

(2011) 07 MAD CK 0023

In the Madras High Court

Case No : Writ Petition (MD) No. 900 of 2006 and M.P. (MD) No. 975 of 2006

Sree Visalakshi Mills (P) Ltd.

APPELLANT

Vs

The Controlling Authority under the Payment of Gratuity Act,
(Assistant Commissioner of Labour (In-charge) and Others

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Citation : (2011) 07 MAD CK 0023

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : P. Chandra Bose, for the Appellant; D. Muruganandam, A.G.A. for R1 to R4, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The writ petition is directed against the order passed by the Labour Officer, holding charge of post of Assistant

Commissioner, Madurai, in exercise of the power of the Controlling Authority, under the payment of Gratuity Act.

2. The case set up by the Petitioner is that the 5th Respondent was employed by the Petitioner company and on superannuation, he was relieved

from services after payment of gratuity.

3. The 5th Respondent being dissatisfied with the payment of gratuity, filed a claim before the Controlling Authority under the payment of Gratuity

Act, on the ground, that he had not been paid gratuity for two years of service.

4. The claim raised by the 5th Respondent was accepted and the Petitioner was directed to pay a sum of Rs. 6,000/- as balance amount of

gratuity due to the 5th Respondent.

5. When the writ petition came for hearing, this Court while admitting the petition on 21.01.2006 passed the following order:

There will be an order of interim stay, subject to the condition that the Petitioner depositing 50 percent of the amount to the Assistant

Commissioner of Labour/first Respondent, within a period of three weeks from the date of receipt of a copy of this order, failing which the interim

stay shall be stand automatically vacated. Notice.

6. The learned Counsel for the Petitioner states that pursuance to the order passed by this Court, 50% of the gratuity amount stands paid.

7. The only ground on which the Petitioner had challenged the order passed by the Controlling Authority, is that by way of notification, dated

15.04.2000, the Assistant Commissioner of Labour, office of the Deputy Commissioner of Labour, Madurai, were conferred with powers of the

Controlling Authority under the payment of Gratuity Act.

8. It is the case of the Petitioner that on transfer of Assistant Commissioner of Labour, No. new Assistant Commissioner was appointed, and the

powers of the Assistant Commissioner were vested with the Labour Officer, the 4th Respondent, by way of stop gap arrangement, for

administrative duties only.

9. It is contended by the learned Counsel for the Petitioner that a person holding administrative charge as stop gap arrangements has No.

jurisdiction to exercise the statutory powers under the Act.

10. In support of his contention, the learned Counsel for the Petitioner relied upon the judgment of this Court in 1997 Writ L.R. 33, [C. Baskaran

v. The District Collector, Trichy and another] wherein the Hon"ble Division Bench of this Court was pleased to lay down as under:

There is one more aspect of the matter which has not been noticed by the Petitioner/Appellant and also by the learned single judge. The order is not

passed by the District Collector, Trichy, but it is passed 5 by the officer-in-charge of the office of the District Collector. The very title of the

proceedings shows that it is the order passed by the Incharge Collector. In-charge Collector cannot be considered to be the Collector and he is

entitled to discharge the statutory functions of the Collector. He is only intended to look after the day-to-day administration and is not entitled to

exercise the statutory powers. Therefore, on this ground also, the impugned

order is liable to be set aside.

11. In the case of K. Thangarajan v. K. Palanisamy, the view of the Hon''ble Division Bench of this Court referred to above was reiterated.

12. The learned Counsel appearing for the State, on the other hand, contended that by way of notification the Assistant Commissioner, was given

the power of the Controlling Authority under the Gratuity Act, and the fact that the Labour Officer was performing the duties of the Assistant

Commissioner.

Therefore, No. fault can be found with the exercise of the power of Controlling Authority, by the Labour Officer.

13. It is also the contention of the learned Counsel appearing for the State, that once a person is vested with the power of the Assistant

Commissioner, the notification would cover the exercise of power of the Controlling Authority by Labour Officer and as No. special notification is

required.

14. However, on consideration, I find force in the contention raised by the learned Counsel for the Petitioner. Once by notification, an authority is

conferred with jurisdiction of quasi-judicial authority, the same cannot be exercised by a person holding the post as stop gap arrangements. This is

the view of the Hon''ble Division Bench of this Court referred to above.

15. In view of the pronouncement by the Hon''ble Division Bench of this Court referred to above, the writ petition deserves to be allowed,

accordingly, impugned order is set aside, the matter is remanded back to the Controlling Authority, to pass fresh orders after hearing the parties.

16. Keeping in view of that the claim of workman is pending since, the Controlling Authority is directed to expedite the hearing and finally dispose

the application within a period of two months from the date of receipt of certified copy of this order. Consequently, connected Miscellaneous

Petition is closed. No. costs.