

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

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

Appeal No. 2/2020
in
G. A.No. 28/2019

Between:

The Managing Director,
M/s. Golden Cashew Products Pvt. Ltd.,
No. 69, Mailam Road, Sedarapet,
Puducherry – 605 111.

... Appellant

Vs.

1. Thiru. K.Kannan,
No.49/49, Therodum Street,
Pulichapallam, Vanur Taluk,
Villupuram District, Puducherry.

2. The Controlling Authority,
O/o the Labour Officer (Enforcement),
Puducherry.

... Respondents

The appeal coming for final hearing before me on 14.10.2020 and during the course of proceedings, the Appellant representative and the Respondent No.1 counsel called present. Upon giving an opportunity of hearing to both sides, 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') against the order of the Controlling Authority under the Act, dt. 11.11.2019.
2. The factual matrix that stood exposed from the appeal filed by the appellant runs thus.

The appellant management M/s. Golden Cashew Products Pvt. Ltd., Puducherry had filed this Memorandum of appeal dated 08.01.2020 under sub-section (7) of Section 7 of the Payment of Gratuity Act, 1972 stating that the appellant management is a private limited company and engaged in the business of processing Distilled Cashew Nut Shell Liquid (Cardanol).

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The Respondent/petitioner Thiru. K.Kannan worked as maintenance helper and then promoted as an Electrician arbitrarily by the disqualified Director R. Thirumurugan and then was made as an in-charge for the entire maintenance of Thuthipet unit. When the appellant management was taken over from Mr. Thirumurugan by the present Managing Director of the appellant management, it was established with reliable source of injunction that large sum misappropriation of the assets of the company had happened wherein it was suspected that Mr.Thirumurugan, CEO, Mr.C.Nagalingame, CFO and Thiru. K.Kannan is behind this misappropriation and swindling of money from the appellant management. And thereby, the appellant management was forced to forfeit the gratuity amount in order to compensate the damages/loss suffered by them. Further, the Respondent/petitioner damaged the production system which caused a wrongful loss to an extent of Rs.10 lakhs and also was not proper and regular to the office. The appellant management has also filed a Criminal complaint before the CB-CID, Puducherry against the above said 3 employees for fraud and misappropriation of the finds of the appellant management running to the tune of INR 8 crores. Thereafter, the Respondent/petitioner Thiru. K.Kannan has given his resignation letter dated 11.01.2019 to Mr. Thirumurugan is absolutely wrong. While this is being so, the Respondent/petitioner has filed gratuity application G.A.No. 28 of 2019 before the Controlling Authority claiming for payment of gratuity and the Controlling Authority has passed an order dated 11.11.2019 confirming the payment of Gratuity to the Respondent/petitioner.

Aggrieved by the order of the Controlling Authority, the appellant management filed this appeal application under sub-section (7) of section 7 of the Payment of Gratuity Act, 1972 on the ground that the order passed by the Controlling Authority is a non-speaking order, bad in law and not sustainable, clearly fits under section 4(6) of the Payment of Gratuity Act, 1972. Wherein, the Respondent/petitioner is a tainted person having committed an offence of theft, criminal breach of trust, misappropriation of property of the appellant management resulting in loss and damages. Further, a financial forensic audit conducted by an external agency has proved the losses that were caused by Thirumurugan and his accomplices. Hence, requested the Appellate Authority under the Payment of Gratuity Act to set aside the order passed by the Controlling Authority in G.A.No.28 of 2019 dated 11.11.2019 and to pass such further orders in the interest of justice.



