
(2010) 10 MAD CK 0016

In the Madras High Court

Case No : M.P. (MD) . No. 1 of 2009 and W.P. (MD) No. 7528 of 2009

Pioneer Spinners

APPELLANT

Vs

Regional Labour Commissioner, Central and Others

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2, 2A, 7(7)

Citation : (2011) 2 LLJ 214

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S.S. Sundar, for the Appellant; P. Krishnasamy, S.C.G.S.C. and S.C. Herold Singh, G.A., for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard Mr. S.S. Sundar, learned Counsel appearing for the Petitioner, Mr. P. Krishnasamy, learned Senior Central

Government Standing Counsel appearing for the first Respondent, Mr. S.C. Herold Singh, learned Government Advocate appearing for the

second Respondent. The third Respondent having served not being represented before this Court.

2. The writ petition is directed against the order passed by the first Respondent, the Regional Labour Commissioner (Central), Chennai, the

Appellate authority, under the Payment of Gratuity Act, 1972 dated March 31, 2009 confirming the order passed by the second Respondent, the

controlling authority, in Gratuity Application No. 46/2005 dated February 28, 2007.

3. The third Respondent who was employed by the Petitioner's mill (which is owned by the National Textile Corporation) filed application for

gratuity before the controlling authority. The controlling authority took up the case as Gratuity Application No. 46/2005 and ordered notice on the writ Petitioner.

4. Before the controlling authority, the third Respondent claimed difference of Gratuity of Rs. 15485.34 paise. The claim of the third Respondent was that the period from July 17, 1977 to August 28, 1980 was not accounted. The contention of the Petitioner was that for the period from July 17, 1977 to August 28, 1980 the third Respondent was working as a casual labourer and as a temporary daily rated worker. It was contended that the third Respondent was a trainee not covered by the term employee under, Section 2(e) of the Payment of Gratuity Act, 1972. He also contended that the service put in by the workman was discontinuance service. However, the controlling authority rejected both the contentions and directed the Petitioner, management to pay a sum of Rs. 15,485.34 paise within 30 days.

5. The Petitioner management filed an appeal u/s 7(7) of the Payment of Gratuity Act challenging the order of the; controlling authority. The appeal was taken on file in G.A. No. 328/2007 and notice was issued to the contesting Respondent. By a final order dated March 31, 2009, the appeal was rejected after holding that in the grounds of memorandum of appeal and before the controlling authority, the Petitioner merely contended that the third Respondent was only a casual labourer or badli worker and that service cannot be a continuous service and the, controlling authority rightly rejected the Petitioner's contentions. Before this Court, once again similar contentions were raised by the Petitioner management.

6. Admittedly, the third Respondent was employed from July 17, 1977 to August 28, 1980 as a temporary worker and thereafter from 1980 to 1981 as badli worker and from 1981 to 1991 as regular worker. However, the term employee defined does not make any distinction between the temporary worker and the permanent worker what is excluded is only an apprentice or a person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for Payment of Gratuity.

7. In the present case, the appellate authority found that no materials was produced to show that the third Respondent was engaged as an

apprentice. In the absence of any such evidence, even assuming that the workman was only a casual labourer, he is not excluded from the provisions of the Act.

8. This Court while defining as to who was an employee u/s 2(e) of the Act in S. Arunachalam Vs. The Managing Director, Southern Structurals,

Pattabiram, Madras-72 and 2 ors, has held that all employees are entitled to gratuity except an apprentice. Once it is held that for a temporary

casual labourer, in the absence of any discontinuance of service u/s 2(A) of the Act, the authorities cannot deny gratuity. This Court do not find any

merits in the contentions raised by the Petitioner. The Writ petition stands dismissed. Consequently connected miscellaneous petition is closed. It is

open to the third Respondent to withdraw the amount lying in deposit in the second Respondent, the controlling authority and the controlling

authority is hereby directed to give notice to the third Respondent and pay the amount to the third Respondent lying in his deposit. No costs.