



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)Nos.3027 to 3031 of 2017

Komala Kamatchi	... Petitioner in W.P.3027/17
P.Selvaraj	... Petitioner in W.P.3028/17
Arunagiri	... Petitioner in W.P.3029/17
M.Karuppusamy	... Petitioner in W.P.3030/17
L.Shankaran	... Petitioner in W.P.3031/17

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 in W.P.3027/17 : Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents more particularly the 1st respondent to proceed U/s.3(1) of the Revenue Recovery Act as against the 3rd respondent to collect a sum of Rs.59,946/- with simple interest at the rate of 10% from 30.04.2004 till the date of payment as per the written requisition of the 2nd respondent made in Na.Ka.No.Aa6/1229/2016 dated 20.09.2016 and get a DD in favour of the Assistant Commissioner of Labour, Dindigul, from the 3rd respondent and deposit the same before the 2nd respondent within a time frame.

Prayer in W.P.3028/17 : Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents more particularly the 1st respondent to proceed U/s.3(1) of the Revenue Recovery Act as against the 3rd respondent to collect a sum of Rs.6,29,775/- with simple interest at the rate of 10% from 31.01.2013 till the date of payment as per the written requisition of the 2nd respondent made in Na.Ka.No.Aa6/3628/2016 dated 05.01.2017 and get a DD in



favour of the Assistant Commissioner of Labour, Dindigul, from the 3rd respondent and deposit the same before the 2nd respondent within a time frame.

Prayer in W.P.3029/17 : Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents more particularly the 1st respondent to proceed U/s.3(1) of the Revenue Recovery Act as against the 3rd respondent to collect a sum of Rs.3,23,031/- with simple interest at the rate of 10% from 30.06.2011 till the date of payment as per the written requisition of the 2nd respondent made in Na.Ka.No.Aa6/1229/2016 dated 30.09.2016 and get a DD in favour of the Assistant Commissioner of Labour, Dindigul, from the 3rd respondent and deposit the same before the 2nd respondent within a time frame.

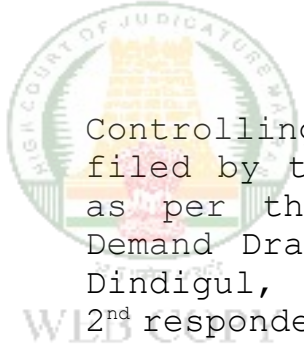
Prayer in W.P.3030/17 : Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents more particularly the 1st respondent to proceed U/s.3(1) of the Revenue Recovery Act as against the 3rd respondent to collect a sum of Rs.2,86,043/- with simple interest at the rate of 10% from 31.03.2012 till the date of payment as per the written requisition of the 2nd respondent made in Na.Ka.No.Aa6/6993/2016 dated 24.01.2017 and get a DD in favour of the Assistant Commissioner of Labour, Dindigul, from the 3rd respondent and deposit the same before the 2nd respondent within a time frame.

Prayer in W.P.3031/17 : Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents more particularly the 1st respondent to proceed U/s.3(1) of the Revenue Recovery Act as against the 3rd respondent to collect a sum of Rs.1,62,225/- with simple interest at the rate of 10% from 31.05.2001 till the date of payment as per the written requisition of the 2nd respondent made in Na.Ka.No.Aa6/1229/2016 dated 20.09.2016 and get a DD in favour of the Assistant Commissioner of Labour, Dindigul, from the 3rd respondent and deposit the same before the 2nd respondent within a time frame.

For Petitioner(in all WPs) : Mr.D.Venkatesh
For R1 & R2(in all WPs) : Mr.M.Rajarajan
Government Advocate
For R3(in all WPs) : Mr.K.Govindarajan

COMMON ORDER

The prayer in all these writ petitions is for issuance of a Writ of Mandamus, directing the 1st respondent to proceed under Section 3(1) of the Revenue Recovery Act as against the 3rd respondent to collect the gratuity amount granted by the



Controlling Authority in the respective gratuity applications filed by the petitioners with simple interest at the rate of 10% as per the written requisitions of the 2nd respondent and get Demand Drafts in favour of the Assistant Commissioner of Labour, Dindigul, from the 3rd respondent and deposit the same before the 2nd respondent within a time frame.

