

(2011) 11 MAD CK 0126

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 786 of 2011 and M.P. (MD) No"s. 1 and 2 of 2011

Indian Overseas Bank

APPELLANT

Vs

T. Govindaraj, M/s. Thiruchendur
Murugan Spinning Mills, The
Assistant Commissioner of
Labour, Controlling Authority
Under Payment of Gratuity Act,
Dindigul and The Joint
Commissioner of
Labour/Appellate Authority
Under Payment of Gratuity Act,
Tiruchirapalli

RESPONDENT

Date of Decision: Nov. 2, 2011

Acts Referred:

- Payment of Gratuity Act, 1972 - Section 4

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: M. Senthilkumar, for the Appellant; S. Arunachalam For Respondent-1 and Mr. M. Govindan (R3 and R4) Spl. Govt. Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice K. Chandru

1. The writ petition is filed by the Indian Overseas Bank, represents by its Branch Manager N.Paraipatti Branch, Vedachendur Taluk. Curiously, in this writ petition, the petitioner Bank challenges an order passed by the 3rd respondent Assistant Commissioner of Labour-cum-Controlling Authority, under Payment of Gratuity Act, Dindigul, dated 28.01.2010.

2. In this writ petition, Notice of Motion was ordered on 21.01.2011. Pending the Notice of Motion, no interim orders have been granted. It is seen from the records that the first respondent herein and the other workers numbering 297, who were employees of the second respondent Spinning Mill at N.Paraipatti, Dindigul District, filed gratuity applications, claiming gratuity. It is seen that the Mill had employed around 300 workers and the Mill was closed without giving any work with effect from 04.12.1994. The workers have been demanding gratuity for the services rendered by them. Having waited patiently and sending representations to various authorities they finally filed an application u/s 4 of the Payment of Gratuity Act, claiming gratuity from the second respondent Mill. Since there was a delay in filing the said application, each one of the worker filed interim application in I.A.Nos.10/2008 to 39/2008, 42/2008 to 238 of 2008, 241/2008 to 250/2008, 252/2008 to 303/2008, 309/2008 to 315/2008 as well as I.A.325/2008 in unnumbered gratuity applications.

3. In the application for condoning the delay, they had also made the petitioner Bank as party/second respondent. This was on the premises that the Mill's property was hypothecated to the petitioner Bank and using the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for short "the SARFAESI Act"), the properties of the Mill were taken over and sought to be appropriated by the Bank towards their due. In fact, earlier the Bank had filed an application against the Mill under the Debt Recovery Tribunal, Chennai, which was subsequently transferred to Debt Recovery Tribunal, Coimbatore and further transferred to Debt Recovery Tribunal, Madurai and it is still pending.

4. In the meanwhile, the provisions of the SARFAESI Act was invoked and they claimed every right to take the possession of the mortgaged property and sale the same in the open auction under due process of law. It also took arrangements to sell the property. But, in the application for condoning the delay, each of the workmen stated that they were under the impression that the Mill was covered by Chapter 5-B of the Industrial Disputes Act and no approval for closure was obtained from the appropriate authority and therefore, the workmen were under the impression that the Mill will be opened. But, when they realise that the petitioner Bank is about to take over and appropriate the entire property and having lost any hope of further working in the Mill, they claimed gratuity and in that process, there was a delay.

5. Notice was issued to the petitioner Bank as well as to the Management of the Spinning Mill. The second respondent Spinning Mill, who is the employer of the workmen, did not file any counter to the said application for condoning delay. But, however, the petitioner Bank filed a counter affidavit, dated 28.08.2008, resisting the condonation of delay. It was claimed by the Bank that they are not the employer and therefore, there is no necessity to make the Bank as a party. But, not stopping

with that contention, they went on to contend that the Bank has got exclusive right over the property and therefore, the workmen will have to proceed against the real employer or the Insurance Company. But however, they contended that there was no cause for condoning the delay after a decade. The authority consolidated all the condonation delay applications numbering about 297 and passed a common order, dated 28.01.2010.

6. The authority framed three issues. The first issue was whether the petitioner Bank having taken over the property under the SARFAESI Act, the status of the Bank having taken the property under the Payment of Gratuity Act? The second question was that whether the petitioner Bank was bound to pay gratuity and whether the second petitioner is an employer of the petitioner? and the third issue was that Whether the delay in filing the main petition has to be condoned? Whether the Interlocutory Application filed by the petitioner is acceptable or not?

