

In the High Court of Judicature at Madras

Dated: 31.10.2008

Coram:

The Honourable Mr.Justice S.J.Mukhopadhaya  
and  
The Honourable Mr.Justice V.Dhanapalan

Writ Appeal No.2341 of 2001

R.Thangeswaran

.. Appellant

vs.

1. The Management of Tamil Nadu Cements Corporation Ltd.,  
(TANCEM), rep. by the General Manager  
(Personnel and Administration),  
LLA Building, Anna Salai, Chennai-600 002.
2. Assistant Commissioner of Labour  
(Controlling Authority under  
the Payment of Gratuity Act, 1972),  
Office of the Deputy Commissioner of Labour-I,  
2<sup>nd</sup> Floor, DMS Compound, Madras-600 006.
3. Deputy Commissioner of Labour (Appeals),  
(Appellate Authority under the Payment of Gratuity Act, 1972),  
6<sup>th</sup> Floor, DMS Compound, Madras-600 006. ... Respondents

Writ Appeal against the order dated 24.11.2000 passed by the learned single Judge of this Court in Writ Petition No.3189 of 1994 filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus directing to call for the records of 3rd respondent relating to his order dated 13.01.1994 in P.G (Appeal).48 of 92 and quash that portion of the order in so far as it denies gratuity for a sum of Rs.24,680/82 and consequently direct the 1st respondent management to pay the same to the petitioner together with interest.

For appellant : Mr.N.G.R.Prasad for M/s.Row & Reddy  
For respondents : Mr.R.Dwarakanathan for R-1  
Mr.D.Sreenivasan, Addl.G.P. for RR-2 & 3

Judgment

(The Judgment of the Court was delivered by S.J.Mukhopadhaya,J)

The appellant-R.Thangeswaran, who was in the services of the first respondent-Tamil Nadu Cements Corporation Limited (for short, 'the TANCEM') being aggrieved by the order dated 13.1.1994 passed in P.G. (Appeal).No.48 of 1992 by the third respondent-Deputy Commissioner of Labour (Appeals)-appellate authority under the Payment of Gratuity Act, 1972, in respect of adjustment of gratuity, unsuccessfully challenged the said order dated 13.1.1994 before the learned single Judge, giving

rise to the present Writ Appeal.

2. As short question of law is involved, it is not necessary to discuss all the facts, except the relevant one.

3. The appellant-writ petitioner, joined the services of the first respondent-Management of the TANCEM on 18.5.1966 and superannuated on 30.6.1991. His last drawn pay was Rs.2,335/- per mensem. Since the first respondent-Management of the TANCEM did not pay him the gratuity amount, he forwarded an application on 5.12.1991, claiming a sum of Rs.45,682.31 p. The first respondent-Management of the TANCEM in their turn, by letter dated 12.2.1992, sanctioned a sum of Rs.30,946.15p as gratuity. When the appellant-writ petitioner went to collect the amount, he was asked to receive only a sum of Rs.6,265.33 p. and on enquiry, he came to know that the Management deducted a sum of Rs.24,680.82p towards the wages paid by them between 1.5.1990 and 20.1.1991, when he was on long medical leave due to an accident while in service.

The appellant thereafter filed Application No.10 of 1992, before the second respondent-Assistant Commissioner of Labour--the Controlling Authority under the Payment of Gratuity Act, 1972, claiming that the amount was illegally deducted by the first respondent-Management of the TANCEM. Before the second respondent-Controlling Authority, the first respondent-Management of the TANCEM, for the first time, made a counter statement that excess leave was treated as extraordinary leave on loss of pay and therefore, the excess amount paid to the appellant-employee (writ petitioner), was ordered to be recovered.

The second respondent-Controlling Authority, after hearing both the parties, computed the gratuity amount and passed favourable order on 24.8.1992, directing the first respondent-Management of the TANCEM to pay back a sum of RS.25,970.25p towards the balance gratuity within stipulated time.

Against the said order dated 24.8.1992 passed by the second respondent-Controlling Authority, the first respondent-Management of TANCEM preferred appeal before the third respondent-Deputy Commissioner of Labour (Appeals)--the appellate authority under the Payment of Gratuity Act, 1972, and the third respondent-appellate authority allowed the appeal, by order dated 13.1.1994 in P.G.(Appeal) Case No.48 of 1992, which has been confirmed by the learned single Judge in the impugned order dated 24.11.2000 passed in Writ Petition No.3189 of 1994 filed by the appellant-employee.