2.The petitioners had the benefit of the orders of the Controlling Authority directing the 3rd respondent to disburse the petitioners gratuity amount awarded in the respective gratuity applications filed by them with 10% interest per annum. The 3rd respondent submits that they have not preferred appeals against the orders of the Controlling Authority and that the said orders have become final. The petitioners made representations to the 3rd respondent for payment of money and also sent representations to the 2nd respondent to recover the amount from the 3rd respondent by proceeding under the Revenue Recovery Act and the 2nd respondent Controlling Authority will have to communicate to the District Collector for recovering the amount from the 3rd respondent through the Tahsildar. The 2nd respondent has communicated to the 3rd respondent that if the amount has not been paid, steps to recover the amount under the Revenue Recovery Act, would be initiated.

3.Even though the petitioners have sought for recovery of the amount ordered by the Controlling Authority together with interest at 10% per annum, it is relevant to consider Sections 7(3A) and 8 together with the Notifications issued under these two provisions. For the sake of convenience, the same are extracted below:-

''Section 7(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.''

''Notification under Section 7(3A)

S.O-874. --- In exercise of the powers conferred by sub-section (3A) of Section 7 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies ten percent per annum as the rate of simple interest payable for the time being by the employer to his employee in cases where the gratuity is not paid within the specified period.



2. This notification shall come into force on the date of its publication in the Official Gazette.''

''Section 8 Recovery of gratuity.--- If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.''

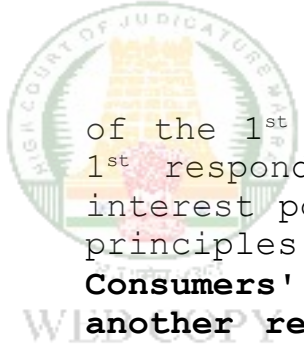
''Notification under Section 8

S.O.1032(E).--- In exercise of the powers conferred by Section 8 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies 15 per cent per annum as the rate of compound interest, recoverable by the Collector for the time being, along with the amount of gratuity and payable to the person entitled thereto.

This notification shall come into force on the date of its publication in the Official Gazette.''

4. If the amount has been paid or voluntarily deposited by the 3rd respondent, the interest payable under Section 7(3A) is 10%. As the 2nd respondent is going to proceed with revenue recovery proceedings, Section 8 will come into play and in terms of Section 8 of the Payment of Gratuity Act, the petitioners will be entitled to interest at 15%. However, since the petitioners have restricted their relief only to 10% interest, the interest would be 10%.

5. Hence, the 1st respondent is directed to ensure that the orders of the Controlling Authority granting gratuity amount in the respective gratuity applications filed by the petitioners, are implemented in its letter and spirit and ensure that the Subordinate Tahsildar recovered the amount from the 3rd respondent in terms of the Revenue Recovery Act and paid the same to the petitioners within a period of one month from the date of receipt of a copy of this order together with interest at 10% per annum. It is open to the 1st respondent to take disciplinary action against the Tahsildar, if he does not comply with the directions



of the 1st respondent for failure of discharge of duties. If the 1st respondent/District Collector does not take any action, the interest portion can be recovered from his salary, by applying the principles laid down in the cases of **Central Co-operative Consumers' Store Ltd., vs. Labour Court, H.P. At Shimla and another** reported in AIR 1994 SC 23 and **A.Sachidanandam, Macneil and Magor Kilburn Group Companies Employees' Union, Chennai, vs. S.Srinivasan and others**, reported in 2011 (5) LLN 696(DB) (Mad).

With the above direction, these Writ Petitions are allowed.
No costs.

sd/-

Assistant Registrar(RTI)

/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.

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

+5cc to Mr.D.Venkatesh, Advocate SR.No.11814, 11815, 11816,
11817 & 11818

+5cc to Mr.K.Gonvindarajan, Advocate Sr.No.11779, 11780, 11781,
11782 & 11783

+1cc to special Government Pleader SR.No.11593

nbi

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