7. With reference to the condonation of the delay, the authority held that the workman was under impression that the Mill will be opened. Having lost all hopes, they had filed the condoning delay applications and after relevant guidelines issued by the High Court in various matters, it was a fit case for condoning the delay. Therefore, he condoned the delay and directed gratuity applications to be numbered and accordingly they were numbered as P.G.1/2010 to 297/2010 and posted the cases further for hearing.

8. With reference to the other two issues, the 3rd respondent, *prima facie* found that since the properties of the Mill have been taken over by the petitioner Bank under the provisions of the SARFAESI Act, *prima facie* they are also bound to pay the gratuity to the workman from out of the funds of the Mill and therefore, held those issues against the petitioner Bank.

9. Since the order itself states that it was a *prima facie* view regarding the maintainability of the claims against the petitioner Bank, the petitioner Bank could have filed a detailed counter affidavit on the said issues and contested the main gratuity applications. In any finding rendered in the condonation delay applications with reference to the other issue can only be *prima facie* view and the real issue to be decided by the authorities is whether there was a ground for condoning the delay.

10. In the present case, the 3rd respondent, being an employer, did not contest the application for condoning the delay and it is not clear as to how the petitioner Bank has locus standi to oppose the condonation of delay. Any other findings rendered by the authorities on the other issues, which are not germane to the condone delay application, it is only be said to be a *prima facie* view and no challenge can be made. In the present case, it presumes that the claims for Gratuity is not concluded by the 3rd respondent. Even if any adverse orders are passed, the Act provides for a statutory appellate remedy u/s 7(7) before the 4th respondent appellate authority.

Therefore, the stage to decide any liability against the petitioner does not arise.

11. Even otherwise, the order is passed by the authority in respect of 297 interim applications, but the petitioner's writ petition filed only showing the name C.Govindaraj, as the contesting first respondent, (who was the applicant) in I.A.No.10/2008. The writ petition is also not maintainable in the light of non-impleadment of the other necessary and proper parties. The petitioner by filing the writ petition, as against P.G.I.A.No.10/2008, dated 28.01.,2008 made in P.G.I.A.No.9 of 2008, cannot impugn a common order passed by the authority in respect of 297 applications filed by 297 workmen. In the order passed against the Bank or against the second respondent in respect of the other employees have become final then those findings are will operate as res judicata against the petitioner. Against a common order the petitioner cannot file a single application challenging only one application, thereby, leaving out 296 applications out of the purview.

12. The Supreme Court while dealing with the filing of appeals from a common order and in which orders were passed but were not appealed against, held, that would operate as res judicata vide its judgment in K.H. Siraj Vs. High Court of Kerala and Others, and in paragraph 76, it was observed as follows: "76. One more factor has also to be noticed in regard to the civil appeals filed by Mr K.H. Siraj which, in our opinion, is also hit by res judicata. His writ petition in the High Court was OP No. 5219 of 2002. That was partly allowed without giving him any relief for a direction for appointment. On the other hand, the High Court set aside the selection of candidates occupying Ranks Nos. 60, 62, 64, 66, 68, and 70. The High Court filed Writ Appeal No. 1496 of 2004 before the Division Bench. Mr K.H. Siraj himself filed WA No. 1584 of 2004 against that part of the impugned judgment which was against him. Candidates occupying Rank No. 60, etc. who are affected by the judgment had themselves filed WAs Nos. 1498, 1510, 1526, 1527, 1541, 1588 and 1574 of 2004. All these appeals filed by the High Court and by these parties were allowed setting aside the judgment of the learned Single Judge. Mr K.H. Siraj's appeal (WA No. 1584 of 2004) was dismissed. However, Mr Siraj has chosen to file appeals only against the decision in WA No. 1496 of 2004 filed by the High Court and WA No. 1584 of 2004 filed by himself and has not chosen to file any appeal against the decision in the other appeals, WA No. 1498 of 2004, etc. filed by the affected parties. The decision therein has become final and, therefore, operates as res judicata and Mr K.H. Siraj's appeal is to be dismissed as such."

13. Considering the fact that it is only an interim order and only *prima facie* case has been taken and also that the order passed in favour of other workmen is not under challenge, it is not a fit case for entertainment by this Court.

14. With reference to the liability of the Bank, this Court refrains from rendering any finding, as there is no final orders passed against the petitioner Bank in the proceedings under this Act. Hence, the writ petition stands dismissed with a cost of

Rs.2,000/- as counsel fee, payable to the counsel for the first respondent. Consequently, connected miscellaneous petitions are also dismissed.