IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.08.2018

CORAM
THE HON'BLE DR.JUSTICE S.VIMALA

W.P.NO.40182 of 2016
& W.P.No.40342 of 2016

Alumigu Vellingiri Andavar Thirukkovil
rep.by its Executive Officer, Poondi
Semmedu Post, Coimbatore-641 114.
.. Petitioner in W.P.No.40182/2016

Arulmighu Koniammal Thirukkovil
rep.by its Executive Officer,
Big Bazaar Street, Coimbatore-641 101.
.. Petitioner in W.P.No.40342/2016

Vs

1. R.Sundararajan .. R1 in W.P.No.40182 / 2016

   K.Radhakrishnan .. R1 in W.P.No.40342 / 2016

2. The Assistant Commissioner of Labour
   Controlling Authority under Payment of
   Gratuity Act, 1972, Coimbatore.

3. The Joint Commissioner of Labour
   Appellate Authority under Payment of
   Gratuity Act, 1972, Coimbatore.

4. The Commissioner
   Hindu Religious and Charitable Endowments
   Department, Chennai - 600 034. .. R2 to R4 in both the W.Ps.

Prayer in W.P.No.40182 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari calling for the records of the third respondent made in A.G.A.No.143/2016 dated 30.09.2016 and order of the second respondent in G.A.No.67/2014 and 18.09.2015 and quash the same.

Prayer in W.P.No.40342 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari calling for the records of the third respondent made in A.G.A.No.144/2016 dated 30.09.2016 and order of the second respondent in G.A.No.66/2014 and 18.09.2015 and quash the same.

For Petitioners in both W.Ps	:	Mr.R.Rajesh Vivekananthan
For Respondents	:	Mrs.G.Thilagavathy Senior Counsel for M/S.R.Gopinath for R1 in both the W.P.s

O R D E R

W.P.No.40182 of 2016 is the writ petition filed by Arulmighu Vellingiri Andavar Thirukkovil represented by its Executive Officer (Poondi, Semmedu Post, Coimbatore - 641 114) against its employee Mr.R.Sundararajan, who joined as a clerk in the petitioner's temple on 06.10.1983 and retired on 30.06.2013.

2. W.P.No.40342 of 2016 is the writ petition filed by Arulmighu Koniamman Thirukkovil represented by its Executive Officer (Big Bazaar Street Coimbatore) against its employee R.Radhakrishnan who joined as clerk in the petitioner's temple on 01.08.1971 and retired on 31.10.2003.

3. Except the difference in date of joining and date of retirement, remaining aspects are common and hence common judgment is pronounced.

4. The employees, as first respondent made a claim for gratuity from the petitioner. The contention of the temple was that since it is not engaged in any business, trade or profession, the temple cannot be termed as an establishment under the Payment of Gratuity Act; the temple is administered by the Board of Trustees / Fit Person as the case may be who are appointed by the appropriate authority under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and therefore, the authorities under Payment of Gratuity Act will not have any jurisdiction in respect of claim made by the workmen.

5. The Assistant Labour Commissioner, by the order dated 18.09.2015 held that the employee is entitled to receive the gratuity and after determining the quantum, directed payment of Rs.1,10,474/- to the employee R.Radhakrishnan. Challenging this order, writ petition was filed in W.P.37530 of 2015 and the writ petition was dismissed directing the temple authorities to avail the alternative remedy of approaching the appellate authority. Accordingly, the management filed AGA 144 of 2016. The third respondent dismissed the appeal by the order dated 30.09.2016. Hence, the present writ petition by the management.

6. So far as Mr.R.Sundararajan is concerned, a sum of Rs.2,35,885/- was ordered to be paid. Challenging this order, Writ petition was filed W.P.37485 of 2015 and the writ petition was dismissed directing the temple authorities to avail the alternative remedy of approaching the appellate authority. Accordingly, the management filed AGA 143 of 2016. The third respondent dismissed the appeal by the order dated 30.09.2016. Hence, the present writ petition by the management.

