

**The General Manager Vs. Appellate Authority Under**

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**Court :** Chennai

**Decided On :** Nov-04-2011

**Judge :** K.Chandru, J.

**Acts :** Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955; [Payment of Gratuity Act, 1972](#) - Sections 2(a), 10, 7(7); [Constitution of India](#) - Article 226

**Appeal No. :** W.P.(MD)No.8069 of 2010 And M.P.(MD).No.1 of 2010 And M.P.(MD).No.1 of 2011

**Appellant :** The General Manager

**Respondent :** Appellate Authority Under

**Judgement :**

1. The petitioner is a newspaper establishment covered by the provisions of the Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955. The order of the first respondent, who is the appellate authority cum Deputy Chief Labour Commissioner (Central), under the payment of Gratuity Act, 1972 confirming the order passed by the second respondent in computing unpaid gratuity in favour of the third respondent is under challenge in this writ petition.

2. The writ petition was admitted on 30.06.2010. Pending the writ petition, the petitioner got a direction to the second respondent not to disburse the amount of

Rs.47,015/- deposited by the petitioner to the credit of G.A.No.11 of 2008 till the disposal of the writ petition. Though the third respondent filed an application in M.P.(MD).No.1 of 2011 together with a supporting counter affidavit, dated 25.07.2011 for permission to withdraw 50% of the gratuity amount deposited, the said application has not been ordered till date. However, with the consent of both sides, the main writ petition itself was taken up for disposal.

3. It is seen from the records that the third respondent joined the services of the petitioner establishment on 01.11.1993. At the relevant time, he was paid salary through voucher payments. Thereafter, he was transferred to the newspaper by name 'Thinabhoomi' as Editorial incharge. He also claimed that he had signed the attendance register kept in the office and the time office, daily made a note of his entry. He was subsequently, promoted as News Editor of the 'Thinabhoomi' newspaper with effect from 01.11.1998. Only from that time onwards his salary was paid as per acquittance register. On 31.05.2007, the third respondent resigned from his services. By that time, he had put on 13 years and 6 months service in the petitioner establishment and his last drawn salary was Rs.7,234/-. He was not paid his gratuity due, though the Payment of Gratuity Act has been extended to the working journalists in terms of Section 5 of the Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955. He made a claim before the second respondent, the controlling authority, under the Payment of Gratuity Act.

4. The said controlling authority is notified by the Central Government as the petitioner establishment had branches in more than one State. Therefore, under the Payment of Gratuity Act the appropriate Government is the Central Government. The claim made by the third respondent was taken on file as G.A.No.11/2008 by the second respondent. Notice was issued to the petitioner newspaper.

5. The petitioner filed a counter statement dated 19.06.2008 disputing the length of service claimed by the third respondent. It was the stand of the petitioner that the third respondent worked only for 8 years 7 months and he was not entitled for claiming gratuity for the service of 14 years. Though a feeble attempt was made to

contend for the petitioner it is the State Government was the appropriate Government, the said contention was not pursued before this Court.

6. The second respondent on the basis of the pleadings of the parties and also the evidence tendered by the third respondent, framed five issues. In respect of the first issue i.e. whether the petitioner establishment comes within the jurisdiction of the second respondent, it was recorded that since the petitioner establishment also has editions published from Madurai, Chennai, Tiruchirappalli, Coimbatore, Tirunelveli, Salem, Puducherry, Vellore, Mumbai, Kochi and Bengaluru, in terms of Section 2(a) of the [Payment of Gratuity Act, 1972](#) the proper Government is the Central Government. Therefore, that objection was overruled.

7. With reference to the second issue whether the application filed by the third respondent was time barred, the authority held that there was no deliberate delay on the part of the third respondent and since the Gratuity Act is a beneficial piece of legislation, the delay must be condoned and accordingly it was condoned.

8. With reference to the third issued relating to the length of service, the authority held that the ESI record relating to dues paid in the name of the petitioner showed that in that document the name of the employer was shown as M/s.Manimaran Printers, 22-D, Dindigul Main Road, Vilangudi, Madurai. Hence he presumed that the petitioner establishment maintains different names as employers, only to deprive legitimate claims of their workman. The ESI card can only be taken as concrete proof for the employment of the third respondent from the year 1998, but cannot used to deny the previous employment of the third respondent in the petitioner establishment.

