



W.P.(MD)No.21989 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.21989 of 2018
and W.M.P.(MD)No.19940 of 2018

Needle Industries (India) Private Limited,
Yellanhalli Post, Nilgris 643 243,
Represented by its Director – Human Resources

... Petitioner

Vs.

1.The Additional Labour Commissioner,
(Appellate Authority Under the
Payment of Gratuity Act), Madurai.

2.The Assistant Labour Commissioner,
(Authority Under the Payment of Gratuity Act),
Madurai.

3.Mr.R.Bojan

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a
Writ of Certiorari to call for the records connected with P.G.A.No.25 of 2018 on



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the file of the Appellate Authority (Additional Labour Commissioner) under the Payment of Gratuity Act, Madurai and quash the order dated 08.10.2018 made therein.

For Petitioner : Mr.Sanjay Mohan for
M/s.S.Ramasubramaniam Associates

For Respondents : Mr.S.Shanmugavel,
Addl. Govt. Pleader for R1 & R2
Mr.T.Ravichandran for R3

ORDER

The brief facts that are relevant for disposal of this Writ Petition are as under:

The value of the dispute that arise for consideration in this Writ Petition is Rs.59,573/- together with interest at the rate of 10% with effect from 09.01.2006 i.e., the date of superannuation of the respondent No.3 herein towards the balance amount of gratuity as claimed by the respondent No.3. The petitioner



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herein is a Private Limited Company registered under the Companies Act and has factory at Nilgiris engaged in manufacturer of Needles. The third respondent herein while working in the petitioner company was dismissed from service by an order dated 04.06.1997 on certain misconduct. Aggrieved by the said dismissal order, the third respondent raised an Industrial Dispute vide I.D.No.92 of 2000 on the file of the learned Labour Court, Madurai. The learned Labour Court, Madurai by its award dated 19.03.2008 allowed the said ID revoking punishment of dismissal from service and ordering for payment of 25% of the monthly wages for the period during which the third respondent was out of service pursuant to the punishment in question till the date on which the petitioner attained the age of superannuation. The said order was passed in the context of the fact that the respondent No.3 has already attained the age of superannuation and therefore, the question of reinstatement of the third respondent into service on setting aside the punishment of dismissal from service does not arise.



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2. Aggrieved by the said award dated 19.03.2008, the petitioner herein filed W.P.No.3362 of 2008 and the said Writ Petition was disposed of by an order dated 16.03.2012, directing payment of lump sum compensation of Rs.2 lakhs to the respondent No.3 herein. Aggrieved by the same, the petitioner filed W.A.(MD)No.246 of 2012 and the said Writ Appeal was originally allowed by an order dated 22.06.2012 setting aside the order of the learned Single Judge dated 16.03.2012 and restoring the award passed in I.D.No.92 of 2000. It was thereafter, the matter was listed under the caption “for being mentioned” and during the course of hearing, it was agreed by the learned counsel on either side that the petitioner herein is liable to pay backwages at the rate of 25% in terms of the award and the same works out to Rs.1,40,142.85P and in the light of the same, the learned Division Bench permitted the petitioner and respondent No.3 herein to withdraw Rs.1 lakh each out of the amount deposited in the credit of I.D.No.92 of 2000 and left it open to respondent No.3 herein to workout his remedy for further claims by filing claim petition before the Labour Court. It was pursuant thereto, the respondent No.3 herein filed C.P.No.78 of 2013 claiming for certain backwages. However, the said C.P. Was dismissed by the



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learned Labour Court by an order dated 16.11.2018 in the light of the observations made by the learned Division Bench while disposing of W.A. (MD)No.246 of 2012 on the ground that the learned counsel on either side agreed on the quantum of backwages at the rate of Rs.1,40,142.85P. Simultaneously, the third respondent also made a claim for payment of balance gratuity amount before respondent No.2 the Controlling Authority under “the Payment of Gratuity Act, 1972” (hereinafter referred to as “the Act 1972”) vide P.G.No.257 of 2016. In the said proceedings, though notice is served on the petitioner herein, the petitioner failed to appear nor filed any reply contesting the claim made by respondent No.3 herein. The respondent No.3 herein made a claim stating that his last drawn monthly salary is Rs.7,800/- and thereby claimed the gratuity for the entire service of 35 years rendered by respondent No.3 as Junior Clerk. The respondent No.2, by an order dated 10.01.2017 having examined the claim of respondent No.3, arrived at a conclusion that respondent No.3 is entitled for an amount of Rs.1,57,500/- towards gratuity and after deducting the amount of gratuity to the tune of Rs.97,927/- already paid on 15.11.2013, ordered for payment of balance amount of Rs.59,573/- together with



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interest at 10% from the date of expiry of 30 days from the date of retirement of the respondent No.3 from service.