7. The employee claimed gratuity by relying upon the judgment of this Court reported in 2013 (3) C.T.C.689. The said judgment was challenged before the Honourable Supreme Court of India in Civil Appeal 4505 and 4508 of 2012. Those appeals were heard after tagging it with Civil Appeal No.897 of 2002. The issue as to whether a charitable trust can be construed as a industry has been referred to the larger bench of the Supreme Court. The Honourable Supreme Court passed an interim order dated 03.05.2013, directing that, the petitioner temple will continue to make payment to the employees as per the Payment of Gratuity Act, 1972 and that appellants will make payments to the employees as and when they retire and will not drive them to go to the authorities under Payment of Gratuity authority Act. Subsequently, this order was clarified by the Honourable Supreme Court on 01.08.2014, by making it clear that the interim order dated 03.05.2013 would be confined to employees of Arulmighu Dhandayudhapani Swami Temple, Palani alone.

8. While hearing Civil Appeal No.897 of 2002, along with C.A.No.4505, 4506, 4507 and 4508 of 2013, the learned counsel appearing for the temple has submitted that the gratuity amount payable to the respondent employees have already been paid and that there is no defiance of the directions of the Honourable Supreme Court. In the same judgment, there is a direction that the gratuity shall be paid (if not paid earlier) by the temple, by 31.01.2017 failing which the respondent employee was granted liberty to approach the court with appropriate contempt petition. This order is dated 17.11.2016.

9. The learned counsel for the employees relied upon the judgment of the full Bench of this Court wherein it has been held that religious institutions would fall within the meaning of establishment as defined under Section 1(3) (b) of the Payment of Gratuity Act.

10. Even under G.O.Ms.54 dated 13.2.2016, it has been pointed out that the employees would be entitled to gratuity either under H.R.&C.E. Rules or under the Act, whichever is more beneficial to them.

11. Learned counsel for the employees contended that payment of gratuity is a statutory liability and pointed out the relevant observation of the Honourable Supreme Court reported in (1984) 3 S.C.C.369 "Sudhir Chandra Sarkar Vs TISCO Limited" which reads thus,

> "Pension and gratuity coupled with contributory provident fund are well-recognized retiral benefits. These retiral benefits are now governed by various statutes such as the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, the Payment of Gratuity Act, 1972. These statutes were legislative responses to the developing notions of fair and humane conditions of work, being the promise of Part IV of the Constitution."

12. The judgment of the Division bench of this Court dated 12.12.2012 passed in W.A.No.3825 of 2003 and Others, has directed the authorities under the Payment of Gratuity Act to hear and dispose of all pending applications within a period of six months from the date of receipt of copy of the judgment.

13. Payment of Interest : The appellate authority under the payment of gratuity act, while ordering payment of gratuity has ordered payment of interest at 10% from 01.08.2016, The controlling authority has passed an order on 18.09.2015, ordering payment of interest from the date of entitlement ie on the expiry of 30 days from the date of retirement as contemplated under Section 7(3)(a) of the Act.

14. The relevant Act and Rules regarding payment of gratuity/interest on gratuity is reproduced for clarity.

> (3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.
> (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.]

15. From which date interest is payable is the issue under challenge. The learned counsel for the employees pointed out Section 4 of the Payment of Gratuity Act. Payment of gratuity is due on the date of retirement and however the law has granted only 30 days time for the authorities to pay the amount and therefore the liability to pay interest is from the expiry of thirty days from the date of retirement. Hence, the order passed by the appellate authority is modified directing payment of interest on the expiry of thirty days from the date of retirement of the respective employees.

16. Considering the facts and circumstances and considering the earlier judgment of the Honourable Supreme Court and the trend of decisions of the Honourable Supreme Court as well as this Court, this Court is of the view that the impunged order of the second respondent ordering payment of gratuity (conferring benefit under a socio welfare legislation) has to be confirmed and the dismissal of the appeal preferred by the management also has to be confirmed. It is confirmed accordingly.

17. In the result, except with regard to modification of interest, both the writ petitioners are dismissed No Costs. Consequently, connected W.M.Ps are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kst

To

1. The Assistant Commissioner of Labour
   Controlling Authority under Payment of
   Gratuity Act, 1972, Coimbatore.

2. The Joint Commissioner of Labour
   Appellate Authority under Payment of
   Gratuity Act, 1972, Coimbatore.

3. The Commissioner
Hindu Religious and Charitable Endowments
Department, Chennai - 600 034.

+1cc to Mr.R.Rajesh Vivekananthan, Advocate, S.R.No.56631
+1cc to the Government Pleader, S.R.No.57292
+1cc to Mr.R.Rajesh Vivekananthan,Advocate,S.R.No.56632(22/11/18)

W.P.No.40182 of 2016
&
W.P.No.40342 of 2016

KAN(CO)

rrs 22/10/2018