IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WA.No. 723 of 2014 IN WP(C).16186/2006

AGAINST THE JUDGMENT IN WP(C) 16186/2006 DATED 12-02-2014
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APPELLANT/PETITIONER :

N.SARAMMA
W/O.CHANDRAN, HELPER (RETIRED), LABHA MARKET SUPPLY CO
PULIMOODU, TRIVANDRUM, RESIDING AT KUNNILVEEDU
ENAIKKARA, KARAKULAM PO, THIRUVANANTHAPURAM

BY ADV. SMT.SREEDEVI KYLASANATH

RESPONDENTS/RESPONDENTS :
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1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT
CIVIL SUPPLIES DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695 001.

2. THE CHAIRMAN AND MANAGING DIRECTOR
KERALA STATE CIVIL SUPPLIES CORPORATION
MAVELIBHAVAN, MAVELI ROAD, GANDHI NAGAR
KOCHI-20.

3. THE REGIONAL MANAGER
CIVIL SUPPLIES CORPORATION 2C 24/869, PRS ROAD
THYCAUD, THIRUVANANTHAPURAM 695 014.

4. ADDITIONAL GENERAL MANAGER(FINANCE)
(REGIONAL MANAGER) CIVIL SUPPLIES CORPORATION
THIRUVANANTHAPURAM PO 695 001.

R1 BY SR.GOVERNMENT PLEADER, SRI.P.I. DAVIS
R2, R3, R4 BY ADV. SHRI N.D.PREMACHANDRAN,SC,SUPPLYCO

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.

W.A. No.723 of 2014

Dated this the 10th day of June 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard the learned counsel for the appellant and the learned counsel appearing for the respondents.

2. This writ appeal has been filed against the judgment dated 12.2.2014 in W.P.(C) No.16186 of 2006. The writ petition has been partly allowed by the learned Single Judge. The appellant/petitioner, still aggrieved by the said judgment, has come up with this writ appeal. The appellant, hereinafter be referred to as the writ petitioner, who was working as Helper in a Maveli Store and had retired from service on 30.4.2005. While in service, a charge memo was issued to the petitioner, where allegations have been made against the petitioner and a direction was issued to realise ₹3,511/- each from the petitioner and two other helpers. The petitioner's grievance in the writ petition was that, by Ext.P11 dated 27.4.2006, a direction was issued to withhold ₹39,020/- from the gratuity of the petitioner. A further order, Ext.P13 dated 1.7.2010 was issued for recovery of ₹30,454/-

from the petitioner. Both the orders were challenged by the petitioner in the writ petition. The learned Single Judge, by the impugned judgment, set aside Ext.P13. In so far as Ext.P11 is concerned, the learned Single Judge left it open to the petitioner to contest the same before the appropriate authorities. The petitioner, aggrieved by the said part of the judgment, has come up in the appeal.

3. Learned counsel for the appellant submits that no deduction could have been made from the gratuity of the petitioner. It is further submitted that in a counter affidavit filed by the first respondent in the writ petition, there was a statement that actual lapse was on the part of the stock custodian, due to which, certain items became damaged/unsaleable. The learned counsel has referred to paragraph 3 of the counter affidavit filed on behalf of the first respondent. It is also stated in paragraph 3 of the counter affidavit that the alleged damage/unsaleable stock relates to the period from 8.8.1994 to 3.2.1995. It is submitted that although there was some allegations against the stock custodian, the recovery of ₹3,511/- was already effected. Similarly, the petitioner was never in charge of any stock and hence, no liability could have been imposed on her.

4. We have considered the submissions made by the learned counsel for the parties and perused the records.

5. The learned counsel appearing for the Corporation has supported the judgment of the learned Single Judge and submitted that Ext.P11 was rightly issued. The amount which has been withheld from the gratuity relates to different earlier periods and different amount which was due on the petitioner.

6. From the facts brought on record, it does appear that no steps were taken for effecting recovery of any liability towards the amount as indicated in Ext.P11 during the period of service of the writ petitioner. It was only after the retirement, an order was issued to withhold the said amount from the gratuity. Learned counsel for the petitioner has rightly submitted that the petitioner is entitled for release of gratuity as per the provisions of the Payment of Gratuity Act, 1972 and no amount could have been withheld from the said gratuity. The learned Single Judge, although had set aside Ext.P13, with regard to Ext.P11, liberty was given to the petitioner to further agitate the matter. We are of the view that in the facts of the case, since no steps have been taken during the service of the petitioner for recovering the amount as mentioned in Ext.P11, withholding the said amount from the

gratuity is unjustified. Hence, Ext.P11 is also liable to be set aside. We order accordingly. We further make it clear that this shall not preclude the Corporation from taking such steps as permissible under law against the petitioner.

The writ appeal is disposed of accordingly.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
J UDGE

Jvt