4. Learned counsel appearing for the appellant-writ petitioner (employee) submitted that the first respondent-Management of TANCEM accepted that the writ petitioner met with an accident while in service and his leave was regularised. It was also submitted that the first respondent, having accepted such contention, as per Sections 13 and 14 of the Payment of Gratuity Act, the gratuity cannot be forfeited and adjusted and contracting out is also not permissible. Learned counsel appearing for the appellant-employee further submitted that as per Section 4(6) of the Payment of Gratuity Act, the first respondent-Management of TANCEM is not entitled to recover the amount, there being

no loss or destruction of the property caused by the appellant-writ petitioner (employee).

5. According to the learned counsel appearing on behalf of the first respondent-Management of TANCEM, the period of excess leave from 1.5.1990 to 20.1.1991 is to be treated as "extraordinary leave on loss of pay" and therefore, a sum of Rs.20,711.65 was due to the employer (first respondent-Management of TANCEM). It was also submitted that it was neither a case of forfeiture of the gratuity amount under Section 4 (6) of the Payment of Gratuity Act, 1972, nor a case of attachment of gratuity in execution of any decree/order of any Court of Law. He further submitted that if any amount is paid in excess to the employee, the Management has a right to adjust the same and pay the rest of the amount due to the employee.

6. We have heard the learned counsel appearing for the parties and noticed the rival contentions.

7. It is not in dispute that the appellant-writ petitioner, met with an accident while he was in service and remained on long medical leave from 1.5.1990 to 20.1.1991. The said period of leave was regularised and treated as "extraordinary leave". After regularisation of the leave period, the appellant-writ petitioner was paid full pay for the period from 1.5.1990 to 20.1.1991. Thereafter, the appellant-employee retired on 30.6.1991 on attaining the age of superannuation. Till the date of superannuation of the employee, no notice was issued on him by the Management for recovery/adjustment of any amount on the alleged ground of excess payment. Even when the appellant-employee applied for gratuity, the first respondent-Management, by letter dated 12.2.1992, sanctioned a sum of Rs.30,946.50p as gratuity amount and no order was passed for adjustment of any amount. Therefore, it would be evident that no competent authority either noticed or determined that the appellant-employee has been paid the excess amount, nor the competent authority who sanctioned the gratuity, vide letter dated 12.2.1992, ordered to recover/adjust any amount from the gratuity amount of the appellant.

8. It is true that the provisions of Section 4(6), Section 13 and Section 14 of the Payment of Gratuity Act, 1972, are not applicable to the present case, as the services of the appellant-employee, were not terminated, and he retired on attaining the age of superannuation. However, there is no bar under the provisions of the Payment of Gratuity Act, 1972, to adjust the amount(s) due to the employer from the gratuity; but in the absence of any determination by the competent authority, after notice to the employee, i.e. the writ petitioner herein, it cannot be alleged by way of filing a counter affidavit that the excess amount had been paid to the writ petitioner-employee, which has been adjusted. In fact, after regularisation of the period of leave of the writ petitioner-employee, once the competent authority decides to pay the total gratuity amount, as decided in the present case, in the absence of such authority's decision to adjust any amount(s) out of the said gratuity, it was not open for the other respondent(s) to adjust any amount(s) from the gratuity of the writ petitioner-employee on the ground of excess payment.



9. The third respondent-appellate authority under the Payment of Gratuity Act and the learned single Judge, having failed to notice the above said position, we have no other option except to set aside the order dated 13.1.1994 passed by the third respondent-appellate authority in P.G.(A).Case No.48 of 1992 and the impugned order dated 24.11.2000 passed by the learned single Judge in Writ Petition No.3189 of 1994.

10. In the result, the Writ Petition in question and the Writ Appeal are allowed, with a direction to the first respondent-Management of TANCEM to pay the appellant-employee the rest of the gratuity amount, i.e. Rs.25,970.25p, as per the order dated 24.8.1992 passed by the second respondent-controlling authority, with 10% interest per annum, to be calculated with effect from 24.8.1992 on the amount of Rs.25,970.25p till the date of payment of the said amount, within two months from the date of receipt/production of a copy of this judgment.

In the facts and circumstances of the case, there shall be no order as to costs.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The General Manager  
(Personnel and Administration),  
The Management of Tamil Nadu Cements Corporation Ltd.,  
(TANCEM), LLA Building,  
Anna Salai, Chennai-600 002.
2. The Assistant Commissioner of Labour  
(Controlling Authority under  
the Payment of Gratuity Act, 1972),  
Office of the Deputy Commissioner of Labour-I,  
2<sup>nd</sup> Floor, DMS Compound, Madras-600 006.
3. The Deputy Commissioner of Labour (Appeals),  
(Appellate Authority under the Payment of  
Gratuity Act, 1972),  
6<sup>th</sup> Floor, DMS Compound, Madras-600 006.

- 1 cc To Mr.Meenakshi Sundaram, Advocate, SR.60645.  
1 cc To M/s.Row & Reddy, Advocate, SR.60719.

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