IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.10.2018

CORAM:
THE HON'BLE DR.JUSTICE S.VIMALA
W.P.No.28442 of 2018

S.Ravishankar ... Petitioner

Vs.

1.The Government of Puducherry,
Rep. by Secretary to Government,
Labour & Employment Department,
Chief Secretariat, Beach Road,
Goubert Avenue,
Puducherry UT - 605 001.

2.The District Collector,
Vazhudavur Road,
Petayan Chathiram,
Puducherry UT - 605 009.

3.The Labour Officer (Enforcement)
Labour Department Complex,
Gandhi Nagar, 3rd Floor,
Puducherry UT - 605 009.

4.M/s.Anglo French Textiles,
Rep. by the Managing Director,
(A Unit of Pondicherry Textile Corporation Limited), AFT Mill Premises,
Cuddalore Road, Mudaliyarpet,
Puducherry UT - 605 004. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, to direct the 2nd respondent to recover the payment of Gratuity of an amount of Rs.4,61,438/- along with 10% interest (to be compounded annually) from 13.11.2013 till the date of payment by the 4th respondent in terms of order dated 16.02.2015 in P.G.Case No.316/2014 and the Recovery Certificate dated 27.05.2015 issued by the Controlling Authority under the Payment of Gratuity Act, 1972 and disburse the same to the petitioner, within a limited time to be framed by this Court and to order exemplary costs against the 4th respondent payable to the petitioner herein.

For Petitioner : Mr.M.Ravi

For Respondents : Mrs.N.Mala,
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner, who have rendered 24 years of service and got voluntary retirement on 24.06.2013. Even after the retirement, i.e. on 24.06.2013, the gratuity amount was not paid to the petitioner. Hence, the petitioner preferred an application before the Controlling Authority under the Payment of Gratuity Act in P.G.No.316 of 2014. The Controlling Authority, by an order dated 16.02.2015, held that the petitioner is entitled to a sum of Rs.4,61,438/-. As the amount even thereafter was not paid, the petitioner applied for recovery of the gratuity amount by invoking the provisions of Revenue Recovery Act and the petitioner's claim was answered by issuance of Recovery Certificate dated 27.05.2015 enabling him to recover the amount of Rs.4,61,438/- along with interest at the rate of 10% p.a. from 13.11.2013 till the date of payment by the 4th respondent. Apart from invoking the services of the legal machinery, the petitioner also addressed a petition to the Centralized Public Grievance Redress and Monitoring System. Now, the petitioner is before this Court seeking a direction to the 2nd respondent to recover the payment of Gratuity of Rs.4,61,438/- along with interest at the rate of 10% p.a. from 13.11.2013 till the date of payment by the 4th respondent.

2. A perusal of the records would go to show that the 4th respondent has sent a letter dated 23.07.2018 to the petitioner, stating that the Management is making efforts to settle the terminal benefits of retired employees by selling the idle assets of the Management in co-ordination with the Government of Puducherry. The letter further shows that as soon as the selling process of properties of the management is materialized the gratuity amount will be settled immediately.

3. The learned Additional Government Pleader representing the Management submitted that earnest efforts are being taken to sell the property in order to settle the dues, for which, permission of the Central Government is awaited.

4. In order to make payment of statutory dues that is already adjudicated before the Court of Law, it is not necessary to get permission from the Central Government to sell the property, especially, when the certificate under the Revenue Recovery Act is issued. Therefore, the respondent need not to wait for the permission from the Central Government.

5. The District Collector shall sell the property and pay dues payable to the workman within a period of two months from the date of receipt of a copy of this order. If there is further delay, learned counsel Mr.K.Bharathi (Ms.No.1711/2003, No.268, New Additional Law Chamber, First Floor, Madras High

Court, Chennai) would act as Commissioner to sell the property in public auction after following the procedures and would settle the dues of the workman.

6. Gratuity Act is a beneficial piece of legislation. The payment of gratuity was required to be paid on the date he retires, or on the following day. This case is a glaring example of inordinate delay. The main purpose and concept of gratuity is to help workmen after retirement, whether retirement is a result of rules of superannuation, or physical disablement or impairment of vital part of the body. The expression "gratuity" itself suggests that it is a gratitious payment given to an employee on discharge, superannuation or death. In other words, it is an amount paid unconnected with any consideration and not resting upon and has to be considered as something given freely, voluntarily or without recompense. It is a sort of financial assistance to tide over post retiral hardships and inconveniences.

