

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-04-2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11846 of 2014

And

M.P.Nos.1 and 2 of 2014

The Management of
Sri Sowdeswari Industries,
Rep. By V.Govindaraju,
Proprietor,
3/3, Sree Devi Nagar,
Ganapathy,
Coimbatore-641 006.

... Petitioner

Vs.

1.The Assistant Commissioner of Labour,
Coimbatore/The Controlling Authority,
Under the Payment of Gratuity Act, 1972,
Ramakrishna Road,
Coimbatore-18.

2.The Tahsildar,
Office of the Tahsildar,
Coimbatore North,
Coimbatore-18.

3.R.Uma Maheswari

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records pertaining to G.A.No.6 of 2012 on the file of the first respondent herein and quash the impugned order dated 2.7.2012 passed by the first respondent directing the petitioner to pay gratuity to the third respondent to the tune of Rs.1,72,500/-.

For Petitioner : Mr.L.P.Balaji Ram
For Respondents-1 & 2: Mr.J.Ramesh,
Additional Government Pleader.

For Respondent-3 : Mr.V.Ajoykhose

O R D E R

The order passed by the first respondent in G.A.No.6 of 2012 dated 2.7.2012 is under challenge in this writ petition.

2. The writ petitioner-management challenging the order passed by the authority under the provisions of the Gratuity Act in G.A.No.6 of 2012 dated 2.7.2012 contended that the petitioner-company is running an electrical switchboard manufacturing industry under the name and style of 'Sri Sowdeswari Industries' at Coimbatore, nearly about 3 to 5 workmen were employed in the petitioner-company. It is a small scale industry. It is contended that the third respondent-workman during the last week of February 1999 approached the petitioner-management and expressed her willingness to undergo training in the petitioner-industry. Accordingly, she was engaged as a Trainee (Electrical) with effect from 1.3.1999.

3. It is stated that the writ petitioner-industry could not able to run the business and accordingly closed down the industry with effect from 31.3.2011. On account of the financial crunch, the writ petitioner-industry was unable to survive and continue the business. Under these circumstances, the third respondent-workman approached the first respondent for the settlement of the gratuity amount under the provisions of the Payment of Gratuity Act, 1972. The writ petitioner-management, even after receipt of the notice from the first respondent-competent authority, had failed to appear before the adjudication proceedings. Accordingly, the competent authority/first respondent passed an order dated 2.7.2012 in Gratuity Application No.6 of 2012, the claim of the third respondent-workman was allowed.

4. The learned counsel appearing on behalf of the third respondent-workman states that pursuant to the order passed by the first respondent under the Payment of Gratuity Act, the recovery certificate was issued on 3.4.2014 and at this juncture, the writ petitioner-management has preferred to file the present writ petition.

5. The contention of the third respondent-workman is that the statutory appeal provided under Section 7(7) of the Payment of Gratuity Act, has not been exhausted by the writ petitioner-management and it is a precondition that in the event of preferring an appeal under Section 7(7) of the Act, the amount of gratuity to be deposited and the said appeal must be filed within a period of 60 days from the date of the original order. The writ petitioner had not done anything in this regard and therefore, the writ petition deserves to be rejected.

6. The learned counsel appearing on behalf of the writ petitioner states that the management during the relevant point of time was closed down and was not running the business. Therefore, it will be difficult for the management to settle the entire dues to the employees. This Court is not inclined to accept such contentions in view of the fact that the writ petitioner-management received the notice from the first respondent-competent authority and failed to participate in the adjudication in an effective manner.

7. This apart, the final order had been passed by the first respondent on 2.7.2012 and thereafter, the recovery certificate was also issued on 3.4.2014. The writ petition was filed on 22.4.2014, challenging the original order passed by the first respondent without exhausting the remedy of appeal provided under Section 7(7) of the Gratuity Act.

8. Thus, the writ petitioner has not exhausted the statutory remedy provided under the Act, not deposited the gratuity amount for the purpose of preferring an appeal and no such appeal was filed within a period of 60 days as contemplated under the said Act. This being the factum of the case, this Court is of the opinion that the writ petitioner has not established any ground for the purpose of considering the claim made in the writ petition. Accordingly, the writ petition stands dismissed and the order passed by the first respondent in G.A.No.6 of 2012 dated 2.7.2012 stands confirmed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Asst.Registrar (CS IX)

/true copy/ सत्यमेव जयते

Sub Asst. Registrar

Svn

To

- 1.The Assistant Commissioner of Labour,
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2.The Tahsildar,
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Coimbatore-18.

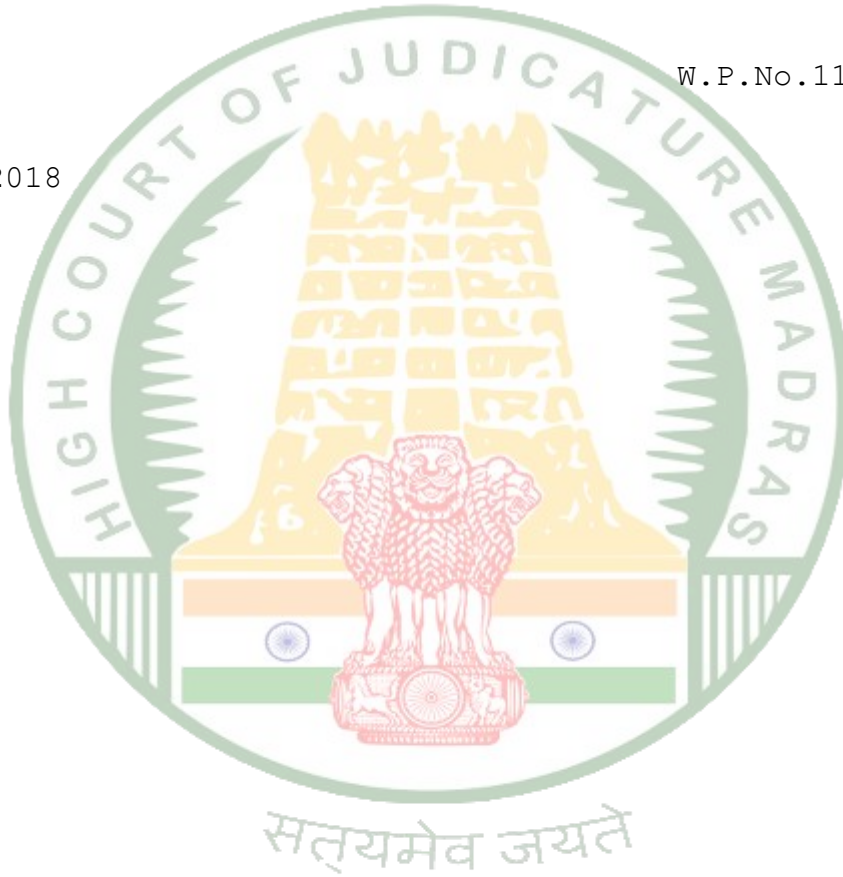
+ 1 cc to Mr.L.P.Balaji Ram Advocate,SR.25721

+ 1 cc to Mr.V.Ajoykhose Advocate,SR.25585

+ 1 cc to The Govt.Pleader, SR.25970

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