

(2011) 02 MAD CK 0123

In the Madras High Court

Case No : Writ Petition No. 36081 of 2005 and W.P.M.P. No. 38921 of 2005

Vel Computer Services Pvt. Ltd.

APPELLANT

Vs

The Assistant Commissioner of Labour/The Controlling Officer
under the Payment of Gratuity Act 1972, Office of 1st
Additional Labour Commissioner and M. Manikandan

RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 4(1), 4(6), 7(7)
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 5

Citation : (2011) 3 LLJ 710

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Ramesh, for the Appellant; R. Murali, G.A. for R1, for the
Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner is an employer. He has come forward to challenge an order, dated 10.1.2005 passed by the first

Respondent Controlling Authority under the Payment of Gratuity Act, 1972-cum-Assistant Commissioner of Labour. By the impugned order, the

first Respondent had computed a sum of Rs. 8439/- towards gratuity payable to the second Respondent on account of his six years of service with

last drawn wages of Rs. 2438/-.

2. The writ petition was admitted on 11.11.2005. Pending the writ petition, this Court had granted an interim stay. Till date, the contesting

Respondent has not been served as the Petitioner had not effected service on him. The writ petition is liable to be rejected solely on that ground. In

any event, as against the order passed by the first Respondent, the Petitioner has a remedy by way of an appeal u/s 7(7) of the Payment of

Gratuity act to the appellate authority. The Petitioner has not moved the appellate authority. On that ground also, the writ petition is liable to be rejected.

3. The contentions raised by the Petitioner in the affidavit was that the second Respondent had misappropriated cash from the Petitioner. Only

when the misappropriation came to light, the second Respondent had resigned on 22.7.2003. Therefore, no disciplinary action was possible. The

gratuity claim was filed belatedly. If any gratuity is paid even after embezzlement by the Petitioner, it will set a bad precedent. Section 4 of the

Payment of Gratuity Act will have to be interpreted in such a way that persons, who have committed misappropriation resigned from service,

thereby depriving the employer from taking disciplinary action, should not be made to claim gratuity. Section 4(6) will have to be interpreted

liberally.

4. The contentions raised by the Petitioner are no longer res integra. For the purpose of depriving the employee from receiving gratuity, a valid

order must be passed by the employer. u/s 4(6), if any order is passed and contingency for payment of gratuity u/s 4(1) arises, it is necessary that

the employer will have to pay gratuity. It is not as if the employer has no remedy in recovering the amount from the employee. They can always file

a civil suit claiming the amount misappropriated by him. There is no legal bar in recovering the amount in case the Petitioner proves that there was

actually embezzlement. But, having allowed the employee to resign, the Petitioner is bound to pay gratuity. The authority had rightly rejected the

case of the Petitioner.

5. The Supreme Court on analysing the provisions of the Gratuity Act as well as Working Journalist Act found that Section 5 of the Working

Journalists Act was differently worded in that Act. A mere termination by way of disciplinary action will disable the working journalist from

receiving gratuity. Whereas u/s 4(6) of the Payment of Gratuity Act, it is only in case of termination for disorderly behaviour or termination on

account of offence involving moral turpitude. Even in that case, an order of forfeiture will have to be passed. The order of termination on these

grounds is not enough to satisfy Section 4(6).

6. In this context, it is necessary to refer to a judgment of the Supreme Court in P. Rajan Sandhi Vs. Union of India (UOI) and Another, . The

following passage found in paragraph 11 of the said judgment may be usefully extracted below:

11. It may be seen that there is a difference between the provisions for denial of gratuity in the Payment of Gratuity Act and in the Working

Journalists Act. Under the Working Journalists Act gratuity can be denied if the service is terminated as a punishment inflicted by way of

disciplinary act, as has been done in the instant case. We are of the opinion that Section 5 of the Working Journalists Act being a special law will

prevail over Section 4(6) of the Payment of Gratuity Act which is a general law. Section 5 of the Working Journalists Act is only for working

journalists, whereas the Payment of Gratuity Act is available to all employees who are covered by that Act and is not limited to working journalists.

Hence, the Working Journalists Act is a special law, whereas the Payment of Gratuity Act is a general law. It is well settled that special law will

prevail over the general law, vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, pp.133 and 134.

7. Since such contingency has not arisen in the present case and there is no dispute regarding resignation of the second Respondent, the Petitioner

is bound to comply with the order impugned in the writ petition. Hence the writ petition will stand dismissed. No costs.