

The Superintending Engineer. Vs. Appellate Authority

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Court : Chennai

Decided On : Jul-18-2012

Judge : K.Chandru, J.

Acts : Contract Labour (Regulation and Abolition) Act, - Section 21 (4); Payment of Gratuity Act - Section 7 (7); [Constitution of India](#) - Articles 226

Appeal No. : Writ Petition No.6633 of 2008 and M.P.Nos.1 of 2008 & 1 of 2009

Appellant : The Superintending Engineer

Respondent : Appellate Authority

Advocate for Def. : Ms. M.Lakshmi, Adv

Advocate for Pet/Ap. : Mr. P.R.Dhilip Kumar, Adv.

Judgement :

Prayer:- Writ Petition filed under Article 226 of the [Constitution of India](#) praying for the issuance of a writ of certiorari to call for the records of the first respondent relating to its proceedings dated 29.09.2007 passed the award in AGA No.52 of 2006 and to quash the same.

ORDER

1. The writ petition is filed by the Superintending Engineer, Purchase and Administration, Mettur Thermal Power Station, Mettur Dam, challenging the order passed by the appellate authority, under the Payment of Gratuity Act, namely, the Joint Commissioner of Labour, Coimbatore, in AGA No.52 of 2006, dated 29.09.2007, confirming the order passed by the Controlling Authority / Assistant Commissioner of Labour, Salem, in P.G. Case No.6 of 2005, dated 02.05.2006. By the impugned order, the appellate authority dismissed the appeal filed by the petitioner and confirmed the order passed by the controlling authority in favour of the second respondent.

2. The writ petition was admitted on 18.03.2008. Pending the writ petition, this Court granted interim stay. The second respondent filed a vacate stay application. But however no orders have been passed. In the meanwhile, the matter was referred to the resolution of the dispute by the Permanent Lok Adalat. However, the dispute was not resolved in the Lok Adalat.

3. The question that arises for consideration in this petition was whether the claim made by the workman, namely, the second respondent, that he had put in service from 16.02.1988 to 31.12.2003, namely, a period of sixteen years is eligible for getting payment of gratuity, under the Payment of Gratuity Act, 1972.

4. There is no dispute by the Board that the second respondent was employed from 01.05.1999 till he retired on 31.12.2003. Therefore, the Board contended that the second respondent rendered services in the Board from 01.05.1999 to 31.12.2003.

5. The only question that has to be considered in this petition was whether the petitioner is eligible for gratuity for the period from 16.02.1988 to 30.04.1999. While the stand of the workman was that he was employed by the Board and also granted service certificate and the said Certificate was also produced before the controlling authority. But however the stand of the Board was that it is only after the abolition of the contract labour and pursuant to the recommendations made by Justice Khalid's Commission, he was given employment as helper with effect from 01.05.1999, but the controlling authority held that even assuming that the service rendered from 16.02.1988 to 01.05.1999 is under contractor, in the absence of

contractor being paid gratuity for the said period, the workman is eligible to get gratuity from the petitioner Board, which is the principal employer.

6. In this context, reliance was placed upon a judgment of this Court in *Madras Fertilisers Limited v. Controlling Authority Under Payment of Gratuity Act and Others*, reported in 2003 (1) LLN 358 by Justice V.S. Sirpurkar (as He then was). In the said judgment, it was held that the contractor, who was engaged the workmen do not pay the gratuity then by virtue of Section 21 (4) of the Contract Labour (Regulation and Abolition) Act, the principal employer is liable to pay all dues and in such circumstances, the principal employer, after paying the amount, can collect the dues payable from the respective contractor. In paragraphs 26 and 27 of the said judgment, this Court had observed as follows:-

"26. Learned counsel argues that payment of gratuity is clearly excluded by Sub-clause (6) which has been reproduced above. According to the learned counsel, no gratuity could be payable even under Clause (d) and, therefore, Sub-clause (6) will apply on all fours to the present case. Reading Sub-clause (6) it is clear that gratuity could be excluded from the wages only if such gratuity is not covered in Clause (d). The language of Sub-clause (6) is very clear. However, the contention of the learned counsel is that gratuity under the Payment of Gratuity Act is not covered by Clause (d) at all and in fact, that clause does not refer to the gratuity at all. This contention is obviously incorrect for the simple reason that otherwise there was no occasion for the legislature to mention the term "any gratuity" in Sub-clause (6). The very language of Sub-clause (6) suggests that any gratuity which is not covered by Clause (d) is excluded from the term "wages". This would presuppose that Clause (d) covers some gratuity. Which would that gratuity be is the moot question to be answered. The answer is to be found in the plain language of Clause (d) which opens with the words "any sum which by reason of the termination of employment of the person employed is payable under any law, ...". There can be no dispute that the termination of employment of respondents 4 to 41 entitled them to receive the payment of gratuity under the law called Payment of Gratuity Act. This clause is complete in itself and, therefore, it can be safely held that the gratuity which is payable under the Payment of Gratuity Act is well covered under Clause (d). Learned senior counsel, however, suggests that

the subsequent clause starting from the words "contract or instrument" suggests that such law, contract or instrument should not provide for the time within which the payment is to be made and in fact, there is a time limit prescribed in the Payment of Gratuity Act. In my view, such cannot be the import of the last clause. The last clause qualifies only the "contract or instrument" because of the user of the word "provides". Now if the letter "s" is added to the word "provide", it would be only when there is the user of singular subject as against the plural subject. The phrase "contract or instrument", because of the existence of the word "or" would become a singular and, therefore, the verb will have to be used with the addition of the letter "s". But such would not be the position if the word "law," is also to be added. It will then become "law and contract or instrument" in which case, the verb will have to be used as if the subject is plural. Therefore, it is clear that the clause starting from the word "contract" and ending with the word "is to be made" is an independent clause and the qualification given in that clause is only for "contract or instrument" and not for "law". The plain meaning of the clause would be that where any sum is payable on termination of employment of the person under any law (in this case Payment of Gratuity Act), it would be covered under Clause (d) and, therefore, it excluded from the operation of Sub-clause (6) and therefore will amount to wages . Once this construction is accepted, it is clear that it will be the basic responsibility, under Sec.21(4) of the Contract Labour Act, of the petitioner to make the payment of gratuity and the petitioner will have a right to recover that sum from the third respondent contractor because, according to me, the initial responsibility to make the payment of gratuity lies with the third respondent contractor.

27. Accordingly, the petition is allowed to this extent only. Resultantly, the petitioner shall make the payment of gratuity as per the calculations and shall be entitled to recover the same from the third respondent contractor."

7. As against the order passed by the controlling authority, the petitioner preferred an appeal under Section 7 (7) of the Payment of Gratuity Act to the first respondent. The first respondent took up the appeal on his file as A.G.A.No.52 of 2006 and issued notice to the second respondent-workman. The second respondent, workman, also filed his objections. Thereafter, after hearing both the

parties, the authority confirmed the order passed by the controlling authority. In doing so, he held that even the contractor liability to pay gratuity can be fastened on the principal employer.

8. The case of the second respondent is fully supported by the aforesaid judgment of this Court in Madras Fertiliser's case (referred to above). Hence, the writ petition stands dismissed. However, it is made clear that it is open to the second respondent to withdraw the amount lying in deposit with the controlling authority, which is a condition precedent for preferring the appeal. No costs. Consequently the connected MPs are closed.

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