

Ramamoorthy N. Vs. Deputy Commissioner of Labour and ors.

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Court : Chennai

Decided On : Mar-03-1999

Reported in : [2000(84)FLR967]; (2000)ILLJ1142Mad

Judge : Y. Venkatachalam, J.

Acts : [Payment of Gratuity Act, 1972](#) - Sections 2; Payment of Gratuity (Amendment) Act, 1984

Appeal No. : W.P. No. 18226/1990

Appellant : Ramamoorthy N.

Respondent : Deputy Commissioner of Labour and ors.

Advocate for Def. : R. Aruljothi, Adv. for Respondent No. 1, ;V. Subramaniyan, Adv. for Respondent No. 2 and ;Karthik, Adv. for ;I.S. Gopalan, Adv. for Respondent No. 3

Advocate for Pet/Ap. : S. Ayyathurai, Adv.

Disposition : Petition dismissed

Judgement :

Y. Venkatachalam, J.

1. Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition seeking for a writ of certiorari to call for the records from the respondent relating to his order in P.G.A. No. 28 of 1980, dated September 17, 1990, and to quash the same.

2. In support of the writ petition, the petitioner herein has filed an affidavit wherein he has narrated all the facts and circumstances that forced him to file the present writ petition and requested this Court to allow the writ petition as prayed for. Per contra, the third respondent has filed a counter- affidavit rebutting all the material allegations levelled against them, one after the others, and ultimately requested this Court to dismiss the writ petition for want of merits.

3. Heard the arguments advanced by learned Counsel appearing for the parties. I have perused the contents of the affidavit and the counter-affidavit together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various points raised by learned Counsel appearing for the rival parties during the course of their arguments.

4. In the above circumstances of the case the only point that arises for consideration in this writ petition is, as to whether there are any valid ground to allow this writ petition or not.

5. The short facts of the case of the petitioner herein, as seen from the affidavit, are as follows:

This writ petition has been filed against the order of the first respondent dismissing his claim for gratuity from respondents Nos. 2 to 5. The petitioner joined the service of the Gobald Motor Service (P) Ltd. in September 1939. The said company was bifurcated into units called A and B. After the bifurcation, his service was transferred to the A unit comprising the three transport undertakings owned by respondents Nos. 2 to 4. In Clause 17(a) of the arbitration judgment dated June 14, 1970, it was stated that gratuity for the employees of the Gobald Motor Services shall be borne by the allottees, referred to in Schedule A-1 (i.e., Rajendran). Respondents Nos. 3 and 4 are brothers of the second respondent. There were further sub-division between them in the year 1980, and despite the

sub-division, the petitioner had been serving under all the three of them as the buses were jointly managed by them, and his services were terminated on October 1, 1985, but he was not paid gratuity. Since respondents Nos. 2 to 4 refused to pay gratuity, the petitioner herein filed an application before the controlling authority claiming gratuity of Rs. 33,561 for 46 years of service under the respondents. Before the controlling authority, the petitioner gave evidence and also examined two witnesses on his side. On the side of respondents Nos. 2 to 5, no one was examined. After hearing the parties, the controlling authority dismissed his claim for gratuity by an order dated May 3, 1989. Aggrieved by the order of the controlling authority, the petitioner filed an appeal before the first respondent and he also, by the impugned order dated September 7, 1990, dismissed his appeal and hence this writ petition.

6. Challenging the impugned order of the first respondent, it is contended by the petitioner herein that the first respondent's conclusion that the petitioner was employed by the second respondent up to June, 1983, and thereafter he was not engaged in the work connected with the transport undertaking of respondents Nos. 2 to 4, is perverse. His grievance is that the first respondent has not at all considered his evidence in proper perspective. According to him, after 1980 there was no further sub-division between respondents Nos. 2 to 5 till his services were terminated on October 1, 1985, and he would do whatever work he was directed to do by respondents Nos. 2 to 4, that the fact that he was asked by the third respondent to collect the rental dues does not mean that he was not employed by all the three respondents, namely, respondents Nos. 2 to 4. The first respondent has failed to note that the rent was common property of respondents Nos. 2 to 4 and that the petitioner had to do whatever work he was directed to do. It is also contended by the petitioner herein that even assuming, without admitting, that he was employed by respondents Nos. 2 to 4 in connection with the work relating to motor undertakings only up to June, 1983, the first respondent ought to have allowed his appeal and directed respondents Nos. 2 to 4 to pay gratuity. It is also contended by the petitioner herein that the conclusion of the first respondent that he was discharging functions of managerial nature or administrative nature is perverse, and that though he was called manager, he was doing only duties of clerical nature, and not of managerial nature. It is his categorical contention that he