7. The Labour Ministers conferences held in 1980 and in 1982 had recommended inter alia that the time limit for payment of gratuity might be prescribed in the Act itself and there should be a suitable provision for recovery of interest in cases where payment of gratuity is delayed. The Indian Labour Conference held in November 1985, recommended that a provision for compulsory insurance of employer's liability and setting up of a gratuity fund for payment of gratuity reincorporated in the Act. Accordingly, Section 4-A providing for compulsory insurance of employer's liability was introduced by the Amendment Act 22 of 1987. Section 4-A reads as under:

> " 4-A Compulsory Insurance -(1) With effect from such date as may be notified by the appropriate Government in this behalf, every employer, other than an employer or an establishment belonging to, or under the control of the Central Government or a State Government, shall, subject to the provision of sub-section (2), obtain an insurance in the manner prescribed, for his liability for payment towards the gratuity under the life measure Corporation of India Act, 1956 (31 of 956) or any other prescribed insurer:
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> Provided that different dates may be appointed for different establishments or class of establishments or for different areas.
>
> 2. The appropriate Government may, subject to such conditions as may be prescribed, exempt every employer who had already established an approved gratuity fund in respect of his

employees and who desires to continue such arrangement, and every employer employing five hundred or more persons who establishes an approved gratuity fund in the major prescribed from the provisions of sub-section (1).

(3) For the purpose of effectively implementing the provisions of this section, every employer shall within such time as may be prescribed get his establishment registered with the controlling authority in the prescribed manner and no employer shall be registered under the provisions of this section unless he has taken an insurance referred to in sub-section (1) or has established an approved gratuity fund referred to in sub-section (2).

(4) The appropriate Government may, by notification, make rules to give effect to the provisions of this section and such rules may provide for the composition of the Board of Trustees of the approved gratuity fund and for the recovery by the controlling authority of the amount of the gratuity payable to an employee from the Life Insurance Corporation of India or any other insurer with whom an insurance has been taken under sub-section (I), or as the case may be, the Board of Trustees of the approved gratuity fund.

(5) Where an employer fails to make any payment by way of premium to the insurance referred to in sub-section (I) or by way of contribution to an approved gratuity fund referred to in sub-section (2), he shall be liable to pay the amount of gratuity due under this Act (including interest, if any, for delayed payments) forthwith to the controlling authority.

(6) Whoever contravenes the provisions of sub-section (5) shall be punishable with fine which may extend to ten thousand rupees and in the case of a continuing offence with a further fine which may extend to one thousand rupees for each day during which the offence continues.

Explanation.-In this section" approved gratuity fund" shall have the same meaning as in clause (5) of Section 2 of the Income-tax Act, 1961 (43 of 1961).]"

8. From the provisions of Section 4-A, it is apparent that the establishment belonging to or under the control of Central Government or State Government are exempted from obtaining insurance for their liability under the payment of gratuity Act. This exemption is extended to every employer (a) who had established and approved gratuity fund; and (b) every employer employing 500 or more persons who establishes an approved gratuity fund.

9. Of late, there are several petitions complaining of non payment of gratuity by the establishments under the control of State Government as well as Central Government. When the suggestion of the Bar was sought for, in order to get over this problem, learned Senior Counsel Mr.S.Ravindran would suggest that the provision providing for exemption should not exempt the Government / Government Institutions from insuring their liability.

10. The learned counsel Mr.K.M.Ramesh would suggest that on par with the enabling provision for the Labour Court to execute its own award, similar provision must be incorporated in the Payment of Gratuity Act empowering the controlling authority himself to execute the order passed by the Controlling Authority instead of driving them to the revenue recovery proceedings. Both the suggestions are well considered suggestions and this court deem it appropriate to send this copy to the Ministry of Labour and Law Commission of India, towards implementation of these suggestions.

11. With the above direction, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
   Government of Puducherry,
   Labour & Employment Department,
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4. The Managing Director,
The Anglo French Textiles,
A Unit of Pondicherry Textile Corporation Limited), AFT Mill Premises,
Cuddalore Road, Mudaliyarpet,
Puducherry UT - 605 004.

5. The Ministry of Labour and
Law Commission of India,
New Delhi.

+1cc to Mr.N.Mala, Advocate, S.R.No.74529
+1cc to Mr.M.Ravi, Advocate, S.R.No.74662
+1cc to the Government Pleader cum Public Prosecutor,
Pondicherry S.R.No.74535

W.P.No.28442 of 2018

rrs 02/11/2018