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3. **Per contra**, the Respondent/Applicant in their written arguments dated 30.09.2020 has stated that the respondent/Applicant had initially served from 06.04.2008 to March 2010 i.e. for a period of 23 months in the then appellatant management by name M/s. Golden Friction Modifiers and continued to work without any break in service in their new management M/s. Golden Cashew Products Pvt. Ltd., as Technician. The Respondent/applicant had resigned from the appellatant management on 23.02.2019. At the time of his resignation, the last drawn salary was Rs.18,453/- and thereby the appellatant management has to settle a sum of Rs.1,17,105/- towards gratuity amount to the Respondent/applicant. But, the appellatant management with an ulterior motive of denying the legitimate right of the respondent/applicant for gratuity has claimed that there is no intimation about his job continuation or resignation and he has not yet handed over/discharged his duties from the appellatant management. Because of his absence in duty till date the appellatant management is unable to come to a conclusion in respect of the applicant and he is still on duty with the appellatant management and gratuity cannot be settled to a person in service. The allegation that the respondent/applicant has taken away costly spares is stoutly denied and the appellatant management is put to strict proof of the same.

Furthermore, the evidence/records furnished by the appellatant management are fabricated/false/forged and it is the duty of them to prove the genuineness & veracity of the records produced & relied by them. No disciplinary action was taken against the respondent/applicant at any point of time and since the appellatant management did not have any records they threw bald allegations against Mr.Thirumurugan as if he had destroyed the documents intentionally & the appellatant management is put to strict proof of the same. The working arrangement of the appellatant management is that nothing can be done without the knowledge/permission/approval of the Managing Director & his son who is also personally supervising the appellatant management every day. They had also claimed that they had lodged a complaint with the CB-CID police which was kept pending without any co-operation by the appellatant management till date.

The appellatant management has requested for forfeiture of gratuity dues until the Respondent/applicant co-operate the Internal Audit. As per sub-section (6) of section 4 of the Payment of Gratuity Act, 1972, an employer can forfeit gratuity payable to an employee only on the following circumstances:

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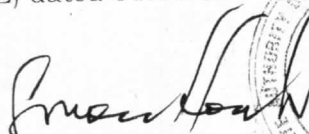



- (i) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of property belonging to the employer shall be forfeited to the extent of damage or loss so caused;
- (ii) the gratuity payable to an employee may be wholly or partially forfeited, if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or of the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in course of his employment.

In the present case, the respondent/applicant was neither terminated for any riotous or disorderly conduct nor for an offence involving moral turpitude. Infact, he has resigned his job on his own volition. Only after the respondent/applicant had applied for grant of gratuity, the appellant management lodged a complaint before the CB-CID police on false and baseless allegations which is now kept pending for non-co-operation of the appellant management. Therefore, the appellant management has no authority to forfeit the gratuity amount payable to the respondent/applicant.

The appellant management has not proved any of its allegations & the appellant management has not initiated any disciplinary proceedings against the respondent/applicant till his resignation. Gratuity is a statutory social benefit made by an employer to his employee for the services rendered by him over a specific period of time. Therefore, the Respondent/applicant humbly prays before this Hon'ble Appellate Authority to dismiss the appeal and confirm the Order dated 11-11-2019 passed by the Controlling Authority and thus render justice.

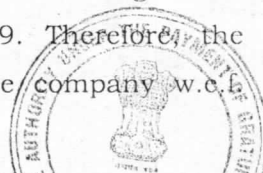
4. **Answering:** On perusal of the records, it was found that as the management failed to pay the gratuity amount, the Respondent/applicant Thiru. K.Kannan filed an application in Form - N before the Controlling Authority under the Payment of Gratuity Act, 1972 claiming gratuity amount from the management of M/s. Golden Cashew Products (P) Ltd., Puducherry. In turn, the Controlling Authority passed an order on 11.11.2019 directing the appellant management to pay an amount of Rs. 1,17,105/- (Rupees One Lakh seventeen thousand one hundred and five only) towards balance gratuity with simple interest @ 10% per annum from 24.02.2019 till the date of payment/deposit as per section 7(3A) of the Act read with Central Government Notification No.S.O.874(E) dated 01.10.87.

