



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.03.2017

CORAM :
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

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W.P(MD)No.3848 of 2017
and
C.M.P(MD)No.3042 of 2017

The Management
Tamil Nadu State Transport Corporation
(Madurai) Limited, Madurai Region,
Bye pass Road,
Madurai-10.

... Petitioner

vs.

1)The Controller Under Payment of Gratuity Act,
Assistant Commissioner of Labour,
Dindigul.

2)S.Ravisankar
55-1, Second Main Street
M.V.M.Nagar,
Dindigul-624001.

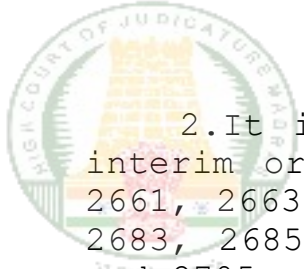
... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records from the 1st respondent the Controller under the Payment of Gratuity Act (Assistant Commissioner of Labour) regarding impugned award passed by it in P.G.No.31/2014 dated 19.09.2016 and quash the same and consequently directing the petitioner Transport Corporation to pay 6% interest on the Gratuity for the belated period and directing the 2nd respondent to remit the dues of Rs.20,934/- with interest to the petitioner Transport Corporation.

For Petitioner : Mr.A.Jeyaram
For R1 :Mr.A.K.Baskarapandian

ORDER

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent, the Controller under the Payment of Gratuity Act (Assistant Commissioner of Labour) regarding impugned award passed by it in P.G.No.31/2014 dated 19.09.2016 and quash the same and consequently direct the petitioner Transport Corporation to pay 6% interest on the Gratuity for the belated period and to direct the 2nd respondent to remit the dues of Rs.20,934/- with interest to the petitioner Transport Corporation.



2. It is represented by the petitioner that I have passed an interim order dated 27.02.2017 in W.M.P(MD)Nos.2655, 2657, 2659, 2661, 2663, 2665, 2667, 2669, 2671, 2673, 2675, 2677, 2679, 2681, 2683, 2685, 2687, 2689, 2691, 2693, 2695, 2697, 2699, 2701, 2703 and 2705 of 2017 in W.P(MD)Nos.3308 to 3333 of 2017, directing the petitioner corporation therein to pay 6% interest and the said order may be followed. In this regard, this Court deems it fit to consider the following observations of the Hon'ble Supreme Court in **Padma Sundara Rao v. State of Tamil Nadu**, reported in (2002) 3 SCC 533:-

'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board*. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

3. I am not inclined to follow the abovesaid interim order, as in the present case on hand, it is the order of the Controlling Authority and the petitioner has got right of appeal to the Deputy Commissioner of Labour.

4. Once the Controlling Authority quantifies the amount of gratuity and directs the employer to pay the same, it should be required to be deposited before preferring appeal in terms of the provisions of the Payment of Gratuity Act. The intention and object of the legislation is very clear and the second proviso to sub section 7 of Section 7 of the Act, has been introduced with an object of making pre-deposit of the gratuity amount determined by the Controlling Authority as a pre-requisite for preferring appeal. Further, Clause (a) of sub-section 4 of Section 7 deals with voluntary deposit by the employer at the threshold where the employer has come forward with such deposit.

5. The Division Bench of this Court in **Onward Trading Company, Madras and Deputy Commissioner of Labour, Madras, and another** reported in **1989 (2) LLN 672**, held that the statutory precondition must be obeyed and also held that failure to deposit the amount would mean that the appeal itself is incompetent. As the petitioner Management has not deposited the amount, the relief sought for by the petitioner has got to be rejected. Apart from that, the entire eligible amount after deducting a portion of the amount which is due to the Corporation by the petitioner, has got to be paid to the petitioner in terms of the order of the



Controlling Authority. The petitioner has not preferred appeal.

6. Section 7(7) of the Payment of Gratuity Act, is relevant to be extracted below:-

''Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of receipt of the order prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf.

Provided that the appropriate Government or the appellate authority as the case may be, may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days extend the said period by the further period of sixty days.''

7. As per the aforesaid provision, the gratuity appeal has got to be filed within a period of 60 days and if there is a delay and sufficient cause is shown in not preferring the appeal within a period of 60 days, another period of 60 days is provided under the Act. If any appeal is filed within the maximum period of 120 days, the appellate authority is entitled to entertain the appeal.

8. It is evident from pages 13 and 14 of the typed set of papers that the order of the Controlling Authority has been despatched to the petitioner corporation on 08.11.2016. Hence, the petitioner has got time to prefer appeal with condone delay petition, as 120 days from the date of receipt of the order still exists. Therefore, if no appeal is filed by the petitioner within 120 days from 08.11.2016, after 120 days, it is open to the Controlling Authority to release the amount to the petitioner as per the order dated 19.09.2016 immediately after expiry of 120 days.

With the above direction, this Writ Petition is dismissed. No costs. Consequently, C.M.P(MD)No.3042 of 2017 is closed.

Sd/-

Assistant Registrar[Records]

/True copy/

Sub Assistant Registrar

To

The Assistant Commissioner of Labour,
Controller Under Payment of Gratuity Act,
Dindigul.

+1cc to M/S.Special Government Pleader, SR.12594/17.