

Filed on : 24.08.2021
Registered on : 25.08.2021
Decided on : 15.02.2024
Duration : **02Y, 05M, 21D.**

BEFORE SMT. T. A. SAWANT, CONTROLLING AUTHORITY
UNDER THE PAYMENT OF GRATUITY ACT & JUDGE,
SECOND LABOUR COURT, THANE.

APPLICATION (PGA) NO. 153 OF 2021

CNR NO : MHLC04000469-2021

Shri. Govindbhai Haribhai Patel
Age : 77 years, Occ : Retired,
Having Address at :
29 D, Rameshwar Apartment,
Murar Road, Mulund (W),
Mumbai - 400 008.

...Applicant

Versus

Samart Furnances Pvt. Ltd.,
Shri. Balkrishna Shankar Poshe,
Age : 77 years (Managing Director),
115, Ajit Industrial Estate,
Off. Western Express Highway,
Mira Village
Dist. Thane - 401 104.

...Opponent

Appearances :-

For Applicant : Ld. Adv. Mr. Sameer Maghade
For Opp. : Ld. Adv. Mr. J. J. Thakur

:- J U D G M E N T :-

(Passed on 15.02.2024)

1. The Applicant has preferred this application under Section 4 of the Payment of Gratuity Act, 1972 .

2. **Brief facts of the Applicant's case are as under :**

The Applicant stated that he was an employee of the Opponents. He is entitled to claim gratuity on account of his resignation with effect from 6/11/2020 after completion of 15 years of service. He had sent application for payment of his gratuity on 12/08/21 but the Opponents refused to entertain the same. As the gratuity is not paid, there is a dispute on the point of non-payment of gratuity. He has therefore prayed that this court be pleased to determine his gratuity and direct the Opponents to pay the same.

3. The Opponents filed their written statement below Exhibit C-2. It is submitted that the Applicant was working strictly as a Technical Consultant / Advisor for the period April 2016 till March 2020 I.e. for 4 years. He was neither direct or permanent employee nor is his name borne on the muster roll or payroll. He was rendering services for BARC and Bangladesh Ordinance factory jobs with the conveyance facility for the same. He was strictly working as a Consultant / Advisor and rendering technical services, guidance and advice to the Opponents. He was put on contract employee due to his personal request and on humanitarian ground during which 10% TDS was deducted and form No. 16 A was Issued to him. The said services were given by him during the Corona period. In March 2020, he abruptly stopped reporting to the BARC site project without formal intimation. Despite repeated

request of MD of the Opponents, he failed to complete the said project due to his reckless, gross negligence, irresponsible acts and total refusal. For non-performance / completion of project within stipulated time, the Opponents sustained a financial loss of ₹ 17.50 Lacs as performance Bank guarantee is still not released by the BARC even the after expiry of claim period. Working for an exports job of Bangladesh Ordinance factory, the Applicant failed to collect the tax invoice as promised from the supplier M/s Laxmi Engineering during delivery. The act of the Applicant was so deliberate and wilful that the company was forced to bear the loss of Rs. 3.85 lakhs as the GST amount was not paid to the government by the supplier. There were major problems in the equipment manufactured under his supervision which was exported to Bangladesh ordinance factory and due to this, they have suffered the loss of ₹50 Lacs approximately and still the equipment is not yet handed over. The said act clearly shows that because of Applicant's gross negligence, the company is still incurring additional expenses of around Rs. 12 Lacs to fix the Issues that arose due to sub-standard and poor quality of work done by the supplier under the supervision of Applicant. They submitted he was found to be very casual and irresponsible towards his services for remaining absent at site and no information to that effect. Because of gross negligence and lack of expertise of the Applicant, the company has incurred a total loss of ₹ 83 lakhs and also caused their name and reputation in the market. Therefore, it is prayed that the application be

rejected. The Applicant is not entitled for payment of gratuity.

4. Issues are framed below Exhibit O-2 as follows.
I answer the same for the reason mentioned herein below.

ISSUES

FINDINGS

- | | | |
|---|--|---------------------------------|
| 1 | Whether the applicant proves that he completed 15 years of service with the opponents till his resignation w.e.f. 06.11.2020 ? | In the negative. |
| 2 | Whether the opponents prove that applicant was working strictly as a Technical Consultant / Advisor from April 2016 to March 2020 only ? | In the negative. |
| 3 | Whether the Applicant proves that he is entitled to the reliefs as prayed for ? | In the negative. |
| 4 | What order ? | Application is rejected. |

REASONS

As to Issue No. 1 :-

5. The Applicant examined himself below Exhibit U-9. The Ld. Advocate for the Opponents failed to cross-examine him hence no cross-examination order was passed against them, on 23.11.2023.

