

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.NO.28210 of 2004
and W.P.M.P.No.34256 of 2004

PLR Textiles Limited
Singanallur, Coimbatre - 641 005
rep.by its Vice Chairman-cum-
Managing Director

.... Petitioner

Vs

1.Assistant Commissioner of Labour
Office of the Deputy Commissioner of Labour
Coimbatore - 641 018

2.S.Sivaraman

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent made in his proceedings Na.Ka.No.A4/8735/2004 dated 03.08.2004 received on 10.09.2004 quash the same.

For Petitioner :Mr.S.Silambanan, Senior Counsel
for Mr.N.UmaPathy

For Respondents :Mr.N.Srinivasan, Addl.Govt.Pleader for R1
Mr.V.Bhiman for R2

O R D E R

This writ petition by the management was filed on 06.09.2004, re-presented on 29.09.2004, admitted on 01.10.2004, heard on 11.10.2018, 23.10.2018, 25.10.2018, and is posted for orders today (30.10.2018).

2. This writ petition challenges the show cause notice, which has given an opportunity to the management to show cause as to why by invoking Section 15(5) of Revenue Recovery Act, proceedings should not be initiated for the recovery of Rs.76,125/-, which was the gratuity payable to the workman as per the order of adjudication made by the Controlling Authority under the Payment of Gratuity Act. Seven days time has been granted to show cause and this show cause notice has been signed on 18.08.2004. Whether this order can be challenged in a writ petition, is the issue.

3. Learned counsel for the petitioner / management would submit that out of 565 workers, 557 workers have submitted their resignation and received the gratuity payments paid by the management as per the terms of settlement. It is alleged that the second respondent herein

along with some others deliberately refused to receive the gratuity payment, which were being paid in instalments as per the settlement.

3.1. The second respondent thereafter filed a petition before the authority under the Payment of Gratuity Act and the Deputy Commissioner of Labour vide his order dated 23.06.2004 allowed the petition and also ordered the payment of Rs.76,125/- with interest. As this amount was not paid, the second respondent took out an execution petition. The Deputy Commissioner of Labour has issued the impugned show cause notice dated 03.08.2004, informing the management regarding the proposed steps to be taken towards recovery of the amount. Aggrieved by the same, the petitioner / management has approached this court with the present writ petition.

4. A writ petition against a show cause notice is not maintainable, but the dismissal of this writ petition on this simple ground is not going to give any relief to the suffering workman who is armed with the order from the year 2004. It is pertinent to point out two things.

5. Section 7(7) of the Payment of Gratuity Act speaks about appeal against the order passed by the controlling authority. Under the proviso to Section 7(7), the management, if aggrieved by an order of gratuity passed, may prefer an appeal within a period of 60 days along with the extended period of 60 days, if there existed a sufficient cause. But, under Section 7(7), either the management should deposit the gratuity awarded with the appellate authority or should produce the certificate from the controlling authority that the appellant has deposited the amount of gratuity. The management has not chosen to prefer any appeal. Once appeal is not preferred, the order of the controlling authority becomes final and the liability to make payment is beyond challenge and only in order to avoid deposit, the management has not chosen to challenge the order of the authority under Payment of Gratuity Act by filing appeal.

6. "Show Cause" is a technical term which is used in the sense that a party is given an opportunity to explain his case ie., to offer defence and prove that the allegations levelled against him are not correct. Therefore, when the show cause notice itself is an opportunity for the management to appear and put forth their case, where is the need for challenging the show cause notice, is the issue.

7. This court is of the view that the petitioner / management should have responded to the show cause notice by raising the grounds, which are raised in the writ petition, before the appropriate authority, instead of filing this writ petition, which should not have been filed. Even now, it is open to the petitioner management to show cause why the revenue recovery proceedings should not be initiated against them.

8. The allegations raised in the writ petition does not raise any point for threshold consideration. Therefore, this Writ ought not to have been admitted. However, it escaped the attention of the Court also for a period of 14 years. Thus, the management has effortlessly purchased time for nearly 14 years.

9. This writ petition is disposed of, directing the authority who issued the show cause notice., the Assistant Commissioner of Labour, Coimbatore to implement the order in G.A.No.14 of 2004, as quickly as possible and not later than four weeks from the date of receipt of a copy of this order. The writ petition stands disposed of in the above terms. No costs. Consequently, connected W.M.P. is closed.

Sd/-
Assistant Registrar (CSii)
//True Copy//
Sub Assistant Registrar

kst
To

Assistant Commissioner of Labour
Office of the Deputy Commissioner of Labour
Coimbatore - 641 018

+1cc to Mr.N.Umapathy , Advocate SR.No. 74101
+1cc to Mr.V.Bhiman , Advocate SR.No. 74249

W.P.No.28210 of 2004

ASK(01/11/2018)

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