3. It was thereafter, the petitioner herein filed an application to set aside the *ex-parte* order dated 10.01.2017 and to reconsider the claim made by the respondent No.3. The said application was numbered as P.G.I.A.No.98 of 2017 and when the same was taken up for consideration, once again there was no representation for the petitioner herein, who filed the said P.G.I.A.No.98 of 2017 and in view of the same, the said IA was rejected by the respondent No.2 herein confirming the order passed in P.G.No.257 of 2016. However, the respondent No.2, once again calculated the amount of gratuity that is due and payable to the respondent No.3 by its order dated 26.02.2018. It was thereafter, the petitioner herein filed an appeal before the respondent No.1 against the order dated 26.02.2018 alone and the same was numbered as P.G.A.No.25 of 2018 before the respondent No.1 appellate authority and the said appeal was rejected by an order dated 08.10.2018. It is aggrieved by the said order dated 08.10.2018 passed in P.G.A.No.25 of 2018 and the order dated 26.02.2018, the petitioner has filed the



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present Writ Petition before this Court. The amount of gratuity that was ordered to be paid under orders dated 10.01.2017 was already deposited by the petitioner with the respondent No.2 Controlling Authority before filing P.G.A.No.25 of 2018 and the same is lying with the respondent No.2.

4. This Court while entertaining the Writ Petition, by an order dated 29.10.2018 has granted an interim order and the operative portion of the said order reads as under:

“4.Since it is an ex-parte order, as seen from the order of the High Court in W.P.No.3362 of 2008, there appears to be a difference in the monthly wages, I am of the view that the amount per se shall not be disbursed at this state, as the management remained exparte. Certainly, there will be indulgence shown to the employee and hence this Court directs the Controlling Authority to deposit the entire award amount deposited before him in P.G.No.257 of 2016 pursuant to the orders of this Court, dated 16.3.2012 shall be deposited in a nationalized bank to be remained in Fixed Deposit till the disposal of the Writ Petition and the interest on the said amount shall be remitted to Petitioner's account by the bank through NEFT/RTGS periodically



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5. Heard Mr.Sanjay Mohan, learned counsel representing M/s.S.Ramasubramaniam Associates for the petitioner, Mr.S.Shanmugavel, learned Additional Government Pleader for respondents 1 and 2 and Mr.T.Ravichandran, learned counsel for respondent No.3.

6. The learned counsel for the petitioner contended that notwithstanding the fact that the petitioner failed to contest the matter effectively before the authorities under the Act 1972, in the light of the admission made by the learned counsel for respondent No.3 herein in W.A.(MD)No.246 of 2012, accepting an amount of Rs.1,40,142.85P as equivalent to 25% of backwages for the period during which the respondent No.3 was kept out of employment because of the punishment of dismissal from service, the last drawn wages of the petitioner would work out to Rs.5,424/- per month if derived from the admitted last drawn



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wages and therefore, it is not open for the respondent No.3 to claim Rs.7,800/- as last drawn salary and to make a claim for payment of gratuity by treating Rs. 7,800/- as last drawn wages. He also further contended that there cannot be two last drawn wages, one for the purpose of calculation of backwages and one for the purpose of payment of gratuity. He also further contended that the claim made by the respondent No.3 for enhanced backwages over and above Rs.1,40,142.85P by filing a claim petition in C.P.No.78 of 2013 before the labour Court concerned was also rejected by order dated 16.11.2018 and therefore, it is not open for respondent No.3 to make a claim otherwise and to consider Rs.7,800/- as last drawn salary. Thus, it is the contention that the respondent No.3 has suppressed about the last drawn salary and made a false claim before the respondent No.2 and therefore, such an issue can be raised before this Court for the first time in the present Writ Petition under Article 226 of the Constitution of India.

