

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.761 of 2016
and
CMP.No.9858 of 2016

Arulmigu Bhavani Amman Thirukoil
Periyapalayam
Rep. By its Hereditary Trustee
Uthukottai Taluk
Thiruvallur District-601 102

...Appellant

Vs.

1.The Assistant Commissioner of Labour-II
Controlling Authority
Under the Payment of Gratuity Act
DMS Compound, Teynampet
Chennai-600 006

2.The Executive Officer
Arulmigu Bhavani Amman Thirukoil
Uthukottai Taluk
Thiruvallur District-601 102

3.P.Raghava Battachari
4.K.Ramachandran
5.L.Kasturi
6.R.Pachaiyappan
7.C.Srinivasan
8.E.Muruganandam

...Respondents/Petitioners and R1 & R2

Writ Appeal filed against the order passed in W.P.No.31516 of 2014 dated 01.12.2015.

W.P.No.31516 of 2014:- Petition presented to this Court to issue a Writ of Mandamus, directing the Second Respondent to deposit the gratuity amounts determined by the 1st Respondent as per the Order DATED 15.5.2014 made in P.G. Case Nos.186 to 191 of 2013 and thereupon permit the petitioners to withdraw the same.

For Appellant : Mrs.Bhavani Subbarayan, for
M/s.Royan Law Associates

For Respondents : Mrs.A.Srijayanthi,
Spl.Govt.Pleader, for R1
Mrs.G.Thilakavathi for R3 to R8

JUDGMENT

(Judgment of the Court was made by HULUVADI G. RAMESH, J.)

Heard the learned counsel for the appellant, the learned Special Government Pleader, appearing for the 1st respondent and Mrs.Thilakavathi, learned counsel for respondents 3 to 8.

2. In the case on hand, it is seen that Respondents 3 to 8 have filed W.P.No.31516 of 2014, claiming to be the employees of the second respondent viz., The Executive Officer, Arulmigu Bhavani Amman Thirukoil, Periyapalayam, Uthgukottai Taluk, Tiruvellore District, and sought for a direction to the 2nd respondent to deposit the gratuity amount determined by the 1st respondent-The Assistant Commissioner of Labour-II/Controlling Authority under the Payment of Gratuity Act, vide order dated 15.05.2014 in P.G.Case Nos.186 to 191 of 2013 and to permit them to withdraw the same. However, the said writ petition was filed without impleading the appellant herein viz., Hereditary Trustee, Arulmigu Bhavani Amman Thirukoil, Periyapalayam, Uthukottai Taluk, as a party.

3. The learned Single Judge, taking note of the fact that the Writ Petitioners/respondents 3 to 8 herein, are the retired employees of the second respondent-Temple and the Writ Petitioners 5 and 6 are the legal heirs of the deceased employees, namely Chenggaiyan and Elumalai, of the second respondent-temple, the erstwhile employees filed applications for computing gratuity and the first respondent, by a reasoned order, computed the gratuity payable to each of them and the order was passed on 15.05.2014. Learned Single Judge, further noted that nothing has been placed on record by the 1st respondent to show that the order dated 15.05.2014 has been challenged by filing an appeal or it has been stayed or reversed by an Appellate Forum. Further, the learned Single Judge, pointed out that the second respondent is required to deposit the amount computed by the original authority namely the 1st respondent in the light of the judgment of the Supreme court in Appeal (Civil) CC 6008-6009/2013. The learned Single Judge, thus allowed the Writ Petition filed by the employees/R-3 to R-8 herein, with a direction to the second respondent to deposit the gratuity amount computed by the 1st respondent.

4. The contention of the learned counsel for the appellant is that the hereditary trustee has not been made as a party before the writ proceedings and as such the Hereditary Trustee, could not defend the matter before the order passed by the learned Single Judge. It is further contended that the order of the 1st respondent, allowing the claim made by the employees, per se, is not maintainable for the reason of non-joinder of the Hereditary Trustee, during the proceedings before the 1st respondent. It is also the contention of the learned counsel for the appellant that the 2nd respondent is only a nominal head appointed by the Government under HR&CE Act, 1959, and has no role whatsoever with regard to the financial implication of the appellant temple.

