

(2000) 07 MAD CK 0070

In the Madras High Court

Case No : Writ Petition No's. 4817 and 6077 of 1993

Management of N.S. Bus Service and Another

APPELLANT

Vs

Appellate Authority under the Payment of Gratuity Act and
Another

RESPONDENT

Date of Decision : 04-07-2000

Acts Referred:

Citation : (2002) 92 FLR 383 : (2002) 1 LLJ 516

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : M.R. Raghavan and D. Hariparanthaman, for the Appellant; S. Vadivel, for the Respondent

Final Decision : Dismissed

Judgement

Y. Venkatachalam, J.—Since the parties concerned as well as the subject matter involved in these writ petitions are common, both the writ petitions were taken up together and are disposed of by the common order with the consent of the parties concerned.

2. W.P. No. 4817 of 1993 has been filed by the petitioner-management seeking for a writ of certiorari to call for the records pertaining to P.G. Appeal No. 6 of 1992 pending before the Appellate Authority under the Payment of Gratuity Act and P.G. Case No. 42 of 1991 on the file of the Authority under the Payment of Gratuity Act and to quash the orders passed therein dated January 16, 1993, and July 29, 1992, respectively.

3. W.P. No. 6077 of 1993 has been filed by the petitioner-workman seeking for a writ of certiorari to call for the records from the first respondent relating to P.G. Appeal No. 6 of 1992 and to quash his order dated January 16, 1993, in P. G. Appeal No. 6 of 1992.

4. In support of the writ petitions, the petitioners herein have filed separate affidavits wherein they have narrated all the facts and circumstances that forced

them to file the present writ petitions and requested this Court to allow the writ petitions as prayed for. Per contra, though no counter-affidavit has been filed by the respondents, the respondents contested the matter. They justified the impugned orders and, according to them, there is no merit at all in these writ petitions and that, therefore, they are liable to be dismissed.

5. Heard the arguments advanced by learned counsel appearing for the respective parties. I have perused the contents of the affidavits and the counter-affidavits 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 respective parties during the course of their arguments.

6. In the above facts and circumstances of the case, the only point that arises for consideration in these cases, is, as to whether there are any valid grounds to allow these writ petitions or not.

7. The brief facts of the case of the petitioners as seen from the affidavits are as follows :

The workman, the third respondent in W.P. No. 4817 of 1993 and the petitioner in W.P. No. 6077 of 1993, filed an application before the second respondent herein under the Payment of Gratuity Act, 1972, claiming a gratuity of Rs. 16,500 as against the petitioner-management. The case of the third respondent-workman before the Authority under the Payment of Gratuity Act was that he (the workman) was employed for a period of 22 years under the petitioner, that his last drawn wage was Rs. 1,300, that the workman was retrenched from service on March 15, 1991, and that he submitted an application for payment of gratuity on August 18, 1991, before the petitioner, that the petitioner refused to entertain the application and that he was entitled for a gratuity of Rs. 16,500. The management had filed a counter to the application filed by the third respondent-workman to the effect that he was working as a conductor and while he was working as such, he got himself voluntarily retired from service on April 30, 1990, stating that he was not able to continue in employment. It was also stated by them that after the third respondent's retirement the third respondent came to the management on May 5, 1990, and received a sum of Rs. 10,000 towards gratuity and other claims in full settlement. It was also mentioned that the third respondent had closed his provident fund account in the office of the Provident Fund Commissioner and received full provident fund amount accumulated in his account in the year 1990 itself. Subsequently, the third respondent approached the management during the month of July, 1990, and sought for help for granting necessary permission to write accounts for the management. The management, on humanitarian grounds, permitted the third respondent to be present in the office once or twice in a week to write accounts. The said permission granted to him was a fresh licence and not in continuation of his earlier employment. The third respondent also was paid for the days he has written accounts. After the retirement of the third respondent on April 30, 1990,

the third respondent was never employed continuously. Hence, the question of retrenchment on March 15, 1991, as alleged by him would not arise. The petitioner-management herein also has brought to the notice of the authority that the gratuity amount has already been paid to the third respondent as early as May 5, 1990, and, hence, on the above-mentioned basis, the third respondent was not entitled to claim gratuity before the authority. The case was taken up on the file by the second respondent herein as P.G. Case No. 42 of 1991. The second respondent, after recording evidence and also after taking into account the documents filed, both on behalf of the management and the workman, passed an order on July 29, 1992, directing the petitioner to pay a sum of Rs. 16,500 by way of gratuity to the third respondent herein. The main reason tendered by the second respondent in support of his order was that the amount of Rs. 10,000 paid through document dated May 5, 1990, represented the gift given to the third respondent by the petitioner and did not represent the gratuity to the third respondent. Aggrieved by the said order of the second respondent, the petitioner approached the Appellate Authority under the Payment of Gratuity Act challenging the order passed by the second respondent herein, directing payment of Rs. 16,500. Ultimately, the first respondent herein directed the "management to remit a sum of Rs. 11,500 by way of gratuity to the third respondent. It is contended by the petitioner-management that the orders passed by the authorities under the Act are contrary to law, without any basis and suffers due to errors apparent on the face of the record. As the management has no other alternative remedy they have filed the present W.P. No. 4817 of 1993 to quash the order passed by the Appellate Authority in P.G. Appeal No. 6 of 1992, dated January 16, 1993, partly allowing the appeal against the order passed by the original authority in P.G. Case No. 42 of 1991, dated July 29, 1992. Thus, since the Appellate Authority has passed an order for a lesser: amount, than the original authority, the workman/third respondent in W.P. No. 4817 of 1993 aggrieved and filed W.P. No. 6077 of 1993 to quash the order dated January 16, 1993, in P.G. Appeal No. 6 of 1992 reducing: the gratuity.

