



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2018

CORAM

THE HONOURABLE Mr. JUSTICE V. PARTHIBAN

W.P (MD) No.21329 of 2018 and

W.M.P (MD) Nos.19197 & 19198 of 2018

The Executive Officer,
Arulmigu Natchadai Thavirtharuliyaswamy
Thirukoil, Devathanam,
Virudhunagar District.

... Petitioner

Vs

1.The Joint Commissioner of Labour/Controlling
Authority under Payment of Gratuity
Act 1972, Madurai.

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

3.K.Veeraputhiran

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the first respondent to take on file the Appeal filed by the petitioner against the orders passed in P.G.NO.181 of 2015 dated 30.11.2016 passed by the second respondent exempting the petitioner from depositing the Award amount passed in P.G.No.181 of 2015 by the second respondent and dispose of the same on merits and in accordance with law.

For Petitioner : Mr.S.Manohar

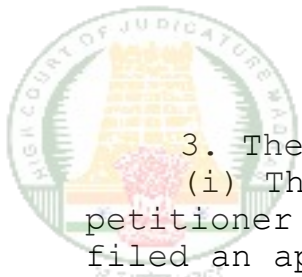
For Respondents : Mr.K.Mu.Muthu,

Additional Government Pleader

ORDER

Heard Mr.S.Manohar, learned counsel for the petitioner and Mr.K.Mu.Muthu, learned Additional Government Pleader takes notice for the respondents.

2. The petitioner has come up with this writ petition seeking a direction to the first respondent to take on file the Appeal filed by the petitioner against the orders passed in P.G.NO.181 of 2015 dated 30.11.2016, by the second respondent, exempting the petitioner from depositing the Award amount passed in P.G.No.181 of 2015 by the second respondent and dispose of the same on merits and in accordance with law.



3. The case of the petitioner is as follows:-

(i) The third respondent claims himself as an employee of the petitioner Temple, approached the second respondent authority and filed an application for payment of gratuity which was numbered as P.G.No.181 of 2015 under the provisions of the Payment of Gratuity Act, 1972. After hearing the parties, the application towards the payment of gratuity was allowed by the second respondent vide order dated 30.11.2016.

(ii) Against the order of the second respondent, the petitioner preferred an appeal to the first respondent within the time stipulated under Section 7 (7) of the Payment of Gratuity Act. However, the first respondent returned the appeal for the reason that the appeal was filed without a certificate that the gratuity amount which was ordered by the second respondent was not deposited before the second respondent. Therefore, the petitioner is before this Court with this writ petition.

4. This Court is unable to appreciate such a writ petition is maintainable, in view of the specific provisions provided in the statute itself viz., The Payment of Gratuity Act, 1972. An appeal is provided under Section 7(7) which reads as follows:-

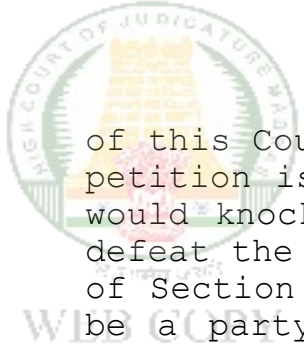
"7.Determination of the amount of gratuity

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount."

5. According to the proviso of the sub-clause 7, it is clearly stipulated that no appeal shall be admitted unless a certificate is produced of the controlling authority to the effect that the appellant has deposited the amount equivalent to the award amount. When the statute prescribes that the deposit of the award amount before the appeal could be admitted, this court cannot entertain the writ petition of the present nature which will defeat the very provisions of the statute, as in the opinion



of this Court the said provision is mandatory. If the present writ petition is entertained, then in every case, the aggrieved person would knock the doors of this Court seeking exemption which will defeat the very purpose of introducing the proviso of sub-clause 7 of Section 7 of the Payment of Gratuity Act. This Court can never be a party to defeat any beneficial proviso of the Payment of Gratuity Act.

6. For the above said reasons, this Court is of the view that the present writ petition is not maintainable and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS-I)

To

- 1.The Joint Commissioner of Labour/Controlling
Authority under Payment of Gratuity
Act 1972, Madurai.
- 2.The Assistant Commissioner of Labour/Controlling
Authority under Payment of Gratuity
Act 1972, Madurai.

+1 CC To MR.S.MANO HAR, Advocate SR. NO. 90668
+1 CC TO The Special Government Pleader SR.NO. 90277

W.P (MD) No.21329 of 2018
11.10.2018

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