

(2011) 02 MAD CK 0120

In the Madras High Court

Case No : Writ Petition No. 32319 of 2004 and WPMP No. 39132 of 2004

Sri Rangavilas Ginning, Spinning and Weaving Mill	APPELLANT
Vs	
Regional Labour Commissioner (Central) and Others	RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1)
Payment of Gratuity Act, 1972 — Section 13, 14, 7(7)

Citation : (2011) 02 MAD CK 0120

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : John, for T.S. Gopalan and Co, for the Appellant; F.X.A.F. Denny, for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner is the Rangavilas Ginning, Spinning and Weaving Mill. The Petitioner mill was taken over by the National

Textiles Corporation and it had been an Unit of the National Textiles Corporation (Tamil Nadu and Pondicherry) Limited. The Petitioner mill filed

the present Writ Petition challenging an order passed by the appellate authority under the Payment of Gratuity Act, 1972 (for short "P.G. Act) cum

Regional Labour Commissioner (Central), (1st Respondent herein) in Gratuity Appeal Nos. 241 to 250,252, 253 of 2003 dated 14.8.04. By the

order impugned, the authority dismissed the appeals filed by the Petitioner management and confirmed the orders passed by the 2nd Respondent

Controlling Authority under the P.G. Act in various Gratuity Applications and directed them to pay the balance gratuity.

2. The Writ Petition was admitted on 8.11.2004. Pending the Writ Petition, this Court granted an interim stay after recording that the management

had deposited the entire amount with the 2nd Respondent to the credit of the appeals. While the 1st and 2nd Respondents are represented by the learned Standing Counsel, some of the workmen, who were served were not appearing through any counsel or in person. Some of the contesting Respondents have also not been served.

3. The short question that arises for consideration is whether the stand of the management that in view of the receipts given by the workmen dated

11.7.2000 undertaking that they will not claim any more amounts either in law or in equity from the mill, the amounts received were vouchsafed as

the full discharge of the liability of the management. According to the Petitioner management, the management faced a severe loss from the

accounting year 1991-1992. In view of the pecuniary limit under the Payment of Bonus Act, majority of the workmen have gone out of the

provisions of Payment of Bonus Act. However, the workmen were insisting for payment during the Deepavali period.

4. Therefore, for the accounting year 1996-1997, on 23.10.1997, a settlement was reached u/s 18(1) of the Industrial Disputes Act with the

recognised unions, by which in respect the workmen, whose wages exceeding Rs. 3,500/- per month, were to be paid an advance, which will be

equivalent to bonus and excreta payable. The mode of adjustment of the advance was to be subsequently discussed with the Trade Unions and

decided. For the year 1997-1998, the management also put up a notice on 5.11.1999 stating that those workmen who are not covered by the

Payment of Bonus Act will be given an advance on condition that the management will seek the Central Government's sanction funds towards the

repayment of the advance. If the Central Government agreed for the waiver, the amounts will not be recoverable. But, however, in case of refusal

by the Central Government, the issue will be sorted out between the authorities.

5. On 26.7.1999, the Central Government rejected the waiver of repayment of advance amount. The workmen did not repay the amounts even on

monthly instalments. Therefore, the management at the time of their resignation or retirement adjusted those amounts from the terminal dues

payable. After adjusting the advance already made, the contesting Respondents were paid their statutory gratuity. Notwithstanding the same, the

workmen approached the 2nd Respondent with different Gratuity Applications 7

of 2001 to 17 of 2001 claiming the unpaid gratuity. The authority issued Notices to the Petitioner mill. The Petitioner mill appeared before the authority and contended that the quit receipt passed on by each of the workmen at the time of leaving their service can operate an estoppel against their claim for unpaid gratuity. Since the management had paid the recoverable advance, it is not open to them to claim the difference in gratuity, which had been adjusted against the advance already paid.

6. Before the 2nd Respondent authority, reliance was placed upon the judgment of the Bombay High Court in *Air India Ltd., v. Appellate authority* under Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central), Bombay and Ors. reported in 1999 (1) LLN 905. The Bombay High Court in paragraphs 12 and 26 held as follows:

12... It would be evident from the above provisions that Section 13 of the Gratuity Act protects gratuity from being attached in execution of any decree or order of any civil, revenue or criminal court. Section 14 makes it clear that the provisions of the Gratuity Act or any rule made hereunder shall have overriding effect not with standing anything inconsistent there with contained in any other enactment or any instrument or contract...

26. Even assuming that there was a valid assignment by virtue of the provisions of Cl.21 of the agreement of leave and licence, in my view, the provisions of Section 14 will override such an assignment.

7. Therefore, the management cannot refuse to pay the entire gratuity on the plea that they are entitled to adjust the advance paid to the workmen from the gratuity payable. Again the identical orders passed by the Controlling Authority dated 1.1.2003, the management preferred appeal u/s

7(7) of the Payment of Gratuity Act, 1972 before the 1st Respondent appellate authority. Their appeals were numbered as Gratuity Appeal Nos.

241 to 250, 252, 253 of 2003. Notices were issued to the contesting Respondents. As a condition of pre-deposit required to be made for maintaining the appeals, the management had also deposited the amount with the 2nd Respondent.

8. Before the appellate authority, once again similar contentions were raised. The appellate authority relied upon Section 13, whether the gratuity was freed from attachment even against court decrees. He also referred to Section 14 of the Payment of Gratuity Act, 1972 by which only better

terms of payment of gratuity has been protected. That itself will show there cannot be payments less than the statutory requirement. Therefore, the authority held that the quit receipt cannot take away the claim for the legitimate gratuity amount. The receipts cannot be construed as if the workmen have given up their right to receive full gratuity. Thus, the appeals were dismissed by a common order dated 14.8.2004. It is against those order, the Writ Petition came to be filed.

9. Mr. John, learned Counsel appearing for M/s.T.S. Gopalan and Co., contended that since the amounts have been paid already as a recoverable advance, it is not open to the workmen to claim anything more inspite of furnishing quit receipts as referred to above. In the present case, the receipts given by the workmen do not make the reference to any gratuity. In fact, the receipts were printed were in English. It was typed under the text of the receipt that it was translated to the workmen in Tamil and they have understood the same and have signed those receipts. Since the text of the receipts were not make clear, the workmen could not have understood that gratuity was also one of the item covered therein. The text of the undertaking shows that the workman understood not to make claim of any kind either in law or in equity against the mill on any account and that the mill can accept this as voucher of full discharge. It was also found in those receipts that he will not make any claim towards the closure period until the Writ Petition filed by the Petitioner was determined by this Court.

10. Even assuming that the workman had stated that he will not make any claim in law, such an undertaking is clearly hit by Section 14 of the Payment of Gratuity Act, 1972 as held by the Respondents 1 and 2. However, adjustment of the recoverable advance even if it is treated as decree of the civil court, the Payment of Gratuity cannot be attached or adjusted in the absence of any law to the contrary. In view of the non-obstante clause u/s 14, the refusal made by the Petitioner mills is misconceived and not supported by law. Hence, the Writ Petition stands dismissed. No costs. The connected Miscellaneous Petition stands closed.

11. In view of the dismissal of the Writ Petition, the contesting Respondents are entitled to withdraw the amount lying in deposit with the 2nd Respondent.