
(2010) 10 MAD CK 0271
In the Madras High Court
Case No : Writ Petition (MD) No. 6534 of 2006

A. Ramasamy

APPELLANT

Vs

The Management, Alagappa Spinning Mills Private Limited,
Appellate Authority under Payment of Gratuity Act (Joint
Commissioner of Labour) and The Controlling Authority under
Payment of Gratuity Act (Assistant Commissioner of Labour)

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Payment of Gratuity Act, 1972 — Section 7(7)

Citation : (2011) 1 LLJ 806

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : N. Ananthapadmanabhan, for the Appellant; S.C. Herold Singh, G.A. for R2 and R3, S. Prasanna, for G.R. Swaminathan, for R1, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The matter arises under the Payment of Gratuity Act, 1972. The petitioner is the workmen and the first respondent is the management. The petitioner filed a Gratuity Application before the Controlling Authority under the Payment of Gratuity Act, Madurai. The Controlling Authority took up the Gratuity application as P.G. No. 29 of 2002 and issued notice to the first respondent management. Before the 3rd respondent namely, the Controlling Authority, the two questions were raised by the management in disputing the claim made by the workmen. The first objection was that the workmen has not completed 240 days of service in all the years in which he has claimed gratuity namely, from 1976, 1978, 1979, 1981, 1993 and 1994. It was only proved that the workmen had worked 2 years beyond 240 days in 1976 and 1978, so as to be eligible for getting gratuity for the completed year of service.

2. The second contention raised was that the workmen was paid gratuity as claimed and he was paid a sum of Rs. 25,487.25 and he was passed on a receipt

for the said amount. However, the Controlling Authority after comparing the signatures found in the application filed by the petitioner as well as the full and final receipt passed on by the workmen found that in the signature of Ramasamy the word "k" there is a variation between the receipt and the pleadings filed before him. Hence he held, in the absence of any bona fide receipt being passed, the stand of the respondent cannot be accepted. Therefore, computed the amount payable as gratuity at Rs. 28,486/- together with 10% interest and cost of Rs. 1,000/-.

3. Aggrieved by the order passed by the third respondent, the first respondent filed an appeal u/s 7(7) of the Payment of Gratuity Act, 1972, before the 2nd respondent, Appellate Authority and the matter was numbered as P.G.A. No. 6 of 2005 and notice was issued to the petitioner. The Appellate Authority found after verifying several signatures of the petitioner that he was always in the habit of writing his name by using the word "k" with difference and therefore, it was found that since the witness of the receipt was also examined before the Controlling Authority, the said evidence ought to have been accepted and in that view of the matter, he modified the order passed by the 3rd respondent and granted gratuity only for 2 years in which he had worked beyond 240 days. In respect of the other amounts he believed that the receipts were passed on by the employee. Therefore, he computed amount Rs. 2,999/-. With reference to the cost and the interest the same were removed in the final order passed on 03.08.2005. Aggrieved by the reversal of the decision by the 2nd respondent, the petitioner has come forward to file the present Writ petition.

4. Notice of motion was ordered on 02.08.2006 and on behalf of the first respondent, Mr. Prasanna, learned Counsel appearing for Mr. G.R. Swaminathan and the learned Government Advocate Mr. S.C. Herold Singh takes notice for the respondents 2 and 3.

5. The contention raised by the petitioner in the affidavit was that the signatures found in the receipt were found out to be a false and that the Appellate Authority ought not have reversed that finding. The evidence of the attesting authority ought not have been relied upon and R.W.1 examined before the Controlling Authority who was an interesting witness. However, this Court finds that the Controlling Authority ought not have referred to the signatures found in the pleadings since when comparing the signature by an handwriting expert, only document which is either contemporaneous or signed earlier than the disputed document alone can be verified. The pleading and the Vakalat will come later. Therefore, the 3rd respondent has committed a grave error in making a comparison and finding the word "k" there was a difference and therefore, the receipt cannot be believed.

6. On the other hand, the finding recorded by the 2nd respondent is perfectly illegal and justified. Once an attesting witness examined before the authority, the same cannot be disregarded as an interest testimony. In the absence of the petitioner produced the credible material before the Controlling Authority, Court

did not inclined to accept the contention raised by the Writ petitioner.

7. If the first respondent in filing the appeal has deposited the amount before the Appellate Authority which is a condition precedent, then it is open to the Writ petitioner to withdraw the amount to which he is entitled to and the balance amount can be withdrawn by the 1st respondent.

8. With the above direction, the Writ petition stands dismissed. No costs. Consequently connected M.P .is closed.