5. Section 43A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (Tamil Nadu Act 22 of 1959), which was introduced during 1974 amendment, provided for a duties of the Executive Officer in the Temples and Maths. Clause 2 of Section 43-A of the Act, provides that the Executive Officer shall be subject to control of the trust of the Math and shall exercise such power or discharge such duties as may be prescribed. For better understanding, the Section is extracted as under:-

"43-A. Appointment and duties of executive officers in temples under maths. (1) Notwithstanding anything contained in Section 45 or any other provision in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an executive officer for any temple under the control of a math. (2) The executive officer shall be subject to the control of the trustee of the math and shall exercise such powers and discharge such duties as may be prescribed. "

6. Admittedly, the appellant herein has not been made as a party in the Writ Proceedings and only the Executive Officer of the Temple has been made as a party.

7. When the Executive Officer is not in a position to take a decision with regard to financial implications of the Temple, which necessarily requires an approval of the trustee, we are of the view that the trustee has also a say in the matter.

8. Ms.G.Thilakavathy, the learned counsel for respondents 3 to 8, vehemently argued that when the matter is pending consideration over 20 years, the appellant has now come up with a contention that they are the Hereditary Trustee and playing a vital role in respect of financial implications, which cannot be entertained at this stage. She further submitted that the issue herein viz., the payment of the gratuity to retired employees of

the Temple, can even be proceeded against the Executive Officer of the Temple, to whom the trustees as well as the Government have vested the responsibility and hence, the arguments raised by the learned counsel for the appellant stating they have come to know the order of this court only when Executive Petitions are filed before the competent forum has no meaning at all. The learned counsel also submitted that as per the directions of the Apex court, the Temple Authorities are required to make payments to the employees as and when the employees retire and will not drive them to go to the Payment of Gratuity Authority and as such, the appellant herein/Hereditary Trustee, may be directed to deposit the arrears before the 1st respondent immediately, since it is nearly than 5 years elapsed from the date of retirement of respondents 3 to 8. The learned counsel thus prayed for dismissing the Writ Appeal as it is devoid of merits.

9. We have given our anxious consideration to the submissions made on both sides. In any event, the Hereditary Trustee of the Temple, has now approached this court by way of present Writ Appeal as against the order of the learned Single Judge dated 01.12.2015. The stand of the appellant herein that they were not aware of the proceedings neither before the 1st respondent nor before the Writ Proceedings, appears to be little strange. However, since it is stated that they have the vital role to play in financial implications, they should be given the right of audience and they should have been given an opportunity to put forth their contentions/defence before the forum, wherein, the direction to make payment is made. Accordingly, the appellant, being a necessary party, in order to give an opportunity, to put forth their contentions, we are inclined to allow the Writ Appeal for the said limited purpose.

10. In view of the foregoing discussions, we hereby, remand the matter to the learned Single Judge, for the purpose of making the appellant herein as a party before the Writ Proceedings. The learned Single Judge shall take into consideration the contentions to be put forth by the appellant herein and if required, shall modify the order passed in the Writ Proceedings. We also make it clear that the appellant, shall take positive steps to deposit the gratuity amount determined by the 1st respondent, which is due as on date.

11. In the result, the Writ Appeal is allowed in part. No costs. Consequently, connected MP is closed.
nvsri

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Assistant Commissioner of Labour-II
Controlling Authority
Under the Payment of Gratuity Act
DMS Compound, Teynampet
Chennai-600 006

2.The Executive Officer
Arulmigu Bhavani Amman Thirukoil
Uthukottai Taluk
Thiruvallur District-601 102.

3. The Section Officer, Writ Section,
High Court, Madras-104.

+ 1 cc to The Govt.Pleader, Sr 36135

KR/29/7/16

W.A.No.761 of 2016



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