

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WA.No. 2431 of 2015 () IN WP(C).21503/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 21503/2015 DATED 15-10-2015

APPELLANT(S)/2ND RESPONDENT IN WPC:

SRI. K.J CHACKO
KARUKAPALLIL VEEDU, VALLAKADAVU, KADAMAKUZHI P.O
KATTAPANA VIA, IDUKKI DISTRICT. 685 575.

BY ADV. SMT.SHAMEENA SALAHUDHEEN

RESPONDENT(S)/PETITIONER AND RESPONDENTS 1,3 & 4 IN WPC:

1. THEPRESIDENT
IDUKKI DISTRICT WHOLESALE CO-OPERATIVE CONSUMER
STORE LIMITED NO. K.444
KATTAPANA P.O, 685 508.

2. THE DEPUTY LABOUR COMMISSIONER
VELLAPPALLY LANE, KOTTAYAM 686 001.

3. THE VILLAGE OFFICER
KATTAPANA VILLAGE OFFICE, KATTAPANA 685 508.

4. THE DEPUTY TAHSILDAR
REVENUE RECOVERY OFFICE, NEDUMGANDAM, IDUKKI 685 553.

R2 TO 4 BY GOVERNMENT PLEADER SHRI.P.M.SANEER
R1 BY SRI.LIJI.J.VADAKEDOM

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
11-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JJ

K. SURENDRA MOHAN & SHAJI P. CHALY, JJ.

W.A NO.2431 OF 2015

Dated this the 11th November, 2015.

JUDGMENT

Surendra Mohan, J.

The appellant who is the second respondent in WPC 21503/2015 has filed this appeal aggrieved by the judgment dated 15.10.2015, allowing the writ petition filed by the first respondent. The appellant was an employee of the first respondent. As per Ext.P1 order in the writ petition, gratuity was ordered to be paid to the appellant by the Controlling Authority under the Payment of Gratuity Act, 1972 (the 'Act' for short). The writ petition was filed by the first respondent complaining that, the said order was passed ex parte and that, an application that was filed for setting aside the said ex parte order had been dismissed for non-appearance. The case of the first respondent in the writ petition was that, his

counsel had not been put on notice regarding the posting of the petition that was filed to set aside the ex parte order. The controlling authority refused to reopen the proceedings on the ground that Revenue Recovery proceedings had been initiated against the first respondent. Though the appellant had opposed the contentions of the first respondent, the learned Single Judge has, after considering the contentions directed the matter to be considered de novo after hearing the first respondent also.

2. The learned Single Judge has granted another opportunity to the first respondent to contest the claim of the appellant on the merits. However, it has been directed that for the purpose of availing the said opportunity, he should pay an amount of ₹40,000/- by demand draft to the appellant within a period of one month. According to Adv.Liji J.Vadakedom who appears for the first respondent the said amount has already been sent by demand draft to the appellant. It has been further ordered by the learned Single

Judge that the Controlling Authority shall after considering the case on the merits, pass final orders in the matter within an outer limit of three months.

3. According to Adv.Shameena Salahudheen who appears for the petitioner, this is a case where the first respondent was adamant that he would not appear before the Controlling Authority or pay the legitimate amount of gratuity that was due to the appellant. With the above object, he had deliberately abstained from the proceedings. He had also not availed the statutory remedy of setting aside the ex parte order against him. It was only after the appellant had filed a writ petition before this Court and obtained orders for initiation of coercive action against the first respondent for recovery of the gratuity amount, that the present writ petition was filed. The object is only to protract the proceedings some how or the other. In view of the above, it is contended that there was no justification for the learned Single Judge to have passed the order appealed against, granting another

opportunity to the first respondent to contest the matter.

4. Having heard the counsel appearing for the respective parties, we are not satisfied that the judgment of the learned Single Judge requires to be interfered with in appeal. Admittedly, the order passed by the Controlling Authority was without hearing the first respondent. The learned Single Judge has in exercise of his discretion felt it necessary to afford another opportunity to the first respondent to contest the matter. Considering the previous conduct of the first respondent, he has also directed payment of an amount of ₹40,000/–, in advance. The learned Single Judge has further fixed an outer limit of three months as the time limit for passing final orders in the matter. We do not find any infirmity in the judgment of the learned Single Judge. It is only in the interests of the appellant that, the proceedings are brought to an end, without further delay and the rightful amount of gratuity to which he is entitled, is recovered without further loss of time. In view of the time limit fixed, we are

satisfied that it would be possible for the proceedings to be completed expeditiously. It is also submitted that, the amount of ₹40,000/- directed to be paid has been sent to the petitioner by post.

In the above circumstances we find no grounds to admit this writ appeal. The same is therefore dismissed, confirming the directions issued by the learned Single Judge.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
SHAJI P.CHALY
Judge

jj

/True copy/

