

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.No.26306 of 2018

S.Vanchi

.. Petitioner

Vs

1. The Assistant Commissioner of Labour /
Office of the Deputy Commissioner of Labour,
Salem-1.
 2. The District Collector
Salem District, Salem.
 3. The Tahsildar, Mettur, Salem District.
 4. The Commissioner, Mettur Municipality
Salem District.
- .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the second respondent to realise Rs.1,52,392/- together with interest at the rate of 15% per annum as per the order of the first respondent dated 12.8.2014 and its subsequent communication dated 13.4.2015 as per Section 8 of the Payment of Gratuity Act 1972 and pay the said amount to the petitioner within a stipulated time.

For Petitioner : Ms.P.Srividhya

For Respondents : Mr.K.K.Ramesh Government Advocate

O R D E R

The petitioner was a workman under the third respondent municipality. He joined the services as Writer on 22.07.1967 and retired as Revenue Assistant on 30.09.2003 on attaining superannuation. Since the gratuity was not paid to him after his retirement, he initiated the proceedings invoking Section 7 (4) (b) of the Payment of Gratuity Act read with Rule 10 of the Payment of Gratuity Rules, in P.G.No.46 of 2013. After contest, the first respondent passed an award dated 12.08.2014, directing the the fourth respondent to pay a sum of Rs.1,52,392/- together

with interest at the rate of 10% per annum till the date of disbursement. The fourth respondent did not comply with the order passed by the first respondent.

2. Thereafter, the fourth respondent did not file an appeal, challenging the order passed by the first respondent. Instead of resorting to the provisions of Section 7(7) of the Payment of Gratuity Act, 1972, the fourth respondent had chosen to file a Writ Petition in W.P.No.6491 of 2016, which was dismissed as not maintainable, as there was an alternate remedy by way of filing an appeal. The fourth respondent had taken recourse to file the writ petition deliberately in order to avoid the mandatory provision of deposit of the amount of gratuity ordered.

3. The claim of the petitioner is that he is entitled to gratuity on the date of retirement or resignation or in case of death, on the date of death itself. As there was no appeal filed, the order passed by the first respondent has become final. The non payment of gratuity is recoverable from the employer as if it is an arrears of land revenue under the Revenue Recovery Act as per Section 8 of the Payment of Gratuity Act. The second respondent is the person empowered under the Revenue Recovery Act to collect the amount and disburse it to the petitioner. However, the second respondent has not taken any action except directing the third respondent to realise the said amount from the fourth respondent herein, through the communication dated 03.06.2015. Thereafter, repeated representations have been submitted and there is no response, which has forced the petitioner to file the present writ petition.

4. The contention of the petitioner herein are supported by the order of gratuity dated 12.08.2014, the order in the writ petition in W.P.No.6491 of 2016 dated 23.02.2016 and the communications sent by the petitioner, which are all filed in the typed set of papers.

5. Needless to issue notice to the other side, having regard to the limited prayer, this Court directs the second respondent to realise the amount of Rs.1,52,392/- along with interest as per the order of the first respondent dated 12.08.2014 within a period of three months from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

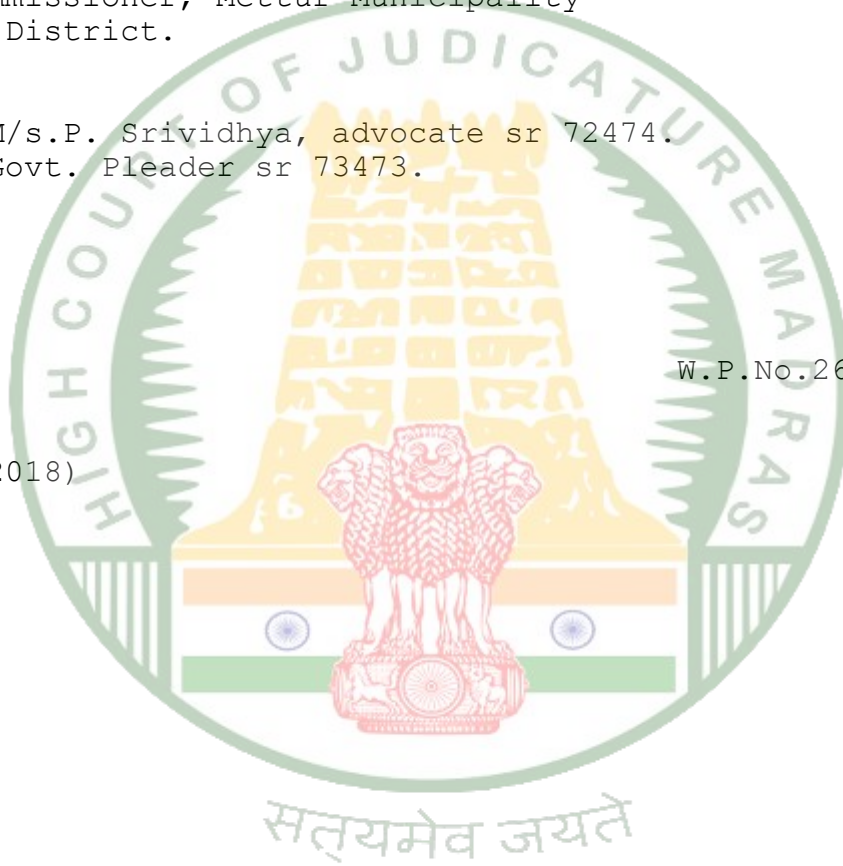
To

1. The Assistant Commissioner of Labour /
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Salem-1.
2. The District Collector
Salem District, Salem.
3. The Tahsildar, Mettur, Salem District.
4. The Commissioner, Mettur Municipality
Salem District.

+1 CC to M/s.P. Srividhya, advocate sr 72474.
+1 CC to Govt. Pleader sr 73473.

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SPD(CO)
SP(29/11/2018)



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