8. Challenging the impugned orders of the authorities, it is contended by the petitioner-management that the lower authorities ought to have found that there has been a clear termination of the employment in the year 1990 itself, inasmuch as the third respondent has withdrawn the accumulated money under the provident fund account, that the lower authority fell in error in misconstruing the receipt filed on behalf of the petitioner, namely, R-1. According to them, the amount represents the gratuity paid to the workman also. They also contended that the third respondent was not entitled to the gratuity inasmuch as he has executed a receipt in full settlement through R-1. The lower authorities ought to have seen that the delay in approaching the authorities claiming gratuity have not been properly explained. It is also contended by the management that the lower authorities ought to have seen that there was no pleading in respect of the request made by the third respondent herein to the management for payment of money to perform his daughter's marriage.

Thus, by taking into consideration the extraneous factor, the authorities have fallen in error by passing the impugned order. Further, according to the management, the Appellate Authority has no powers to allocate a portion of the amount towards gratuity and a portion of the amount towards gift. It is also their case that the Appellate Authority's allocation of Rs. 5,000 towards gratuity and Rs. 5,000 towards other claims, is without any basis. Having found that the signature of the third respondent in R-1 was admitted, the Appellate Authority ought not to have construed Rs. 10,000 as one half representing gratuity and the other half representing other claims. Thus, it is their case that both the authorities ought to have dismissed the claim of the third respondent, as the claim itself was time-barred and did not merit consideration.

9. So also, it is also the case of the third respondent workman that the first respondent has given no reason for allocating Rs. 5,000 towards gratuity and Rs. 5,000 towards other claims from the amount of Rs. 10,000 paid to him. According to the workman, the first respondent failed to see that nowhere the employer gave any particulars regarding the amount, which represents gratuity and the other amount, which represents other claims. In the absence of such particulars, the first respondent ought to have rejected the appeal of the employer, that the first respondent failed to see that the employer lacks bona fide in their action as they failed to produce the documents as ordered by the Authority. Therefore, according to the employee/workman, the second respondent has correctly drawn adverse inference. It is also contended by him that the first respondent failed to see that he tendered evidence before the second respondent, that the blank space in voucher R-1 was filled as "gratuity and other claims" subsequently after obtaining his signature and that evidence was not controverted by the employer.

10. Having seen the entire material available on record and from the facts and circumstances of the case and also from the claims and counter-claims made by the rival parties herein, the following are the admitted facts. The issue involved herein is the quantum of amount payable to the employee as gratuity amount. The case was taken up by the second respondent in P.G. Case No. 42 of 1991 and, subsequently, an order came to be passed on July 29, 1992, directing the petitioner to pay a sum of Rs. 16,500 by way of gratuity to the third respondent herein. Aggrieved by the said order, the management approached the Appellate Authority and the Appellate Authority, the first respondent herein, had opined in his order that Rs. 5,000 out of Rs. 10,000 mentioned in the receipt marked as R-1, represents the gratuity paid to the workman and the remaining Rs. 5,000 represents the other claims and, hence, directed the management to remit a sum of Rs. 11,500 by way of gratuity to the third respondent. The said order is challenged by both the management as well as the employee. According to the management, the Appellate Authority should have allowed the appeal in toto instead of allowing in part. Whereas according to the employee instead of reducing the amount, the Appellate Authority should have dismissed the appeal in toto and should have confirmed the lower authority's order as it is. In this

case, it is clear that it is an admitted fact that the respondent worker received Rs. 10,000 from the appellant-management and exhibit R-1 is the receipt for the same. Further, it is significant to note that in the said receipt, exhibit R-1, it is stated that the said amount of Rs. 10,000 is towards gratuity and other claims. The workman also admitted that the signature in R-1 is his own. That being so, it is the finding of the Appellate Authority that the management has not established either before the Controlling Authority under the Payment of Gratuity Act or before him as to what are the other claims of the respondent worker. It is also significant to note that the word "gratuity" is also mentioned in the receipt. Therefore, in such circumstances and in the absence of details regarding other claims by the respondent worker, the Appellate Authority rightly allocated Rs. 5,000 towards gratuity and Rs. 5,000 towards other claims. Apart from this the Appellate Authority agrees with the Controlling Authority under the Payment of Gratuity Act regarding the quantum of gratuity to be paid to the worker, i.e., Rs. 16,500 and that, therefore, the Appellate Authority has rightly come to the conclusion that the appellant management has to pay Rs. 11,500 to the respondent worker. That being so I do not see any merit whatsoever in the various contentions raised by the petitioners in these writ petitions challenging the impugned order of the first respondent Appellate Authority.

11. Therefore, for all the aforesaid reasons and in the facts and circumstances of the case and also in view of my above discussions with regard to the various aspects of the case, I am of the clear view that the petitioners herein have failed to make out any case in their favour and that, therefore, there is no need for any interference with the order impugned in these writ petitions. Thus, the writ petitions fail and are liable to be dismissed for want of merits.

12. In the result, both these writ petitions are dismissed. No costs. Consequently, W.M.P. No. 9715 of 1993 also is dismissed.