
(2011) 02 MAD CK 0121

In the Madras High Court

Case No : Writ Petition No. 32663 of 2007 and M.P. No. 1 of 2007

The Management of The Salem Textiles Limited

APPELLANT

Vs

The Appellate Authority, Joint Commissioner of Labour and
The Controlling Authority under the Payment of Gratuity Act,
1972 Assistant Commissioner of Labour and I. Rayar

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Apprentices Act, 1961 — Section 2
Industrial Disputes Act, 1947 — Section 18(1)
Payment of Gratuity Act, 1972 — Section 2A, 4(1), 7(7)

Citation : (2011) 3 LLJ 735

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M.R. Raghavan, for the Appellant; R. Murali, G.A. for R1 and R2 and
T. Ravichandran, for R3, for the Respondent

Judgement

K. Chandru, J.—The Petitioner is the Management of Salem Textiles Limited at Salem District. They have filed the writ petition, seeking to

challenge the order of the first Respondent Appellate Authority made in A.G.A. No. 19 of 2006 dated 24.08.2007 and seeks to set aside the said order.

2. In the writ petition, initially notice regarding admission was granted on 10.10.2007. Pending the notice, no interim order was granted.

Subsequently, when the matter came up on 03.11.2010, the writ petition was admitted.

3. The case of the Petitioner was that the third Respondent submitted an application to join the Petitioner Textiles as an Apprentice under the

Apprenticeship Scheme on 23.01.1996. The Petitioner appointed him as an

Apprentice for a period of 3 years. During the said period, he was paid stipend. On 01.06.1999, a settlement was entered into between the Management and the Workers u/s 18(1) of the Industrial Disputes Act.

By the said settlement, it was agreed that the names of workers which are mentioned in Annexure 1 of the settlement will be absorbed into service from 01.07.1999. Among the 200 persons who were covered by the settlement, the Petitioner was one among them. Therefore, he has been working in the Petitioner mill only from 01.07.1999. He resigned from his service on 04.02.2004. At the time of his resignation, the third Respondent was receiving a sum of Rs. 2590.98 as salary. Notwithstanding the fact that he did not have the requisite service of 5 years, he filed an application before the Controlling Authority under the Payment of Gratuity Act (R2) claiming gratuity. In that application, the third Respondent mentioned his total period of service as 20 years and his last drawn wages as Rs. 4290/-. He also alleged that he was in service from 04.04.1984.

4. On notice from the authority, in P.G. Case No. 26 of 2004, the Petitioner filed a counter statement and marked 7 documents. The second Respondent by an order dated 29.06.2005 rejected the request for gratuity. He found that inasmuch the third Respondent had not completed 5 years of service, he was not eligible to get gratuity. It was also held that there was no evidence to show that he had worked from the year 1984.

5. Aggrieved by the same, the third Respondent filed an appeal u/s 7(7) of the Payment of Gratuity Act, 1972 before the first Respondent. His appeal was taken on file as A.G.A. No. 19 of 2006 and notice was issued to the Petitioner. The third Respondent contended that the Petitioner had not provided the copies of the application (Ex.R1) and the Agreement (Ex.R2) to the third Respondent. There was no document showing that he joined as an Apprentice and his certificate of completion of Apprenticeship was also not furnished. A copy of the certified standing orders was also not produced. The Appellate Authority after hearing both sides set aside the order of Controlling Authority. He held that the third Respondent was a regular worker from 04.04.1984 to 03.02.2004. Inasmuch as the Petitioner had not produced any document, their claim that the third Respondent was working as Apprentice cannot be countenanced. Hence, the Appellate Authority held that the third Respondent would have

worked only from 04.04.1984 and his last drawn salary was Rs. 2,590.98 and by rounding of the amount came to Rs. 2,591/-, and thus he

computed the gratuity for a period of 20 years which worked out to Rs. 29,896/- and it was directed to be paid together with simple interest.

6. Mr. M.R. Raghavan, learned Counsel for the Petitioner submitted that the Petitioner and produced the copy of the undertaking dated

23.01.1996, wherein the third Respondent agreed to work under an Apprenticeship Scheme. The agreement was also produced. The settlement

reached between the Union and the Management u/s 18(1) of the I.D. Act was produced and in the Annexure, the name of the third Respondent

also finds a place. Therefore, it cannot be said that there was no evidence before the authorities. This argument of the Petitioner is well founded. In

the present case, the fact that the third Respondent was appointed as an Apprentice and settlement u/s 18(1) providing for absorption of

workers from 01.07.1999 was also been mentioned. It is not clear as to what other documents which the first Respondent was expected to

produce. In the absence of any evidence that the third Respondent has been working from 1984, the only other evidence available, that he was an

Apprentice from 23.01.1996 alone could be accepted. Even if it is accepted that R3 had worked only from 01.07.1999 as per the settlement and

he resigned from service on 03.02.2004, he had worked for 4 years and 7 months even as a regular worker. The term ""continuous service"" is

defined u/s 2A of the P.G. Act. u/s 2A(2)(a), if the service is discontinuous than 240 days, it will be deemed to be continuous service. Therefore, it

can be safely assumed that the third Respondent's service from 01.07.1999 to 03.02.2004 can be taken as the minimum service required u/s 4(1)

so as to enable the third Respondent to get gratuity.

7. Admittedly, R3 was in employment as an Apprentice from 23.01.1996 for a period of 3 years and he was not an Apprentice under a contract

of Apprentice prescribed under the Apprenticeship Act, 1961. Therefore, the term ""employee"" defined u/s 2(e) of the Act, which excludes an

Apprentice, will have to be understood only as an Act Apprentice and not a private Scheme Apprentice. It is the Petitioner, who had failed to

convince the authorities that he was actually given training to the third Respondent during the period and he was only an Apprentice in the letter and

spirit of the term and not an employee under the Act.

8. In the present case, since the third Respondent is not an Act Apprentices, in labour jurisprudence, mere nomenclature cannot be a criteria for

deciding the status. The Petitioner Employer not having let in any evidence, it can be safely held that R3 had put in a total service of 8 years.

Therefore, his gratuity can be worked out on the said basis. If it is worked out in that manner, R3 will be entitled to get the amount as per the

following calculation:

$2591 \times 15/26 \times 8 = 11,957/-$ rounded of to Rs. 20,000/-

9. In the light of the above, the writ petition is partly allowed. The findings of the first Respondent Appellate Authority with reference to

employment of R3 is restored, but his length of service is fixed at 8 years. The third Respondent is entitled to get a sum of Rs. 20,000/-. Without

driving the third Respondent for enforcing the order, the Petitioner is hereby directed to pay the gratuity as ordered by this Court to the third

Respondent directly within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected

miscellaneous petition is closed.