has done all the works only on the direction of respondents Nos. 2 to 4 and this cannot be taken to mean that he was discharging duties of managerial nature. According to the petitioner, he did not do any work of managerial nature and he had no power to appoint or punish or transfer anyone of the employees of respondents Nos. 2 to 4 and also he did not have any power even to issue cheques and he could not do without authority of respondents Nos. 2 to 4 and the designation was only on paper and in reality he did not have any managerial powers. It is his contention that the respondents had not let in any oral evidence to prove their contention that he was doing works of managerial nature and in the absence of any such evidence, the first respondent ought to have rejected the contention of respondents Nos. 2 to 4, that he was doing functions of managerial nature. The petitioner also contended that the conclusion of the first respondent that he received Rs. 20,000 towards gratuity, is perverse, and what he received was only arrears towards wages. It is also his case that when he signed the voucher for Rs. 5,000 it was blank except for the amount and according to him that voucher for Rs. 5,000 alone would have been subsequently converted into a receipt for gratuity and, assuming without admitting, that the receipt was for gratuity, the first respondent ought to have directed respondents Nos. 2 to 4 to pay the balance of gratuity and in any event the failure on the part of the first respondent to compute gratuity, vitiates the impugned order. It is the further case of the petitioner that if he had been paid gratuity, then the respondents would have stated so before the controlling authority, that the first respondent ought to have seen that in the absence of clear evidence from respondents Nos. 2 to 4 to show that he was paid gratuity, respondents Nos. 2 to 4 are bound to pay gratuity, and that when there is no evidence to show that the alleged amount of Rs. 20,000 represented gratuity, the respondent cannot say that gratuity was paid to him. Therefore, according to the petitioner, thus the order of the first respondent is perverse and illegal.

7. Per contra, it is the contention of the respondents that the petitioner herein was employed in the Gobald Motor Service (P) Ltd. from 1939. In the year 1976, there was a partition in the family and while dividing the assets of the family, Gobald Motor Service (P) Ltd. was treated as two units and one of the two units was allotted to respondents Nos. 2, 3 and 4. After the partition, respondents Nos. 2, 3

and 4 were running the undertaking. The petitioner was working as a manager for the transport undertaking allotted to respondents Nos. 2, 3 and 4. In the year 1980, there was a division among respondents Nos. 2, 3 and 4 and at that time the service of the petitioner was taken over by the second respondent. In June, 1983, the petitioner left the services of the second respondent and he approached the third respondent for employment. The third respondent took him as a personal assistant for collection of rents of the shops belonging to him. The petitioner left the services of the third respondent in September, 1985. It is further stated by the respondent that when division between respondents Nos. 2, 3 and 4 was to take place, sometime in 1979, the petitioner wanted to be relieved of his services and his account be settled. It was then agreed that he should be paid a sum of Rs. 20,000 towards gratuity and among respondents Nos. 2, 3 and 4 the understanding was that while respondents Nos. 3 and 4 would contribute Rs. 5,000 each, the second respondent who was to retain the petitioner in service, should pay Rs. 10,000 and it is not in dispute that the petitioner received Rs. 20,000, which according to the third respondent was towards gratuity. It is the categorical case of the respondents that the petitioner, was working in the transport undertaking only till 1983. In September, 1987, the petitioner preferred a claim for gratuity on the ground that he had put in 46 years of service between September 1, 1939, and October 1, 1985, and a sum of Rs. 33,561 was due. On May 3, 1989, the controlling authority passed orders holding that the petitioner was attending to managerial and administrative functions of the transport undertaking, that he had received a sum of Rs. 20,000 as gratuity and that, therefore, his application was not maintainable and in that view, his application was dismissed. Against the order of the controlling authority dated May 3, 1989, in G.A. No. 289 of 1987, the petitioner preferred an appeal to the first respondent and the appeal was numbered as A.G.A. 28 of 1989. The first respondent passed orders on September 17, 1990, holding that the petitioner was employed as manager, in true sense, that having regard to the law prevailing prior to July 1, 1984, the provisions of the Payment of Gratuity Act would not apply to the petitioner and, therefore, the claim for gratuity was not sustainable. He further held that admittedly the petitioner had received a sum of Rs. 20,000, which was paid only towards gratuity, the appeal preferred by the petitioner was dismissed. Therefore, according to the

