

(2011) 02 MAD CK 0180

In the Madras High Court

Case No : Writ Petition No. 25939 of 2007

Kousalya

APPELLANT

Vs

Management Sri Balavinayagar Bus Service, The Controlling
Authority under the Payment of Gratuity Act, 1972 (The Asst.
Commissioner of Labour (Gratuity)) and The Appellate
Authority under the Payment of Gratuity Act, 1972 (The Joint
Commissioner of Labour)

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

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

Citation : (2011) 02 MAD CK 0180

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

**Advocate : K.M. Ramesh, for the Appellant; S. Ravindran, for T.S. Gopalan and
Co. for R1 and R. Murali, G.A. for R2 and R3, for the Respondent**

Final Decision : Allowed

Judgement

K. Chandru, J.—The Petitioner is a widow of late A.C. Kannan, who was employed with the first Respondent Sri Balavainayagar Bus

Service, Vellore. She has filed the writ petition, seeking to set aside the order of the third Respondent Appellate Authority made in P.G.A. No. 34

of 2004 dated 14.12.2004.

2. The Petitioner's husband was working as Conductor in the first Respondent's transport service. He joined the services on 22.09.1945 and was

terminated from service on 03.12.1995. He had put in 50 years of service. His last drawn wages was calculated as Rs. 1669/-, which is the

minimum wage, though he was paid Rs. 1,500/-. He sent a notice to the first Respondent and thereafter lodged a gratuity claim before the second

Respondent Controlling Authority. The said claim was taken on file as P.G. No. 3 of 2003 and notice was issued to the first Respondent. When

the main application was taken up for hearing, the Petitioner's husband died on 29.09.2002. Hence, she took out an application to bring her on

records as the legal representative of her deceased husband.

3. Before the second Respondent, 4 documents were filed on the side of the Petitioner, which were marked as Exs. P1 to P4. On the side of the

first Respondent Management, 7 documents were filed and marked as Exs. R1 to R7.

4. The Controlling Authority by his order dated 01.03.2004 held that the Petitioner was eligible to get gratuity only for 40 years of service. On that

basis, he computed the gratuity by calculating his drawn drawn pay as Rs. 2,500/- and fixed the gratuity at Rs. 57,692/-. Aggrieved by the said

order, the first Respondent Management filed an appeal u/s 7(7) of the Payment of Gratuity Act. The said appeal was taken on file as P.G.A. No.

34 of 2004. The first Respondent deposited the entire amount computed by the Controlling Authority.

5. On notice from the Appellate Authority, the Petitioner filed a counter statement. The Appellate Authority by his order dated 14.12.2004

allowed the appeal. The Appellate Authority held that the letter dated 30.12.1991 (Ex.R1) sent by Petitioner's husband to the Management would

not imply employer employee relationship between her husband and the first Respondent as in the said letter, he only pleaded for an help in

consultation with the first Respondent's brother and mother. Ex. P3 will show that the bus was operated by 3 different entities namely, R1, his

brother and mother. Therefore, the Petitioner's husband having worked in the buses run by the first Respondent, his mother and brothers were

proved by documents. Therefore, the third Respondent held that order of the Controlling Authority was not valid.

6. In the writ petition, notice was ordered initially. Subsequently, it was admitted on 27.10.2010.

7. The first Respondent has filed a counter affidavit dated 20.10.2010. Their contention was that when the bus service is run in the general name of

Sri Bala Vinayagar Bus service, each of the members of the family having separate permit for separate bus will automatically become a separate

entity. In so far as the first Respondent is concerned, it is only single bus transport service which is initially owned by the father of the deponent to the counter affidavit. But the fact that they have internal division will not deny the workers from receiving gratuity from any one of the members of the family. It is not the case of the first Respondent that he had separately registered him self under the Motor Transport Workers Act, 1961. No such pleadings were also made to that effect. The claim that during the year 1945 to 1985 that he could have been employed only with the first Respondent cannot be believed. Since records were produced to show ownership of the buses by different persons, directing the first Respondent to bear the entire burden cannot be accepted.

8. However, this Court is not inclined to accept the stand taken by the first Respondent. On the other hand, when the Petitioner sent notice in Form I, no reply was sent by the first Respondent. Even before the Controlling Authority, deponent to the counter affidavit accepted that the husband of the Petitioner had worked with the first Respondent, his sister and his mother. It is the first Respondent who did not file any document by bringing his mother or the brother to show the ownership. Even in the office, where it is shown as registered office, the telephone stands in the name of the transport. In the certificate issued by the RTO North dated 03.09.1982, the name of T. Panneer Selvam is found. Since the first Respondent had not proved the internal arrangement among the family members, it is the first Respondent who is bound to pay the amount. In the light of the clear findings rendered by the second Respondent, the third Respondent was not justified in reversing the said finding.

9. In the light of the above, the writ petition stands allowed. The order of the third Respondent in P.G.A. No. 34 of 2004 dated 14.12.2004 stands set aside and the order of the second Respondent in P.G. No. 3 of 2003 dated 01.03.2004 stands restored. The Petitioner is entitled to withdraw the amount lying in deposit with the second Respondent. If for some reasons, the first Respondent claims that his mother, brother and sister were also liable to contribute towards the payment, it is always open to him to sue them in an appropriate Civil Court and claim their proportionate share towards his liability in making the payment of gratuity to the Petitioner. No costs.