

**BEFORE THE APPELLATE AUTHORITY UNDER THE PAYMENT  
OF GRATUITY ACT, 1972, PUDUCHERRY**

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Present:

Thiru. S. Mouttoulngam,  
Appellate Authority under the Payment of  
Gratuity Act, 1972,  
Labour Department Complex – II Floor,  
Vazhudavur Road, Gandhi Nagar,  
Puducherry – 605 009.

Appeal No. 5/2019

In

P.G. No. 187/2018

11 8 MAR 2020

Between:

Thiru. S. Kasinathan,  
No.39, 1<sup>st</sup> Block,  
Jawahar Nagar, Boomianpet,  
Puducherry – 605 005.

... Appellant

Vs.

1. The Managing Director,  
M/s. Anglo French Textiles,  
Puducherry Textiles Corporation Ltd.,  
Mudaliarpet, Puducherry - 4.

...Respondent No.1

2. The Controlling Authority under  
the Payment of Gratuity Act, 1972

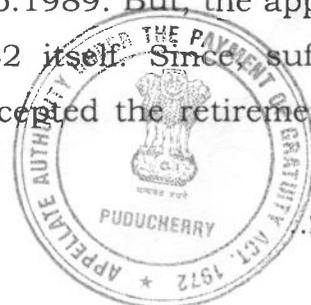
... Respondent No.2

The appeal coming for final hearing before me on 05.12.2019 and the Appellant and the Respondent No.1 called present, during the proceedings. Upon giving an opportunity of hearing to both sides and having stood over till this day for consideration, this Authority pronounced the following:

**O R D E R**

1. This appeal has been preferred under sub-section (7) of Section 7 of the Payment of Gratuity Act, 1972 (Hereinafter referred to as the 'Gratuity Act').
2. The factual matrix that stood exposed from the appeal filed by the appellant runs thus.

The appellant Thiru. S.Kasinathan in his letter dated 22.08.2019 has stated that he was a retired employee of the opposite party management M/s. Anglo French Textiles, Puducherry. The opposite party management in their reply has counted the joining date of the appellant from 01.06.1989. But, the appellant had become a full time worker during the year 1982 itself. Since sufficient documents are not available with him at that time, accepted the retirement age furnished by the opposite party management.



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Now, he had the ESIC Identity Card for the year 1982 and the Salary slip for the same year. Hence, prayed before this Authority to calculate the service period from the year 1982 for the purpose of calculation of gratuity and thereby render justice.

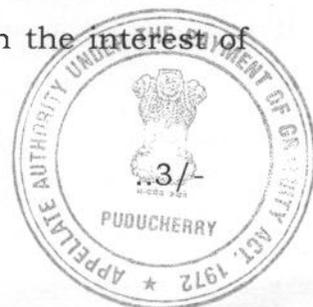
3. Per contra, the management in their counter statement dated 16.10.2019 has stated that the Appellant has raised objection in the date of appointment by referring the Employees State Insurance Corporation date of entry and claims the date of appointment as 24.03.1982 instead of 01.06.1989 as per the records of the Management. Even in the case of (a) date of entry in EPFO is 01.03.1982, (b) date of appointment in ESI is 24.03.1982 and (c) the date of appointment in AFT is 01.06.1989 and it is clear that there are 3 different date of appointment for the same applicant. Wherein, the date of entering in ESI or EPFO is not at all relevant for the purpose of gratuity. Therefore, the appellant can raise/challenge the date of appointment issue only before the concerned legal forum. Hence, the date of appointment issue may be treated as preliminary issue and prayed to pass necessary orders in the preliminary issue.

Further, it is stated that as per Anglo French Textiles Limited (Acquisition and Transfer of Textiles Undertaking) Act, 1986, section 11 provides that notwithstanding anything contained in the payment of Wages Act, 1936 (Central Act 4 of 1936) and the Payment of Gratuity Act, 1972 (Central Act 39 of 1972)

d. The Government or the Corporation shall not be liable to any person who has become an employee of the Corporation under this sub-section for payment of any gratuity or any arrears of wages for the period commencing from the day on which the Textile undertaking in which he was employed was closed and ending on the day on which he becomes an employee of the Corporation, irrespective of whether such closure was in accordance with the provisions of the Industrial Disputes Act, 1947 or not.

e. the termination of services of a person under sub-clause (ii) of clause (a) of sub-section (3) on his becoming an employee of the corporation under this sub-section shall not entitle such person to payment of any gratuity. From all the above said facts, the applicant is not eligible for gratuity as claimed by him in his appeal petition dated 22.08.2019.

Hence, the claim of the applicant to change the date of appointment may be rejected as there is no merit in his claim and prayed to pass orders on the basis of the counter dated 25.01.2019 filed by the Respondent Management before the Controlling Authority under the Payment of Gratuity Act, 1972 in the interest of justice.



