. However, without considering this payment of gratuity under Ex.R10 and Ex.R11, the controlling authority as well as the appellate authority have passed the orders as against the Management. The learned Counsel has also took yet another plea that the respondent who was examined as PW1 admitted this payment of gratuity vide Ex.R10 and Ex.R11 and also submitted before the original authority that he is due of one year gratuity alone. However, this was also not considered by the authority. He has also taken another plea that the petitioner Company is a partnership firm established in the year 2004 and was dissolved and then, a new partnership firm was established from 01.01.2010 and

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therefore, the present Company is not liable for the payment of gratuity for the arrears, if any, due to the respondent by the earlier partnership firm.

4.The petitioner has taken two stands. One is that the petitioner Company is a partnership firm established by three partners, namely S.S.Sankanan, M.Thangam Rajessi and S.V.Pradeep Kumar. Later, S.S.Mohan was also inducted as a partner. This partnership firm was dissolved in the year 2009 and a new partnership firm was established in the year 2010. Therefore, according to them they are not liable to pay the gratuity amount for the liabilities of the previous partnership firm. However, they have taken a plea that the gratuity amount has already been paid to the employee vide Ex.R10 and Ex.R11. This according to them is the full and final amount due to the employee. The case of the petitioner Management is that the respondent retired from the service in the year 2007, inducted in the year 2010 on compassionate ground and they have paid the gratuity amount vide Ex.R10 and Ex.R11 for the year 2014 and 2015. The stands taken by the petitioner are contradictory to each other.



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5.The learned Counsel appearing for the respondent submitted that the writ petitioner has filed a reply statement before the controlling authority contending that the partnership firm i.e., M/s. Rathna Fireworks was originally consisted of three partners and the same was dissolved on 30.12.2009. Pursuant to which, the benefits of the workman were settled and from 01.01.2010, the firm started functioning with different partnership consisting of S.S.Mohan and M.Thangam Rajessi. However, out of four partners, one partner/S.S.Sankanan died, one S.V.Pratheep Kumar retired from partnership and the partnership was continued from 01.01.2010 with two partners i.e., S.S.Mohan and his wife Thangam Rajessi. He further submitted that the employer has not denied the employment of the respondent from 01.04.2001 to 03.11.2015 in the petitioner Management. The learned Counsel by referring to the Rule 3(3) of the Payment of Gratuity (Central) Rules submits that Rule 3(3) mandates the employer to submit notice in Form “C” before 60 days of intending closure of the business. No such notice was ever submitted by the employer in this case. The learned counsel has also relied on the orders passed by the authority in the interlocutory application filed by the respondent seeking their documents from the management. However, the management has not produced any documents before the authority and



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therefore an adverse inference has been taken as against the Management. The learned Counsel submitted that denying statutory right of an employee to get gratuity is not only an unfair labour practice, but it is also a punishable offence under Section 9(2) of the Payment of Gratuity Act. The learned Counsel has also relied on Section 114 (g) of the Indian Evidence Act (Section 119(g) of Bhartiya Sakshya Adhiniyam, 2023) and submitted that when the petitioner has failed to produce the documents as directed by the authority, an adverse presumption has to be drawn as against the petitioner that he has withheld the evidence in his possession. The learned Counsel has also relied on the judgement of the Hon'ble Supreme Court rendered in the cases of *Union of India Vs. Ibrahim Uddin* reported in *2012 (8) SCC 148* and *Sri Ram Industrial Enterprises Limited Vs. Mahak Singh and others* reported in *2007 (4) SCC 94*.

6.This Court considered the rival submissions made on either side and perused the materials placed on record.

7.This writ petition is arising out of the orders of the Controlling Authority under the Payment of Gratuity Act, which was modified by the



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Appellate Authority. The respondent workman has filed the application before the Controlling Authority claiming gratuity for the period of his service from 01.04.2001 to 03.11.2015 (15 years). The petitioner / employer has not denied the employment of the respondent from 01.04.2001 to 03.11.2015 in M/s.Rathna Fire Works. However, the petitioner claim that the partnership firm of M/s.Rathna Fire Works was dissolved on 30.12.2009 and reconstituted from the year 2010.

8.It appears that M/s.Rathna Fire Works is a partnership firm established by three persons and later, a fourth person was also inducted as a partner. The partnership firm was reconstituted following the demise of a partner, one Sankan and the retirement of another partner in the year 2010. The remaining two partners, namely, S.S.Mohan and his wife, M.Thangam Rajessi, have continued right from the start and even after the alleged reconstitution in the year 2010.

9.As rightly pointed out by the learned Counsel for the respondent, the intimation of the closure of business as required under Rule 3(3) of the Payment of Gratuity (Central) Rules has not been made in Form 'C' before 60 days of the intending closure of the business. The Gratuity



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Authority has also directed the petitioner to produce the documents with regard to the dissolution and also for the formation of a new partnership firm and for the alleged settlement of benefits to its employees. However, the same were not produced. Therefore, adverse presumption has to be drawn as against the petitioner Management.

10.The Hon'ble Supreme Court in the case of Union of India v. Ibrahim Uddin reported in **2012 (8) SCC 148** has held as follows:

“Generally, it is the duty of the party to lead the best evidence in his possession, which could throw light on the issue in controversy and in case such material evidence is withheld, the Court may draw adverse inference under [Section 114\(g\)](#) of the Evidence Act notwithstanding, that the onus of proof did not lie on such party and it was not called upon to produce the such evidence”

11.In Sri Ram Industrial Enterprises Limited Vs. Mahak Singh and others, it was held as under:

“When the best evidence having been withheld by the employer, the High Court was entitled to draw adverse presumption against the employer”



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12.In view of the above ratio and the discussions supra, this Court is not inclined to interfere with the order dated 16.09.2020. Accordingly, the writ petition is dismissed with liberty to the respondent to withdraw the amount already deposited by the Management before the controlling authority. No costs. Consequently, connected miscellaneous petition is closed.

13.This Court places its appreciation to Mr.D.Sivaraman, learned Counsel who assisted this Court as a Legal Aid Counsel.

14.The Leagal Aid Services Authority attached to this Bench is directed to pay a remuneration of Rs.15,000/- to Mr.D.Sivaraman.

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Internet :Yes
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NCC :Yes/No
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