



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2018

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P (MD) No. 9562 of 2016

and

WMP (MD) No. 7606 of 2016

&

WMP (MD) No. 16123 of 2017

The Management,
Tamil Nadu State Transport
Corporation
(Madurai Division-I) Madurai Employees
Cooperative Thrift & Credit Society Ltd,
Rep. by its Managing Director,
94/4B, Pattukottai Kalyanasundaram Street,
Bye Pass Road, Madurai - 625 010.

... Petitioner

Vs.

1. The Assistant Commissioner of Labour,
Controlling Authority under the
Payment of Gratuity Act, Madurai.

2.P.Moovendran

... Respondents

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order passed by the first respondent in P.G.No.227/2015 dated 12.04.2016 and quash the same.

For Petitioner : Mr.D.Shanmugaraja Sethupathi
For Respondents : Mr.J.Gunaseelan Muthaiah,
Addl.Govt.Pleader for R1
Mr.T.Arulvadivel @ Sekar for R2

ORDER

The writ petitioner is a registered Co-operative society. The second respondent was working as the Secretary in the writ petitioner's society. He allegedly caused loss to the society to the tune of few lakhs of rupees. Surcharge proceedings were therefore initiated against him. An order adverse to the second respondent was passed. The second respondent questioned the same by filing CMA (CS) Nos. 12 of 2015, 13 of 2015 and 34 of 2015 before the



Principal District Judge, Madurai. The appeal proceedings are still pending.

2. In the meanwhile, the second respondent filed P.G.No.227 of 2015 before the Assistant Commissioner of Labour/Controlling Authority under the Payment of Gratuity Act, Madurai. The said authority by order dated 12.04.2016 directed the writ petitioner herein to pay a sum of Rs.10,00,000/- as gratuity to the second respondent with interest. The same is questioned in this writ petition.

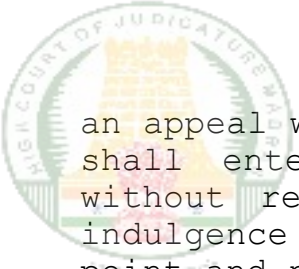
3. The learned counsel appearing for the writ petitioner would contend that the second respondent herein has been saddled with financial liability to the writ petitioner's society in view of the surcharge proceedings passed against him. The surcharge proceedings are still holding good. It is yet to be stayed or set aside in appeal proceedings. Therefore, the writ petitioner is entitled to set off all gratuity claims of the second respondent against the liability owned by him to the writ petitioner's society.

4. The learned counsel appearing for the writ petitioner society would place reliance on the unreported decision of this Court made in **WP(MD)No.2665 of 2008 dated 27.09.2010**. The learned Judge of this Court relying on Section 48(2) of the Tamil Nadu Co-operative Societies Act, held that in case of loss to the society or any amount due to the society, the gratuity amount can be adjusted.

5. Per contra, the learned counsel appearing for the second respondent would contend that the very same learned Judge of this Court, in a subsequent order dated 22.11.2010 in **WP. (MD)No.9144 of 2010** had held that in view of the non obstante clause found under Section 14 of Payment of Gratuity Act, payment of gratuity cannot be withheld, even though the surcharge proceedings were pending against the concerned employee. The learned counsel for the second respondent would also contend that the writ petitioner ought to be non suited for failure to avail the statutory appeal remedy set out in Section 7(7) of the Payment of Gratuity Act, 1972. He also placed reliance on a catena of decisions of this Court.

6. This Court is of the view that the writ petitioner has not made out a case for direct invocation of the jurisdiction of this Court under Article 226 of the Constitution of India. The writ petitioner can very well avail the appeal remedy under Section 7(7) of the Payment of Gratuity Act, 1972 for quashing the order impugned in this writ petition. The writ petition is therefore liable to be dismissed on the ground of non exhaustion of the statutory appeal remedy.

7. The learned counsel appearing for the writ petitioner prays for extension of time for preferring the said appeal. The writ petitioner is therefore given time till 28.02.2018 to prefer an appeal against the impugned order. If the writ petitioner files



an appeal within the time stipulated herein, the appellate authority shall entertain the same and dispose of the appeal on merits without reference to limitation. It is made clear that such indulgence is given to the writ petitioner only on the limitation point and not on any other aspect.

8. This writ petition is dismissed as indicated above. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner of Labour,
Controlling Authority under the Payment of Gratuity Act,
Madurai.

- + 1 CC TO Mr.D.SHANMUGARAJA SETHUPATHI, ADVOCATE IN SR No. 41789
- + 1 CC TO Mr.C.ARUL VADIVEL @ SEKAR, ADVOCATE IN SR No. 41827
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 46882

SKM

TE/GT/SAR-3 : 14/03/2018 : 3P/5C

W.P(MD)No.9562 of 2016 and
WMP(MD)No.7606 of 2016 &
WMP(MD)No.16123 of 2017
11.01.2018