Wherein, the Controlling Authority under the Payment of Gratuity Act, 1972 in his order dated 11.11.2019 has recorded that the applicant has joined the respondent establishment on 06-04-2008 and the last day of his service is 24.02.2019 and thus rendered 11 years of continuous service.

On the other hand, contention of the appellant management was that the applicant started working in their management as a maintenance helper and then was promoted as an Electrician by the company's disqualified Director Thiru. R.Thirumurugan. The Respondent/applicant was in collusion with Thirumurugan and did a lot of willful activities against the company and earned wrongful gains by taking away maintenance spares, motors and other electrical fittings. When the facts came to light before going from the company the applicant damaged the production system on the pretext of improving the system and thereby caused wrongful losses to an extent of Rs.10 lakhs. By knowing the above facts he himself was absent and did not work from March 2019 and then in April 2019 he asked for his salary for February 2019. Atlast the appellant management initiated criminal complaint against him along with disqualified Director R. Thirumurugan, Manager C. Nagalingame and Thuthipet Unit watchman Ganesan and the same is pending for investigation and it will be registered at any time. Further, there is intimation about his job continuation or resignation of job and he has not yet handed over/discharged his duties from the company. Therefore, on the above grounds the claim may be dismissed.

Accordingly, the Labour Officer (Enforcement)-cum-Controlling Authority under the Payment of Gratuity Act, 1972 has passed an Order dated 11.11.2019 stating that as regards the merits of the case the main dispute raised by the appellant management is that the applicant/respondent has committed misconduct and is still in service and therefore ineligible for receiving gratuity payment. During cross examination the appellant management witness RW1 stated that no resignation letter was given to the company and the resignation letter dated 11.01.2019 (Ex.P5) was given to the Director Thirumurugan who was not Director on the said date and he has also denied that the said Thirumurugan was the Director of the appellant management till March 2019. But, subsequently when the Notice given by the appellant management in the newspaper The Hindu dated 05.05.2019 (Ex.R4) was shown to RW1, he accepted that the said Thirumurugan was functioning in the company till 3rd week of March, 2019 only as an incharge and not as Director but he has not produced any record to show that Thirumurugan was removed from the position of Director as on 11.01.2019. Therefore, the resignation letter dated 11.01.2019 to the Director of the company w.c.f. 24.02.2019 has to be accepted.



In respect of period of service from 06.04.2008 till 31.03.2010 the applicant has contended that he worked in the appellant management in the name of Golden Friction Modifiers and produced the Service Certificate (Ex.P1). In the absence of occurrence of eventualities enumerated under sub-section (6) of section 4 of the Act the applicant is entitled to the gratuity for the service rendered in the appellant management. Though the appellant management denied of the applicant's employment during the said period no records were produced to show that the applicant was not in the employment. As such, the entire period from 06.04.2008 till 24.02.2019 has to be taken into account for the purpose of calculation of gratuity. As regards the last drawn wage is concerned the applicant has stated in the claim that the salary was Rs.18,453/- which was also confirmed by the appellant management and hence the same was taken account and thereby directed the appellant management to pay an amount of Rs. 1,17,105/- (Rupees One Lakh seventeen thousand one hundred and five only) towards balance gratuity to the applicant/respondent.

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In this context, the appellant management has not filed any records either before the Controlling Authority or before the Appellate Authority under the Payment of Gratuity Act, 1972, so as to substantiate the misconduct committed by the applicant/respondent without which the provisions enshrined under sub-section (6) of section 4 of the Payment of Gratuity Act cannot be invoked.

5. In the light of the above, this appeal is dismissed and the Order of the Controlling Authority under the Payment of Gratuity Act, 1972 dated 11.11.2019 is hereby admitted.

6. No order as to costs.

Given under my hand and seal on this the 11th November, 2020.

S. Mouttoulngam
(S. MOUTTOULINGAM)

APPELLATE AUTHORITY UNDER
THE PAYMENT OF GRATUITY ACT, 1972.



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