

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM:
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.10168 of 2014

T.Rajendra Kumar

... Petitioner

vs.

1. The Assistant Commissioner of Labour,
(Controlling Authority under
Payment of Gratuity Act),
Office of the Deputy Commissioner of Labour-1
DMS Complex, Chennai 600 006.

2. M/s.Krishna & Company,
rep. By Partner A.Vijayalakshmi
4A, Subbarao Avenue,
2nd Street, Nungambakkam,
Chennai 600 006.

3. The District Collector,
Chennai 600 001.

... Respondents

(3rd Respondent impleaded vide order dated 06.08.2019 made in
W.M.P.No.34575 of 2018 in W.P.No.10168 of 2014)

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus, calling for the production of the records relating to the proceedings dated 23.04.2013 made in D1/8080 to 8082/12, quash the same and direct the first Respondent to take appropriate action under the Payment of Gratuity Act in pursuance of the Memo dated 30.10.2012 filed by the petitioner herein to recover the gratuity amount from the second respondent herein.

For Petitioner : Mr.S.Senthilnathan
For 2nd Respondent : Mr.S.Sivalingam Kesavan
For 3rd Respondent : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

O R D E R

Challenging the proceedings dated 23.04.2013 issued by the 1st Respondent in D1/8080 to 8082/12, and for a consequential direction to the 1st Respondent to take appropriate action under

the Payment of Gratuity Act in pursuance of the Memo dated 30.10.2012 filed by him, to recover the gratuity amount from the 2nd Respondent herein, the Petitioner is before this Court by way of the present Writ Petition.

2. According to the Petitioner, he worked under the 2nd Respondent/Company and had put in 35 years of service. The 2nd Respondent/Company was closed on 11.06.1997. Since, gratuity due to the Petitioner was not paid, he filed an Application for payment of gratuity before the 1st Respondent/Assistant Commissioner of Labour, (Controlling Authority under the Payment of Gratuity Act), Chennai, claiming a sum of Rs.1,63,384.03. The 1st Respondent passed an order on 04.02.2000 computing the gratuity amount payable by the 2nd Respondent/Company at Rs.1,00,000/- within a period of 30 days from the date of receipt of the order.

3. Since the 2nd Respondent/Company failed to comply with the order of the 1st Respondent, the Petitioner again filed an Application before the 1st Respondent praying for recovery of gratuity amount as arrears of land revenue. In exercise of the powers conferred under Section 8 of the Payment of Gratuity Act, the 1st Respondent issued Certificate to the District Collector on 31.01.2001 asking him for recovery of gratuity amount with compound interest at 15% from the date of default, from the 2nd Respondent/Company, as arrears of land revenue. As the District Collector and Tahsildar did not take any steps to recover the amount, the Petitioner made a representation dated 22.02.2002 to the District Collector to recover the same.

4. In such circumstances, the Petitioner filed W.P.No.29177 of 2002 seeking a direction to the District Collector and concerned Tahsildar to recover the gratuity amount from the Management in pursuance of the Certificate dated 31.01.2001 issued by the 1st Respondent and disburse the recovered amount. By an order dated 07.08.2002, this Court directed the District Collector to dispose of the Petitioner's representation dated 22.02.2002 within a period of four weeks.

5. The 2nd Respondent/Company, without preferring an Appeal against the said order, filed a Writ Petition in W.P.No.14402 of 2003 stating that the Management was not aware of the order passed by the 1st Respondent and filed an Application to set aside the ex-parte order with a Petition to condone the delay. In the injunction Petition, a condition was imposed directing the Management to deposit 50% of the gratuity amount. Pursuant to deposit of the same, this Court, by an order dated 18.02.2004, permitted the Petitioner to withdraw 50% of the deposited gratuity amount. Final order of dismissal was passed in the said Writ Petition on 18.02.2011, with liberty to the contesting respondents to withdraw the amount lying in

deposit with the 1st Respondent.

6. Pursuant thereto, the Petitioner filed a Memo dated 30.10.2012, enclosing a copy of the order passed in W.P.No.14402 of 2003 and requested the 1st Respondent to take appropriate action to recover the dues payable by the Management. But, the 1st Respondent sent a communication dated 23.04.2013 to the Petitioner stating that no amount is lying with them. Aggrieved by the same, the Petitioner is before this Court.

7. This Court heard the learned counsel on either side and carefully gone through the material documents available on record.

8. In the case on hand, an Application was moved by the Petitioner for recovery of gratuity amount and the Controlling Authority has passed an order stating that once the Management deposits the entire gratuity amount, the Petitioner would be entitled to withdraw 50% of the same. From this, it is clear that gratuity amount has not been paid to the Petitioner in its entirety.

9. When an Application for recovery of gratuity is filed, it is mandatory on the part of the Controlling Authority and the District Collector to ensure that the amount is recovered from the Management and paid to the employee, as gratuity is not a gratis or bounty payable to the employee. The Controlling Authority has passed an order on 04.02.2000 in P.G. Case No.204 of 1999 and as on date, there is no whisper as to whether an Appeal has been filed against the same. As contemplated under Section 7 of the Payment of Gratuity Act, 1972, an appeal should have been filed within 120 days. But, in the case on hand, the Management has chosen not to prefer an Appeal, as they had a favourable order, and almost a decade had gone by.

10. In view of the above, as the action of the 1st Respondent/Controlling Authority in issuing the proceedings dated 23.04.2013 is not only perfunctory, but also abdication of his duties, the same is set aside.

11. It is mandatory on the part of the 1st Respondent/Controlling Authority and the District Collector through Tahsildar to recover the gratuity amount from the Management and ensure that the last penny is paid to the employee. Now that revenue recovery has been initiated, the 1st Respondent/Controlling Authority and the 3rd Respondent/District Collector are directed to recover 50% gratuity amount payable to the Petitioner from the 2nd Respondent/Company, as 50% of the amount had already been withdrawn by the Petitioner together with interest, as contemplated under Section 8 of the Payment of

Gratuity Act, 1972, which prescribes interest at the rate of 15% per annum from the date the amount became due. The said exercise shall be completed within a period of sixty (60) days from the date of receipt of a copy of this order.

12. It is needless to mention that if a Company/Partnership firm is not in existence, nothing prevents the authorities concerned from recovering/attaching the personal funds of the Directors/Partners towards the amount payable to the employees under the head Provident Fund/Gratuity, as employees are in a better pedestal than any other secured creditors.

13. Before parting with, this Court opines that if the Tahsildar under the control of the District Collector fails to execute the order of the District Collector, after a direction is issued by the latter, he shall not draw his salary till the amount is recovered and paid to the Petitioner/employee.

This Writ Petition is allowed with the above direction and observation. No costs. Consequently, connected M.P.No.1 of 2014 is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Assistant Commissioner of Labour,
(Controlling Authority under
Payment of Gratuity Act),
Office of the Deputy Commissioner of Labour-1
DMS Complex, Chennai 600 006.
2. The District Collector,
Chennai 600 001.
- 3.The Tahsildar Concerned,
through the District Collector,
Chennai-600 001.

+2cc to M/s.Prakasam Goklaney, Advocate sr.67510
+1cc to Mr.Senthil Nathan, Advocate sr.67047
+1cc to Government Pleader sr.68079

W.P.No.10168 of 2014

ks(co)
nr 03/10/2019