

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1327 of 2017
and
C.M.P.No.18441 of 2017

S.Manimozhi

Appellant/Petitioner

Versus

- 1 Tamil Nadu Civil Supplies Corporation
Rep. by its Managing Director
10 Thambuswamy Road Chennai 10
 - 2 Tamil Nadu Civil Supplies Corporation
Rep. by Senior Regional Manager
Chennai North Region Chennai 86
 - 3 The Assistant Commissioner
of Labour Cum Controlling Authority Under
Payment of Gratuity Act
O/o. the Labour Commissioner Chennai 6
 - 4 The Joint Commissioner
of Labour Cum Appellate Authority Under
Payment of Gratuity Act 1972
Labour Welfare Building 6th Floor
Teynampet Chennai 6
- Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 9.8.2017 passed in W.P.No.12337 of 2017 on the file of this court.

WP.12337/2017

Petition Under Article 226 of the Constitution of India praying for issue writ of mandamus forbearing the 4th respondent from proceeding further with the P.G Appeal No. 130 of 2017 preferred by the 2nd respondent against order dated 18.11.2016

of the 3rd respondent passed in P.G. No. 10 of 2016 under payment of Gratuity Act 1972 by virtue of 4th respondent summons dated 26.04.2017

For appellant : Mr.S.Venkataraman
For RR1 and 2 : Mr.Paramasivadoss

JUDGMENT

(Judgment of the court was made by RMT.TEEKAA RAMAN, J.)

Heard the learned counsel appearing for the appellant and Mr.Paramasivadoss, learned counsel, who takes notice on behalf of the respondents 1 and 2.

2. Challenging the correctness of the order passed on 9.8.2017 in W.P.No.12337 of 2017, the unsuccessful petitioner has moved this writ appeal.

3. For the sake of convenience, the parties are referred to herein according to their ranking in the writ appeal.

4. Learned counsel appearing for the appellant contended that the appeal preferred by the Management viz., Tamil Nadu Civil Supplies Corporation as against the order passed by the third respondent-Assistant Commissioner is in violation of Circular issued on 25.9.2008 wherein the Board has passed a resolution only to go for civil suits for recovery of the gratuity amount.

5. Per contra, Mr.Paramasivadoss, learned counsel, who takes notice on behalf of respondents 1 and 2 would submit that as per the provisions contained in the Payment of Gratuity Act, it is a statutory appeal and the fourth respondent, the statutory authority, the appeal was preferred against the order passed by the third respondent to the fourth respondent and it is taken on file as P.G. Appeal No.130 of 2017 and the same is pending.

6. The prayer in the writ petition is to forbear the fourth respondent from proceeding with P.G.Appeal No.130 of 2017.

7. The learned Single Judge, having observed the submissions of the learned counsel appearing for the parties and also the provisions of law, has come to the conclusion that statutory appeal is provided under the Payment of Gratuity Act 1972 and it cannot be taken away by the resolution of the Board and the Circular has no relevance in respect of the appeal and hence, the rejected relief sought for in the the writ petition. Challenging the same, the present writ appeal has been filed.

8. After going through the rival submissions and the material records produced by way of typed set of papers and also the finding of the learned Single Judge, we find hard to interfere with the finding of the learned Single Judge for the simple reason that statutory appeal has been provided under the statute and the fourth respondent, being competent authority authenticated under the Act, cannot be prevented from discharging his duty in respect of the statutory appeal filed by the first respondent. Further, it appears that the circular issued by the Board is with respect to the circumstances that were prevailing in the year 2008 and the petitioner cannot seek extension of the same benefit when the statutory course of action is initiated by the first respondent by filing appeal before the fourth respondent. Therefore, the plea of the appellant cannot be accepted and the same stands negatived. We do not see any reason to interfere with the order passed by the learned Single Judge.

9. In view of the above, the writ appeal is dismissed. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

ssk.

To:

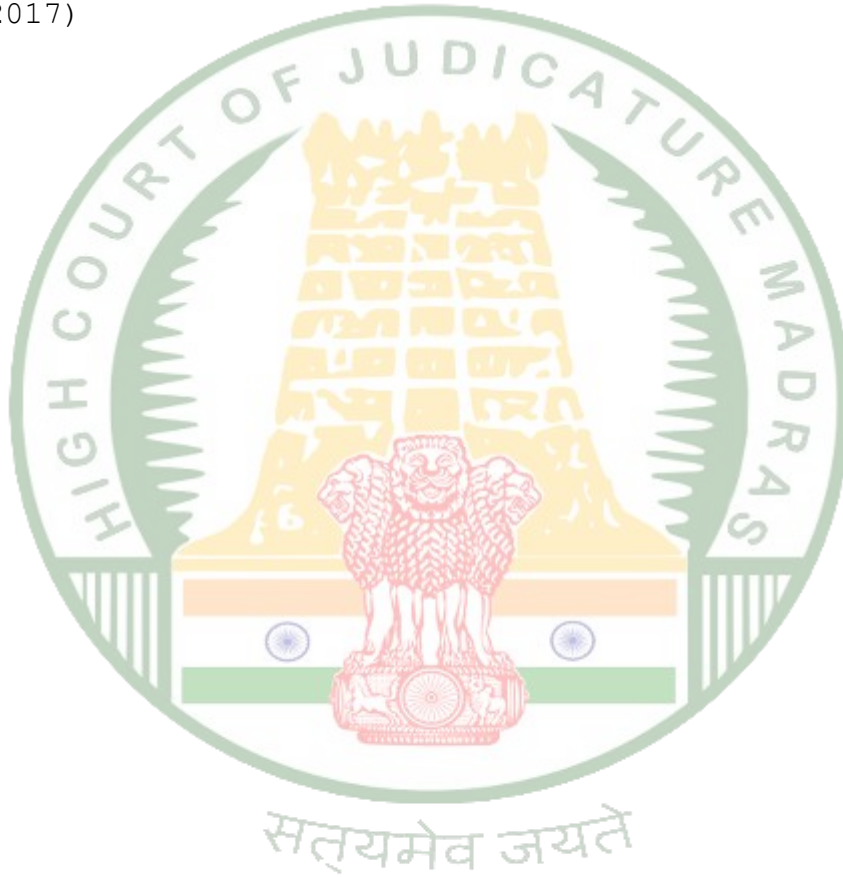
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+1cc to Mr.PARAMASIVA DOSS Advocate, S.R.No. 77705/17

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SR (CO)
TR(22/11/2017)



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