The opposite party management in their additional counter dated 09.11.2019 has stated that the Anglo French textiles Limited (Acquisition and Transfer of Textile Undertaking) Act, 1986 is a special enactment, wherein, as per section 11 of the Act, the service of the petitioner was terminated on his fresh employment with the Respondent before the appointed date. The Anglo French textiles Act specifically states that the employees who were employed before the appointed date in the Corporation are not eligible for gratuity on their termination under section 11 (1)(b) under sub-clause (ii) of clause (a) of sub-section 3 on their becoming employee of the Corporation under sub-section(1) of section 11 of the Act. Further, as per section 23 of the AFT Act, the Act has an overriding effect on all other enactment including the Payment of Gratuity Act, 1972. Therefore, as the AFT Act specifically denies gratuity for the period of employment under the erstwhile owner, the petitioner can't make a claim under the Gratuity Act for such period. Therefore, the Authority has no jurisdiction to entertain the application by virtue of the provision of the Act and therefore the same is deserved to be rejected at the threshold.

4. **Answering:** On perusal of the records it was found that, the Labour Officer (Enforcement)-cum-Controlling Authority under the Payment of Gratuity Act, 1972 has passed an Order dated 17.07.2019 directing the respondent management M/s. Anglo French Textiles, Puducherry to pay an amount of Rs.2,36,897/- (Rupees Two Lakhs thirty six thousand eight hundred and ninety seven only) towards gratuity with simple interest @ 10% per annum from 30.09.2015 till the date of payment/deposit as per Section 7 (3A) of the Act read with Central Government Notification No.S.O.874(4) dated 01.10.87 to the appellant Thiru. S. Kasinathan within 30 days of the receipt of the notice.

Whereas, the appellant filed this appeal before this Appellate Authority under the Payment of Gratuity Act, 1972, on the ground that the opposite party management in their reply has counted the joining date of the appellant from 01.06.1989. But, the appellant had become a full time worker during the year 1982 itself. Since no sufficient documents are available with him at that time, had accepted the retirement age furnished by the opposite party management. Now, he had the ESIC Identity Card for the year 1982 and the Salary slip for the same year. Hence, prayed before this Authority to calculate the service period from the year 1982 for the purpose of calculation of gratuity and thereby render justice.



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On the other hand, the opposite party management has stated that the Anglo French textiles Limited (Acquisition and Transfer of Textile Undertaking) Act, 1986 is a special enactment, wherein, as per section 11 of the Act, the service of the petitioner was terminated on his fresh employment with the Respondent before the appointed date. The Anglo French textiles Act specifically states that the employees who were employed before the appointed date in the Corporation are not eligible for gratuity on their termination under section 11 (1)(b) under sub-clause (ii) of clause (a) of sub-section 3 on their becoming employee of the Corporation under sub-section(1) of section 11 of the Act. Further, as per section 23 of the AFT Act, the Act has an overriding effect on all other enactment including the Payment of Gratuity Act, 1972. Therefore, as the AFT Act specifically denies gratuity for the period of employment under the erstwhile owner, the petitioner can't make a claim under the Gratuity Act for such period.

In this context, it is stated that the Payment of Gratuity Act is a piece of social welfare legislation and deals with the payment of gratuity which is a kind of retiral benefit and the act accepts in principle, compulsory payment of gratuity as a social security measure to wage-earning population in industries, factories and establishment. Accordingly, in the decision reported in 1994 (1) LLN 573 (Chander Sain V. State of Haryana) the *Supreme Court held that a private college when taken over by the Government the services rendered in private college by the employees are bound to be counted for gratuity.* The mere fact that the appellant did not retire prior to the take over of the college by the State Government, but retired after it was so taken over does not mean that he is not entitled to claim gratuity in respect of the period of service rendered by him before the college was taken over by the state. *Therefore, the appellant is entitled to payment of gratuity computed on the basis of the entire period of his service covering the period of service rendered by him while the college was under private management as well as service rendered by him after the college was taken over by the state government. Accordingly, the appellant is entitled to payment of gratuity to be computed on the basis of his entire length of service, inclusive of the service rendered by him while the college was under private management before it was taken over by the state government.*

In the present case, on perusal of the records submitted by the appellant viz. copy of Pay slip for the month of October & November, 1982 and copy of the I.D. Card issued by the ESI Corporation, Puducherry dated 24.3.1982, it was found that the appellant joined in the respondent management during the year 1982 and the contention of the respondent management in their counter statement is that the Anglo French Textiles Limited, Puducherry remained closed from July, 1983 to June, 1986.



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Applying the above said decisions and the records submitted by the appellant to the facts of this case, the Appellate Authority under the Payment of Gratuity Act is of the view that the payment of gratuity cannot be calculated for the closed period of the mill. However, the order of the Controlling Authority under the Payment of Gratuity Act, 1972 dated 17.07.2019 is hereby revised based on the service rendered by the appellant and the award amount of Rs.2,36,897/- is modified as Rs.2,53,818/- (Rupees Two Lakhs Fifty Three Thousand Eight Hundred and Eighteen only) along with interest @ 10% per annum from the date of due till the date of payment as requested by the appellant and the appellant is entitled for settlement of gratuity as follows:

Number of years of service : 30

Wages per day : Rs. 564.04/-

15 days wages : Rs. 564.04 x 15

: Rs. 8460.6 x 30

: Rs. 2,53,818/-

10% interest : Rs. 25,382/- (from the date of due till the date of payment)

No order as to costs.

Given under my hand and seal on this the 18<sup>th</sup> March, 2020.



(S. MOUTTOULINGAM)  
APPELLATE AUTHORITY UNDER  
THE PAYMENT OF GRATUITY ACT, 1972.

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