7. On the other hand, Mr.T.Ravichandran, learned counsel appearing for respondent No.3 contended that the original order passed by the Controlling



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authority respondent No.2 ordering for payment of balance amount of gratuity by an order dated 10.01.2017 has not been challenged by the petitioner so far and therefore, the petitioner is not entitled for any relief in the present Writ Petition. According to the learned counsel, the order dated 26.02.2018 is only an order reiterating the order dated 10.01.2017 after having considered the P.G.I.A No.98 of 2017 filed by the petitioner to set aside the *ex parte* order dated 10.01.2017. Further he also contended that in the absence of any appeal being filed against the order dated 10.01.2017, the appeal filed in P.G.A.No.25 of 2018 against the order dated 26.02.2018 is of no effect on the original order dated 10.01.2017.

8. This Court has carefully considered the submissions made on either side.

9. As already noted above, the petitioner herein failed to contest the matter before the respondent No.2 Controlling Authority either by filing appropriate reply or by entering appearance. As a result, the Controlling Authority was



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constrained to accept the contentions raised by the respondent No.3 with regard to the last drawn salary of the respondent No.3 and proceeded to pass an order concluding that the last drawn salary of the respondent No.3 as Rs.7,800/- per month. Though the petitioner herein filed an application to set aside the *ex parte* order dated 10.01.2017 by filing P.G.I.A.No.98 of 2017, the petitioner failed to prosecute the said application as well and as a result, the respondent No.2 was constrained to reject the said IA as well. Even in the appeal filed before the respondent No.1 in P.G.A.No.25 of 2018, the petitioner herein failed to place any material to contradict the claim made by the respondent No.3 and as a result, the appellate authority also confirmed the order passed by the respondent No.2 .

10. Though an ample opportunity was afforded to the petitioner to contest the claim made by the respondent No.3 before the respondent No.2 Controlling Authority initially as well as on filing an application to set aside the *ex parte* order, the petitioner failed to avail the said opportunity. In the result, practically, there was no contest on the claim made by the respondent No.3 for payment of the balance amount of gratuity. The contention that the last drawn salary of the



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respondent No.3 can be derived from 25% of the backwages payable to the respondent No.3 in terms of the order passed in I.D.No.92 of 2000 and that the respondent No.3 cannot claim Rs.7,800/- as last drawn salary cannot be accepted for the simple reason that the backwages are calculated basing upon the last drawn wages i.e, the wages that are payable to the respondent No.3 as on the date of his removal/dismissal from service.

11. The learned Labour Court by its award dated 19.03.2008 having revoked the order of punishment of removal from service refrained from ordering for reinstatement only on the ground that the respondent No.3 has already attained the age of superannuation. But for the fact that the respondent No.3 has attained the age of superannuation, the Labour Court would have ordered for reinstatement of the respondent with backwages at 25% till the date of reinstatement. In the instant case, the learned Labour Court awarded backwages at the rate of 25% till the date of superannuation of the respondent No.3. Once the respondent No.3 was granted backwages may be at 25%, it is implied that the respondent No.3 was granted the benefit of continuity of service



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from the date of dismissal/removal from service till the date of attaining the age of superannuation. Even if it is assumed that the third respondent's last drawn salary as on the date of dismissal from service was Rs.5,424/- as calculated by the petitioner, the same would not remain static from 04.06.1997 ie., the date of dismissal from service till the date on which the petitioner attained the age of superannuation in the year 2006. If the service from 04.06.1997 till the year 2006 is taken into consideration, the salary of the respondent No.3 would have increased substantially and it is only basing upon the same, the respondent No.3 appears to have claimed Rs.7,800/- as his last drawn salary for the purpose of calculation of gratuity.