9. The authority also found that as a newspaper establishment, they are bound to maintain appointment orders and the attendance registers, but they were not produced. Even though it was feebly contended that there was a fire accident in their Unit and records were damaged, the authority disbelieved the same. Though the petitioner attempted to show a letter from the fire officer, the authority held that the petitioner had failed to discharge their obligation in disproving the stand of the third respondent. It is in that view of the matter, while answering the fourth issue he had computed the last drawn wages as Rs.7234/-. It is also the admission of

the petitioner in their counter statement. But the authority calculated the length of service as 13 years and 6 months and rounded it off as 14 years. In that view of the matter, the authority had computed a sum of Rs.57,015/- together with interest payable under Section 10 of the payment of Gratuity Act.

10. Aggrieved by the order passed by the second respondent, the petitioner preferred an appeal to the first respondent under Section 7(7) of the payment of Gratuity Act. As a condition precedent for preferring the appeal, they deposited a sum of Rs.47,015/- after giving credit to Rs.10,000/- already paid by them to the third respondent. Their appeal was taken on file as G.A.No.7 of 2010 and notice was issued to the third respondent. The third respondent filed a counter statement dated 30.07.2009.

11. On the basis of the rival pleadings, the first respondent (the appellate authority) held that there was no case for interfering with the order passed by the second respondent. In fact, the appellate authority also noted that the third respondent while deposing before the second respondent was not cross-examined with reference to the length of service. Other than the contentions raised by the controlling authority, no new arguments were advanced by the parties as noted in para 28 of the impugned order of the appellate authority. The appellate authority held that 'Thinabhoomi' newspaper was published as 'Athirstam' newspaper and it was functioning from 1993. The third respondent was later transferred to 'Thinabhoomi' which started publishing from the year 1995. The petitioner was promoted as a news editor on 01.11.1998. Therefore, his entire service cannot be deprived. Since no appointment order was given, the third respondent is only having an identity card issued by the working journalists association on which he is a member. Under the said circumstances, the first respondent dismissed the petitioner's appeal and refused to interfere with the order of the second respondent.

12. The only ground urged before this Court was that the length of service fixed as 13 years and 6 months can not be believed as the petitioner themselves have produced the ESI card to show that the third respondent was only employed from the year 1998 and not for any previous period. The said contention was not

supported by any records.

13. In the present case, the third respondent had given evidence before the controlling authority that no appointment order was given, but he had asserted that he had worked on voucher basis in the very same newspaper. He had an identity card given by his association. When the third respondent had let in oral evidence on that respect, it was open to the petitioner to disprove the same by producing credible documentary evidence. The contention that they have lost records due to fire accident cannot be accepted. Under the provisions of the Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955 more particularly under Section 17-A of the said Act, a newspaper establishment has to maintain registers, records and muster-rolls in the manner prescribed. The Central Government had framed Rules known as the Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Rules, 1956. Rule 37 mandates maintenance of registers, records and muster-rolls. It includes Form 'D' register of employees, Service Registers in respect of all working journalists in Form 'E', Leave Registers in respect of all working journalists in Form 'F' and a Muster- roll in Form 'G'. Unless the petitioner asserts that all these registers have been maintained properly, the finding rendered by the second respondent rejecting their claim that such register were destroyed in a fire accident cannot be interfered with.

14. Some of the registers mentioned under the Rule are permanent records of the employees. In case of loss, the petitioner should have taken steps to re- construct those records after due notices to the working journalists. In any event, the Payment of Gratuity Act is a beneficial piece of legislation and a Special Law. It had constituted controlling authority and appellate authority to determine the amounts due to employees in case of disputes.

15. In this case, both the authorities constituted under the Act, have negated the claim of the petitioner. The power of the authorities in determining the dispute is provided under Rule 11 of the Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955. A perusal of the said rule will clearly show the procedure contemplated is only

summary nature. The authorities on the basis of available materials have rendered a finding on fact. This Court sitting under Article 226 of the Constitution cannot interfere with a finding of fact, though there may be possibility of taking a different view on the issue.

16. Under such circumstances, there is no case made out by the petitioner to interfere with the impugned order. Hence, the writ petition stands dismissed. In view of the dismissal of the writ petition, the third respondent is entitled to withdraw the amounts lying in deposit with the second respondent and claim the balance including interest. Consequently, the connected miscellaneous petitions are closed. No costs.

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