6. The Opponents failed to lead their evidence hence their evidence was closed by passing order dated 18/12/23 below Exhibit U-1.

7. I have heard the Ld. Advocate for the Applicant. He submitted that the Applicant resigned and sent Form 'T' to the Opponents on 12/08/21 and then had sent reminders to the Opponents for payment of gratuity. But the Opponents did not pay him the same. They did not file their evidence. They did not cross-examine the Applicant. Hence there is no rebuttal on record. His case is not challenged. It is therefore prayed that the application be allowed and Opponents were directed to pay gratuity to the Applicant.

8. The Opponents failed to argue. Therefore, their arguments were closed by order dated 02/02/2024 below Exhibit U-1.

9. I have gone through all the materials on record. At the threshold it is important to note that there are no pleadings of the Applicant with respect to his date of joining, exact service tenure, last date of working, last drawn wages and with respect to his continuous service in the Opponents of more than 240 days in a year. He has only stated that he resigned with effect from 6/11/2020 after completion of 15 years of service but what was his actual date of joining of the company and on what post, is not mentioned in his application. Though he has filed on

record documents viz; resignation copy dated 12/08/2021, copy of Form 16 & 16A, copy of reminder letters and copy of his visiting card, however he has not filed on record his appointment letter, he has not filed any document to show whether his resignation was accepted or whether the said resignation was duly served upon the Opponents. The said copy of resignation letter which he has filed on record does not have any seal or stamp of the Opponents to show that they have received the same. Same is the case for the reminder letter that he has alleged to have sent to the Opponents. He has not filed their acknowledgment on record that they were duly served upon the Opponents. Though he has filed on record photo copies of the email dated 7th May 21 and 11th July 21 however he has not filed on record any Section 65B certificate as required under law. With respect to his visiting card also, the original is not filed on record and the same is not proved as per evidence. No relevancy is shown of the same.

10. I have also gone through the Form 16 which he has filed on record. The Applicant has filed copies of form 16 for the year from 2004 till 2016. However thereafter for the assessment year 2018-19 to 2020-21, he has filed on record Form 16A for the period from 01/07/17 till 30/09/17, 01/10/17 till 31/12/17, 1/1/2018 till 31/03/18, 01/10/19 till 31/12/19 and 04/01/20 till 31/03/20 only. They are with respect to non-salary income and the tax withheld from it. The same do not show continuity of service of 15 years. He has stated that he resigned on 12/08/21. But his

date of joining is nowhere mentioned. Nothing is there on record to show that he has worked with the Opponents continuously for more than 240 days in a year or that he has thus completed 15 years of service. Similarly with respect to his last drawn wages, there is nothing on record filed by him. No calculations are filed by him. There are no pleadings to that effect.

11. Though, in his affidavit of evidence, he stated that he joined the services in the month of November 2004 and was working as a Senior Technical Manager and was earning ₹ 45,000/- monthly wages and was relieved on 06/09/20, however there are no such pleadings and no evidence is filed on record to show his appointment as such and his details of monthly wages. Therefore, without pleadings on his evidence cannot be considered. He pleaded he resigned on 6/11/2020 but in his affidavit he stated he was relieved on 6/9/2020. There is contradiction and difference in it. Similarly, there is no evidence on record to show that he is entitled to claim gratuity of ₹389423/- from the Opponents. No calculations are filed on record. Since there are neither pleadings nor evidence to show that he has completed 15 years of service with the Opponents and his resigned on 6/11/2020, I therefore answer Issue No. 1 in the **Negative** by holding that he has miserably failed to prove the same.

As to Issue No. 2 :-

12. After filing of the written statement, the Opponents have not led any evidence. Therefore, they have failed to prove their defence. There is nothing on record to show that the Applicant was working strictly as a Technical Consultant / Advisor from April 2016 till 02/03/20 only. I therefore answer Issue No. 2 in the **Negative**.

As to Issue No. 3 :-

13. Since the Applicant has failed to prove his case, hence he is not entitled to any relates. Therefore, I answer Issue No. 3 in the negative and in answer to Issue No. 4, I proceed to pass the following order.

:- O R D E R :-

1. Application stands rejected.
2. No Order as to costs.

Sd/-

(Smt. T.A. Sawant)

Controlling Authority under the
Payment of Gratuity Act & Judge,
Second Labour Court, Thane.

Place : Thane.

Date : 15.02.2024

VAM***26022024

Argued on : 02.02.2024
Judgment directly dictated & typed on : 15.02.2024
Judgment checked & signed on : 26.02.2024