respondents the order of the first respondent dated September 17, 1990, impugned in this writ petition is not vitiated by any error of law or justification and the same should not be interfered with.

8. Having seen the entire material available on record and from the claims and counter-claims of the rival parties herein, the only claim before this Court by the petitioner herein is that as he has worked for 46 years under the respondents, he is eligible for a gratuity of Rs. 33,561. With this claim he first approached the controlling authority. After hearing, he dismissed his claim. Thereafter, he approached the first respondent herein by way of an appeal, but that was also dismissed by virtue of the impugned order herein which is dated September 7, 1990. The petitioner herein challenges the impugned order on a number of grounds. But a perusal of the impugned order clearly goes to show that the petitioner's service with motor transport company ended in June, 1983, itself and it was also held by the first respondent, in clear terms, that the petitioner was a manager in its true sense. Such conclusions have been arrived at by the first respondent only after a careful analysis of all the facts and circumstances of the case along with the documentary evidence produced before him. He has also given elaborate reasons in his order to come to such conclusions. So in such circumstances, I am of the clear view that the conclusions arrived at by the first respondent in the impugned order are reasonable and in accordance with law and on the strength of evidence. That apart, it is significant to note that the provisions of the [Payment of Gratuity Act, 1972](#), were so amended with effect from July 1, 1984, as to include even persons exercising managerial or administrative functions with the definition of employee and prior to July 1, 1984, any person holding managerial position or exercising administrative functions was not considered to be an employee for the purpose of this Act and, consequently, such persons were not entitled to gratuity. Further, it has already been held by the first respondent that the petitioner herein was in charge of motor transport company only up to June, 1983, and it has also been established that the petitioner herein was discharging managerial functions while he was with the first respondent and that, therefore, it has been rightly concluded by the authorities below that the provisions of the Payment of Gratuity Act was not applicable to persons discharging managerial functions, prior to July 1, 1984, and consequently, the claim for gratuity

up to June, 1983, is not sustainable. Further, the petitioner admits that he received a sum of Rs. 20,000 from the respondents. But he denied that it was towards payment of gratuity, and according to him it is only towards arrears of wages. But on considering the entire materials available before him, the first respondent came to a conclusion that the said amount would constitute only payment of gratuity. Therefore, in such circumstances it is the categorical contention of the respondents that the petitioner was working in transport undertaking only till 1983 and when the employment of the petitioner with respondents Nos. 2, 3 and 4 was to come to an end, it was agreed to pay the petitioner a sum of Rs. 20,000 and it was duly paid and that, therefore, the authorities below have rightly passed the orders and that, therefore, the orders of the first respondent dated September 17, 1990, and impugned in this writ petition is not at all vitiated by any error of law or jurisdiction and the same should not be interfered with. In the above facts and circumstances of this case, I am of the clear view that there is every force in the said contention of the respondents.

9. Therefore, for all the aforesaid reasons and in the facts and circumstances of this case and also in view my above discussions with regard to the various aspects of the case, I am of the clear view that the petitioner herein has failed to make out any case in his favour and that, therefore, there is no need for any interference with the order impugned in this writ petition. Thus, the writ petition fails and the same is liable to be dismissed for want of merits.

10. In the result, the writ petition is dismissed. No costs.