

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-04-2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19679 of 2014

And

M.P.No.1 of 2014

The Management,
Tamil Nadu State Apex
Co-operative Bank Ltd.,
No.233, N.S.C. Bose Road,
Chennai-600 101.

... Petitioner

Vs.

- 1.The Joint Commissioner of Labour
(Appellate Authority under Payment of
Gratuity Act, 1972),
Labour Welfare Building VI Floor,
D.M.S. Compound,
Chennai-600 006.
- 2.Deputy Commissioner of Labour,
Labour Welfare Building,
D.M.S. Compound,
Teynampet,
Chennai-600 006.
- 3.Assistant Commissioner of Labour
(Controlling Authority under Payment of
Gratuity Act),
Office of Deputy Commissioner of Labour-I,
Labour Welfare Building,
Teynampet,
Chennai-600 006.

4.G.Rajasekaran ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling the records in P.G.No.102 of 2010 on the file of the Assistant Commissioner of Labour (Controlling Authority under Payment of Gratuity Act) Office of the Deputy Commissioner of Labour-I, Labour Welfare Building, Teynampet, Chennai-600 006, the third respondent herein, quash the order dated 30.4.2013 passed therein.

For Petitioner : Mr.M.R.Raghavan
For Respondents-1to 3: Mr.A.Raghu,
Government Advocate.

For Respondent-4 : Mr.B.Hari Babu

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O R D E R

The order of the Assistant Commissioner of Labour (Controlling Authority under payment of Gratuity Act) passed in P.G.No.102 of 2010 dated 30.4.2013 is under challenge in this writ petition.

2. The fourth respondent-workman was an employee of the writ petitioner-management. On account of certain misconducts committed, the disciplinary proceedings were initiated and after conducting a domestic enquiry, the fourth respondent-workman was demoted from his original post. The punishment of reversion was confirmed by the Appellate Authority also. However, the fourth respondent-workman was relieved from service on attaining the age of his superannuation on 31.7.1998. The workman was allowed to retire from service and accordingly he made a claim for a portion of his gratuity amount, which was due to him. The fourth respondent-workman preferred an application before the Assistant Commissioner of Labour, who is the controlling authority under the provisions of the Gratuity Act. After adjudication, an award was passed allowing the claim of the fourth respondent-workman.

3. The learned counsel appearing on behalf of the writ petitioner states that against the order of the controlling authority/Assistant Commissioner of Labour, the writ petitioner has erroneously preferred an appeal before the Deputy Commissioner of Labour instead of the Joint Commissioner of Labour. It is an error committed by the officials of the management and therefore, the appeal under Section 7(7) of the Act, was preferred within the time limit of 60 days under the Act itself. However, the appeal filed before the Deputy Commissioner of Labour was returned and therefore, the writ petitioner re-presented the said appeal before the Joint Commissioner of Labour, who is the appellate authority. The Joint Commissioner of Labour, without considering the fact that the appeal was filed within the period of limitation before the Deputy Commissioner of Labour, returned the appeal on the ground that the same was not filed within the period of 60 days from the date of the order of the controlling authority.

4. The order returning the appeal dated 13.2.2014 is enclosed in page No.17 of the typed set of papers filed along with this writ petition. The said order states that the appeal was not filed within the period of limitation. Further, it is admitted in the said order that the writ petitioner had preferred an appeal erroneously before the Deputy Commissioner of Labour and the said papers were returned back to the writ petitioner.

5. When the fact regarding the erroneous filing of the appeal before the Deputy Commissioner of Labour is an error, this Court is of the opinion that the Joint Commissioner ought not to have returned the papers, simply because an appeal was erroneously filed before the Deputy Commissioner of Labour and the right of appeal to the parties, cannot be denied. Based on such hyper technical grounds, the appeals cannot be rejected and all the appeals filed under the provisions of the Act, are to be decided on merits and in accordance with law. This being the principles to be followed, this Court is of the opinion that the returning of the appeal filed by the writ petitioner is improper and therefore, the claim of the writ petitioner deserves to be considered.

6. Accordingly, the first respondent-Joint Commissioner of Labour (Appellate Authority under the Payment of Gratuity Act, 1972) is directed to entertain the appeal filed by the writ petitioner under Section 7(7) of the Act and number the appeal and proceed with the adjudication by providing opportunity to all the parties concerned and pass final orders as early as possible, preferably within a period of six months from the date of receipt of a copy of this order.

7. The writ petition is disposed of with the above directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Joint Commissioner of Labour
(Appellate Authority under Payment of
Gratuity Act, 1972),
Labour Welfare Building VI Floor,
D.M.S. Compound,
Chennai-600 006.

2.Deputy Commissioner of Labour,
Labour Welfare Building,
D.M.S.Compound,
Teynampet,
Chennai-600 006.

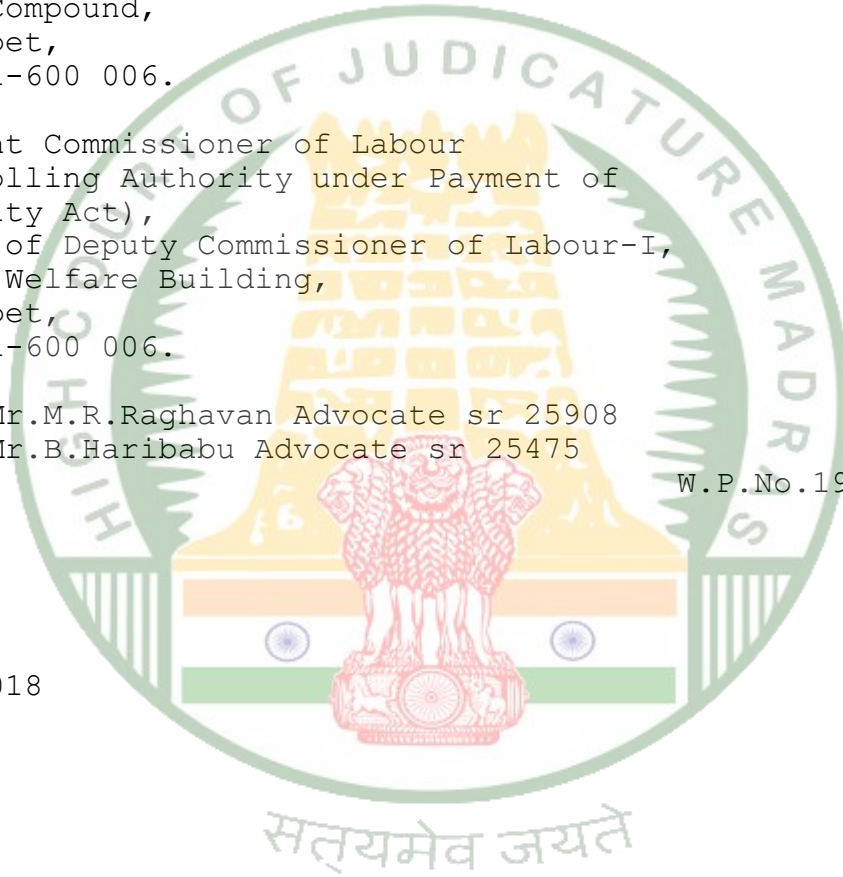
3.Assistant Commissioner of Labour
(Controlling Authority under Payment of
Gratuity Act),
Office of Deputy Commissioner of Labour-I,
Labour Welfare Building,
Teynampet,
Chennai-600 006.

+1 cc to Mr.M.R.Raghavan Advocate sr 25908

+1 cc to Mr.B.Haribabu Advocate sr 25475

W.P.No.19679 of 2014

gjII(cO)
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