

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.05.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.14094 OF 2019

AND

W.M.P.NO.14151 OF 2019

The Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation Limited, Madhavaram Milk Colony,
Chennai - 51.

...Petitioner

Versus

1. M.Gnanaguru
2. The Assistant Commissioner of Labour,
Chennai - 6.
3. The Additional Commissioner of Labour,
Chennai - 6.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the order dated 23.07.2018 passed in Appeal No.E/1555/2018 against P.G.No.65 of 2016 on the file of the third respondent and order dated 17.03.2017 passed in P.G.No.65 of 2016 on the file of the second respondent and quash the same as being illegal, arbitrary and unconstitutional.

For Petitioner

सत्यमेव जयते : Mr.D.Venkatachalam
for Mr.R.Balaramesh

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O R D E R

The relief sought for in this Writ Petition is to call for the records relating to the order dated 23.07.2018 passed in Appeal No.E/1555/2018 against P.G.No.65 of 2016 on the file of the third respondent and order dated 17.03.2017 passed in P.G.No.65 of 2016 on the file of the second respondent and to quash the same as being illegal, arbitrary and unconstitutional.

2. In this case, as against the order passed by the second

respondent in P.G.No.65 of 2016 dated 17.03.2017, the petitioner has preferred an Appeal on 10.05.2018 after a lapse of one year and he has also deposited the gratuity amount only on 03.11.2017, much belatedly.

3. Admittedly, no Appeal has been preferred by the petitioner within a maximum period of 120 days as contemplated under the provisions of Payment of Gratuity Act, 1972 and no deposit of gratuity amount has been made by him. Therefore, on 23.07.2018, the Appellate Authority/third respondent has rightly rejected the Application of the Petitioner.

4. As per the provisions of Payment of Gratuity Act, 1972, the gratuity Appeal has to be filed preferably within 60 days from the date of receipt of the order or at least within a maximum period of 120 days. If an appeal is filed after 120 days from the date of receipt of the order, then the Authority becomes functus officio and therefore, he cannot entertain the Appeal. Since the petitioner has preferred an Appeal beyond 120 days, the Authority has rightly passed an order rejecting the request of the petitioner herein.

5. In the case of Onward Trading Company, Madras Vs. Deputy Commissioner of Labour, Madras and another reported in 1989 (2) LLN 672 and 673, this Court has held that if the petitioner fails to deposit the amount of gratuity within the stipulated time, then the Appeal itself is incompetent.

6. If the contention of the Petitioner herein is accepted, then the Management would approach the High Court after 120 days stating that they are willing to deposit the amount and that they may be permitted to pursue the Appeal. The Gratuity payable is not a gratis or bounty and it shall be payable immediately or at least within the time stipulated under the Act. In the case on hand, even the admitted amount has not been deposited before the Controlling authority, when the Appeal was filed before the Controlling Authority. Hence, no indulgence can be shown to the Petitioner herein.

7. The gratuity payable attracts 10% interest as per Section 7(3A) of the Payment of Gratuity Act, 1972. In exercise of the powers conferred by Section 8 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies 15 per cent per annum as the rate of compound interest, recoverable by the Collector for the time being, along with the amount of gratuity and payable to the person entitled thereto.

8. For better appreciation of the case, Sections 7(3A) and 8 of the Payment of Gratuity Act, 1972 together with the Notifications issued under the aforesaid provisions are

extracted hereunder:

"Section 7 - Determination of the amount of gratuity: (1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity. (2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined. (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.]

Section 8 - Recovery of gratuity: If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify,] from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto : Provided

that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate: Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.

Notification under Section 7(3A)

S.O.874 - In exercise of the powers conferred by sub-section (3A) of Section 7 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies ten per cent per annum as the rate of simple interest payable for the time being by the employer to his employees in cases where the gratuity is not paid within the specified period.

Notification under Section 8

S.O. 1032(E) - In exercise of the powers conferred by Section 8 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies 15 per cent per annum as the rate of compound interest, recoverable by the Collector for the time being, along with the amount of gratuity and payable to the person entitled thereto.

9. In the light of the aforesaid judgment, this Court has come to the conclusion that the subsequent act of deposit will not validate the Appeal, which is filed belatedly and the order of the Appellate Authority/third respondent cannot be interfered with. Now that, amount has been deposited, amount can be released to the workers within one month from the date of receipt of this order, without standing on technicalities that the Appellant should give his consent for withdrawal.

Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(V.O)

//True Copy//

Sub Assistant Registrar

mrr/aeb

To

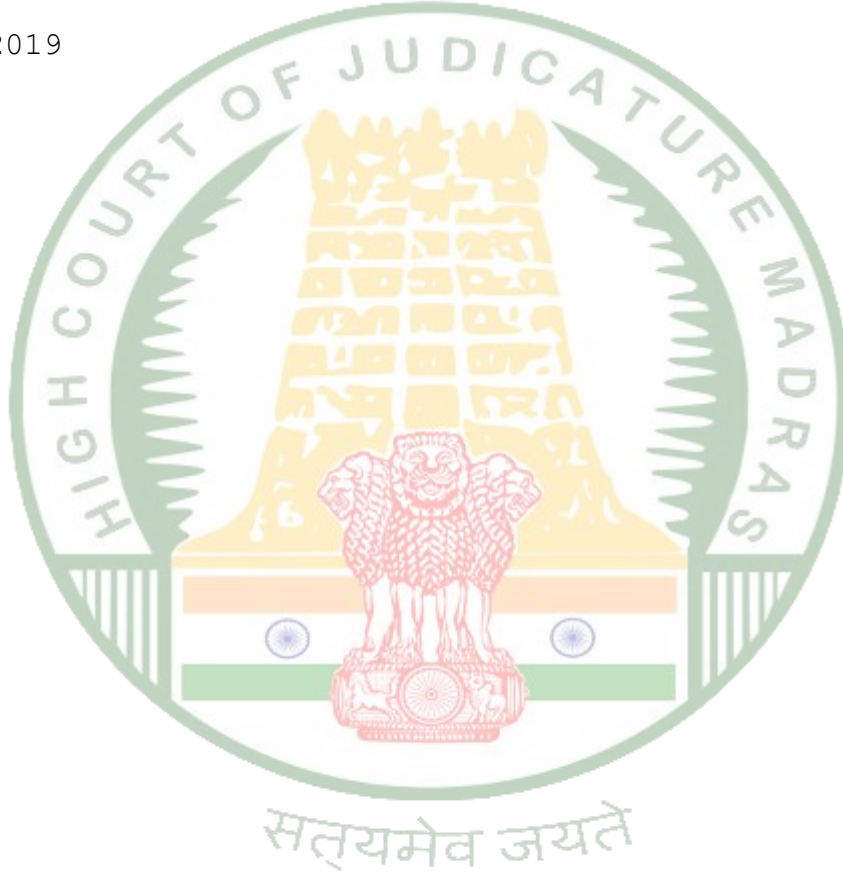
1. The Assistant Commissioner of Labour,
Chennai - 6.

2. The Additional Commissioner of Labour,
Chennai - 6.

+1cc to Mr.R.Balaramesh, Advocate, S.R.No.43555

W.P.No.14094 of 2019

PA(CO)
CS/17/05/2019



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