

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 27.11.2017**

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN**W.P (MD) No.10881 of 2017**

Sakthivel

... Petitioner

Vs.

1. The District Collector
Dindigul District.

2. The Controlling Authority
Under Payment of Gratuity Act /
Assistant Commissioner of Labour
No.8, Nehruji Nagar,
Dindigul.

3. The Joint Commissioner / Executive Officer,
Arulmighu Dhandayuthapani Swamy Thirukovil,
Palani, Dindigul District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents more particularly the first respondent to proceed U/s.3(1) of the Revenue Recovery Act as against the third respondent to collect a sum of Rs.1,93,839/- with simple interest at the rate of 10% from 31.08.2007 till the date of payment as per the written requisition of the second respondent made in Na.Ka.No.Aa6/3584/2016 dated 02.01.2017 and get a DD in favour of the Assistant Commissioner of Labour, Dindigul from the third respondent and deposit the same before the second respondent.

For Petitioner

: Mr.D.Venkatesh

For Respondents

: Mr.M.Alagathevan - For R1 & R2

Special Government Pleader

: Mr.K.Govindarajan - For R3

O R D E R

This writ petition has been filed, seeking a Writ of Mandamus, directing the respondents more particularly the first respondent to proceed U/s.3(1) of the Revenue Recovery Act as against the third respondent to collect a sum of Rs.1,93,839/- with simple



interest at the rate of 10% from 31.08.2007 till the date of payment as per the written requisition of the second respondent made in Na.Ka.No.Aa6/3584/2016 dated 02.01.2017 and get a DD in favour of the Assistant Commissioner of Labour, Dindigul from the third respondent and deposit the same before the second respondent.

2. It is the case of the petitioner that he served as Assistant under the third respondent Temple and retired from service with effect from 31.08.2007 and the petitioner submitted several petitions before the third respondent for payment of gratuity. Finding no action, he approached the second respondent seeking for the arrears of payment of gratuity and the second respondent vide his order dated 22.01.2016, directed the third respondent to disburse the gratuity amount to the petitioner. Even thereafter, the third respondent did not take any steps to disburse the amount and the petitioner filed an application before the second respondent under Section 8 of the Payment of Gratuity Act, 1972. Pursuant thereto, the second respondent sent a communication dated 02.01.2017 to the first respondent to proceed against the third respondent under Revenue Recovery Act for the payment of arrears of gratuity to the petitioner. As there was no action, the petitioner has come before this Court with the above said prayer.

3. Heard the learned Counsel on either side.

4. It is a sorry state of affair that the petitioner, who served for a number of years under the third respondent, has been made to run from pillar to post for getting his gratuity amount, despite the positive communication of the second respondent dated 21.09.2016 to the third respondent and he was deprived of his decent livelihood after retirement. Such a lethargic attitude of the third respondent is highly condemnable and cannot be tolerated. As per the provisions of the Payment of Gratuity Act, 1972, the persons employed in a religious institution, in which ten or more persons are employed, would be eligible to receive gratuity.

5. The Hon'ble Division Bench of this Court, while dealing with the similar issue in the case of **The State of Tamil Nadu, rep. By its Secretary to Government, Tamil Development Culture and Religious Endowment Department, Fort St. George, Chennai - 600 009 and another Vs. Tamil Nadu Temple's Retired Employees Welfare Association, (Reg.No.169/2010) Rep. By its President C.Kandaswamy, in W.A.(MD)No.326 of 2015, decided on 12.10.2017**, has been pleased to observe as follows:

"28. In order to identify the Religious institutions, in which ten or more persons had been employed after the commencement of Payment of Gratuity



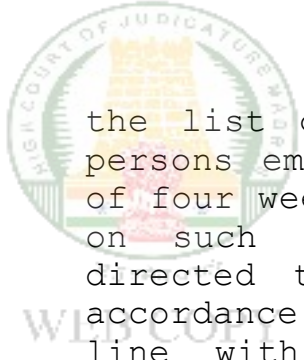
Act, 1972, which come into force on 16.09.1972, the second appellant/ Commissioner, Hindu Religious and Charitable Endowments Department, Government of Tamil Nadu is required to annually publish the list of such institutions on the first day of January every year starting from 01.01.2018. The retired employees of the aforesaid list of Religious Institutions would be entitled to make their claim for the eligible amount of gratuity to their respective employers/religious institutions in terms of the Payment of the Gratuity Act, 1972 and in the event of refusal to do so or if any dispute arises regarding the quantum thereof, such retired employees could seek redressal by making necessary applications claiming the eligible amount of gratuity from their employers/religious institutions before the Controlling Authority under the provisions of Payment of Gratuity Act, 1972.

29.It is added by way of clarification that in cases where the religious Institutions in which ten or more persons had never been employed at any time, if any of its retired employee make any claim before the Controlling Authority under the Payment of Gratuity Act, 1972, such claim could be defended by the concerned Religious Institution with supporting evidence that the provisions of the Payment of Gratuity Act, 1972, do not apply to that Religious Institution.

30.Since it is only the persons employed in a religious institution, in which ten or more persons are employed would be eligible to receive gratuity under the provisions of the Payment of Gratuity Act, 1972, this Court is of the considered view that the directions issued by the learned Judge in the Writ Petition in the impugned order, permitting the Respondent/Association to make a representation enclosing the list of names and details regarding service particulars of its members would not be necessary and hence that part of the direction issued is hereby set aside.

31.As already pointed out, the members of the respondent association/retired employees of the Religious Institutions are entitled to pursue the legal remedy for payment of the eligible amount gratuity in the manner set out supra.

6. Considering the facts and circumstances of the case and keeping in mind the judgment of the Hon'ble Division Bench of this Court (cited supra), this writ petition is disposed of, directing the petitioner to make a representation to the respondents 1 & 2, along with a copy of this order, by enclosing



the list of names and details regarding service particulars of persons employed in the third respondent Temple, within a period of four weeks from the date of receipt of a copy of this order and on such representation being made, the first respondent is directed to consider the same and pass appropriate orders in accordance with law within a period of two weeks thereafter, in line with the communication of the second respondent dated 21.09.2016. It is made clear that if the facts are not in dispute, the gratuity amount should be released to the petitioner forthwith and otherwise, it is open to the petitioner to approach the concerned Authority under the Payment of Gratuity Act, 1972 for appropriate relief. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector
Dindigul District.
2. The Controlling Authority
Under Payment of Gratuity Act /
Assistant Commissioner of Labour
No.8, Nehruji Nagar,
Dindigul.

Rm
AE/SV MMS/SAR4/18.12.2017/4P/3C

W.P(MD)No.10881 of 2017
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