12. No doubt, the claim made by the respondent No.3 for balance of backwages by treating Rs.7,800/- as his last drawn salary was negated by the learned Labour Court in C.P.No.78 of 2013, but the reason for negating the said claim is that the learned counsel, who appeared for respondent No.3 herein in W.A(MD)No.246 of 2012 has accepted Rs.1,40,142.85P as the amount equivalent to 25% of the backwages payable to the respondent No.3 in terms of



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the award passed in I.D.No.92 of 2000. But, the learned Division Bench in the order dated 22.06.2012, passed in W.A.(MD)No.246 of 2012 granted liberty to the respondent No.3 herein to workout the remedy by filing a claim petition before the Labour Court in respect of payment of earn leave wages etc. Therefore, the reasoning assigned by the learned Labour Court in the order passed in C.P.No.78 of 2013 cannot be accepted and the same would not come in the way of deciding the entitlement of respondent No.3 for payment of gratuity. The learned Labour Court in the said order lost sight of the liberty granted by the learned Division Bench while disposing of Writ Appeal.

13. In the light of the above, it is evident that the learned Division Bench has not dealt with the aspect of last drawn salary of the respondent No.3 in the order dated 22.06.2012 nor the said order dealt with the issue with regard to payment of gratuity to the respondent No.3 herein. Therefore, the contention of the learned counsel for the petitioner that the last drawn salary of the respondent No.3 is to be derived only from the quantum of 25% backwages as agreed before the learned Division Bench cannot be accepted. Even if there is any such



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concession made on behalf of the respondent No.3 before the learned Division Bench that will not have the effect of taking away the right of the respondent No. 3 in payment of gratuity in terms of the provisions contained in the Act 1972, which is a social welfare and beneficiary legislation. As a matter of fact there is no concession or waiver made by the petitioner to give up the claim for payment of gratuity in terms of the provisions contained in the Act, 1972.

14. In the light of the above, this Court does not find any merit in this Writ Petition and the same is accordingly dismissed.

15. As already noted above, this Court while entertaining the Writ Petition, passed an interim order dated 29.10.2018 directing the respondent No.2 to keep the entire amount of gratuity in a fixed deposit and further directed the respondent No.2 to remit the interest accrued thereon periodically to the petitioner herein by RTGS/ NEFT, as a consequence of dismissal of this Writ Petition, the petitioner is liable to refund the entire amount of interest received by the petitioner pursuant to the interim order passed by this Court and deposit

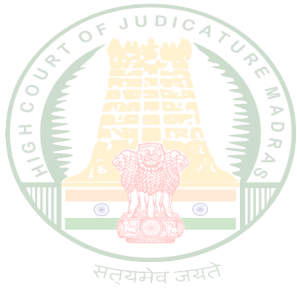


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the same with the respondent No.2. Accordingly, the petitioner is directed to deposit the entire amount of interest received by the petitioner pursuant to the interim order dated 29.10.2018 passed by this Court before the respondent No.2 to the credit of P.G.No.257 of 2016 within a period of four weeks from the date of receipt of a copy of this order. On deposit of the said amount, the respondent No.3 is permitted to withdraw the entire amount lying in the deposit to the credit of P.G.No.257 of 2016 without furnishing any security.

16. As already noted above, the value of the dispute involved in the present Writ Petition is Rs.59,573/- and the petitioner herein having failed to contest the matter at the appropriate stage, filed the present Writ Petition depriving the respondent No.3 herein of his legal entitlement for the past more than 8 years and in view of the fact that all the contentions raised on behalf of the petitioner are found to be frivolous and wholly unsustainable, this Court is of the considered view that it is a fit case where the petitioner should be mulcted with exemplary costs for having wasted the valuable time of this Court. Accordingly, this Writ Petition is dismissed with costs of Rs.10,000/- payable to



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the respondent No.3 within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

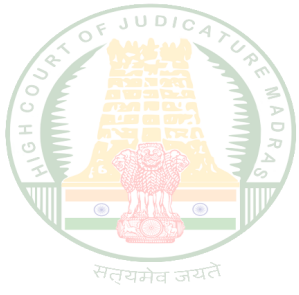
25.02.2025

Neutral Citation: Yes / No
Index : Yes / No

vsm

To

- 1.The Additional Labour Commissioner,
(Appellate Authority Under the
Payment of Gratuity Act), Madurai.
- 2.The Assistant Labour Commissioner,
(Authority Under the Payment of Gratuity Act),
Madurai.



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MUMMINENI SUDHEER KUMAR, J.

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