

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.10.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9666 of 2014
and M.P.No.2 of 2014

The Special Officer,
(presently the Managing Director),
Thirupathur Coop. Sugar Mills Ltd.,
Kethandapatty Post - 635 815,
Tirupathur Taluk,
Vellore District ... Petitioner
Vs.

1. The Presiding Officer,
The Principal Labour Court,
Vellore District.

2. Mr.K.Subramaniam ... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records culminating in the order of the first respondent dated 27.09.2013 made in C.P.No.29 of 2013 and quash the same and consequently direct the second respondent to receive the balance amount of Rs.16,421/- (Rupees Sixteen Thousand, Four Hundred & Twenty One only) under the surrender of Earned Leave benefits by modifying of the amount ordered by the first respondent upon adjustment of the sum of Rs.86,019/- (Rupees Eight Six Thousand and Nineteen only) paid in excess under the Gratuity claim to the petitioner.

For Petitioner : Mrs.G.Thilakavathi, Senior counsel
for Mr.R.Gopinath

For Respondents : R1 - Labour Court
Mr.S.T.Varadarajulu [R2]

O R D E R

The order of the first respondent dated 27.09.2013 passed in C.P.No.29 of 2013 is sought to be quashed. Consequential direction is also sought for to direct the second respondent to receive the balance amount of Rs.16,421/- (Rupees Sixteen

Thousand Four Hundred and Twenty One only) under the surrender of Earned Leave benefits by modifying the amount ordered by the first respondent upon adjustment of a sum of Rs.86,019/- (Rupees Eight Six Thousand and Nineteen only) paid in excess under the Gratuity claim to the petitioner.

2. The facts in nutshell that are required to be considered in this writ petition are that, the writ petitioner is Tirupattur Co-operative Sugar Mills Ltd.,. The second respondent was an employee of the petitioner sugar mill and reached the age of superannuation and his gratuity amount and other terminal benefits were settled by the Management.

3. The second respondent also had received the gratuity amount and other terminal benefit and subsequently filed a claim petition before the Principal Labour Court, Vellore under Section 33C(2) of the Industrial Disputes Act. The Management filed a counter before the Labour Court stating that an excess amount of gratuity was paid to the employee concerned, the documents were also filed, the evidence were taken and the Labour Court finally arrived a conclusion as follows:

"But the evidence of the RW1 is that on the date of petitioner's having attained superannuation, he was paid the dues under various heads towards gratuity totalling to a sum of Rs.4,36,019/- and that the actual ceiling amount for the petitioner is to the tune of Rs.3,50,000/- and that therefore the petitioner was paid an excess amount of Rs.86,019/-. The Learned Counsel for the respondent Management during his advancement of argument contended that the above said excess amount is to be adjudicated towards the payment of encashment for surrender of Earned Leave for 116 and half days. A perusal of Ex.R1, copy of final statement for the petitioner and Ex.R2 copy of pay voucher would show that an excess amount of Rs.86,019/- has been paid to the petitioner towards gratuity amount. It is also seen from the perusal of Ex.R1 that only a sum of Rs.14,149/- had been calculated and paid to the petitioner towards his surrender of Earned Leave. In the annexure enclosed along with this petition the petitioner has calculated for a sum of Rs.1,16,589/- which has been payable to him for his 116 and half days surrender of Earned Leave. After the deduction already paid, the amount of a sum of Rs.14,149/- from the above said amount, the balance amount payable by the respondent Management to the petitioner is

Rs.1,02,440/-. It cannot be disputed that the petitioner was paid an excess amount of Rs.86,231/- towards his gratuity amount due to wrong calculation as seen from the perusal of Ex.R1. However, the above said excess amount cannot be adjusted with the amount payable to him legally towards his surrender of earned leave for 116 and half days. The remedy for respondent Management is to proceed against the petitioner for recovery of the excess amount of Rs.86,231/-. In view of the foregoing reasons, this Court hold that the petitioner is entitled to get the relief as prayed for in the petition."

4. The Labour Court, based on the document marked as Ex.R1, found that the second respondent was paid an excess amount of Rs.86,231/- towards his gratuity amount on account of wrong calculation as seen from the document Ex.R1. However, the Labour Court held that the writ petitioner/Management has to proceed against the second respondent/employee for recovery of the excess amount of Rs.86,231/- . By saying so, the computation petition filed by the second respondent/employee was allowed. It is admitted that the second respondent is entitled for Rs.16,421/- towards the surrender of Earned Leave benefits. It is now found that an excess amount of Rs.86,019/- was paid as a gratuity. Thus, this Court is of an opinion that the excess amount is to be recovered by adjusting the amount of Rs.16,421/- towards the surrender of Earned leave benefits for which the second respondent is entitled.

5. No employee is entitled to receive an excess gratuity amount equally on account of certain errors in the calculation. Unjust enrichment either on the part of the employer or on the part of the employee cannot be allowed by the Courts. The amount paid in excess is a public money, more specifically, the petitioner, which is a sugar mill owned by the Co-operative Society. Thus, no party can take any excess amount by way of an unjust enrichment. In the event of settling the lesser amount, the employer is liable to pay the correct amount. Equally if an excess amount is paid to an employee, the employer is entitled to recover the same. On account of certain calculation mistake, the employee cannot be permitted to take the excess amount and the Labour Court, though arrived a conclusion that the second respondent/employee received an excess amount of gratuity from the Management, allowed the claim petition. Thus, the decision taken is contrary to the documents filed as well as the findings arrived by the Labour Court.

6. Under these circumstances, this Court has no hesitation in coming to the conclusion that the award of the Labour Court

is perverse and not in consonance with the documents filed and the issues established by the Management. Accordingly, the award dated 27.09.2013 passed in C.P.No. 29 of 2013 is quashed. The second respondent is entitled for the balance amount of Rs.16,421/- towards the surrender of earned leave benefits and the writ petitioner/Management is liable to settle the said amount in favour of the second respondent. Equally, the writ petitioner/Management is empowered to recover the excess amount of gratuity, which was paid to the second respondent on account of wrong calculation. Thus, the writ petitioner is at liberty to recover the excess amount by following the procedures contemplated.

7. It is brought to the notice of this Court that at the time of admission of the writ petition, the writ petitioner/Management deposited certain amount before the first respondent/Labour Court. In view of the order now passed by this Court to recover the excess amount from the second respondent and to pay the benefit of surrender of earned leave to the second respondent, the petitioner/Management is permitted to withdraw the entire amount, adjust the said amounts by following the procedures contemplated.

8. The writ petitioner is at liberty to file an appropriate application for withdrawal of the deposited amount and in the event of any such application, the first respondent/Principal Labour Court, Vellore is directed to return the deposited amount with accrued interest within a period of four(4) weeks from the date of receipt of a copy of the application from the writ petitioner/Management and the Writ petitioner/Management is directed to re-calculate the gratuity amount as applicable to the second respondent as well as the surrender of earned leave benefit and accordingly, settle the issue by following the procedures contemplated within a period of twelve(12) weeks from the date of receipt of a copy of this order.

Accordingly, this writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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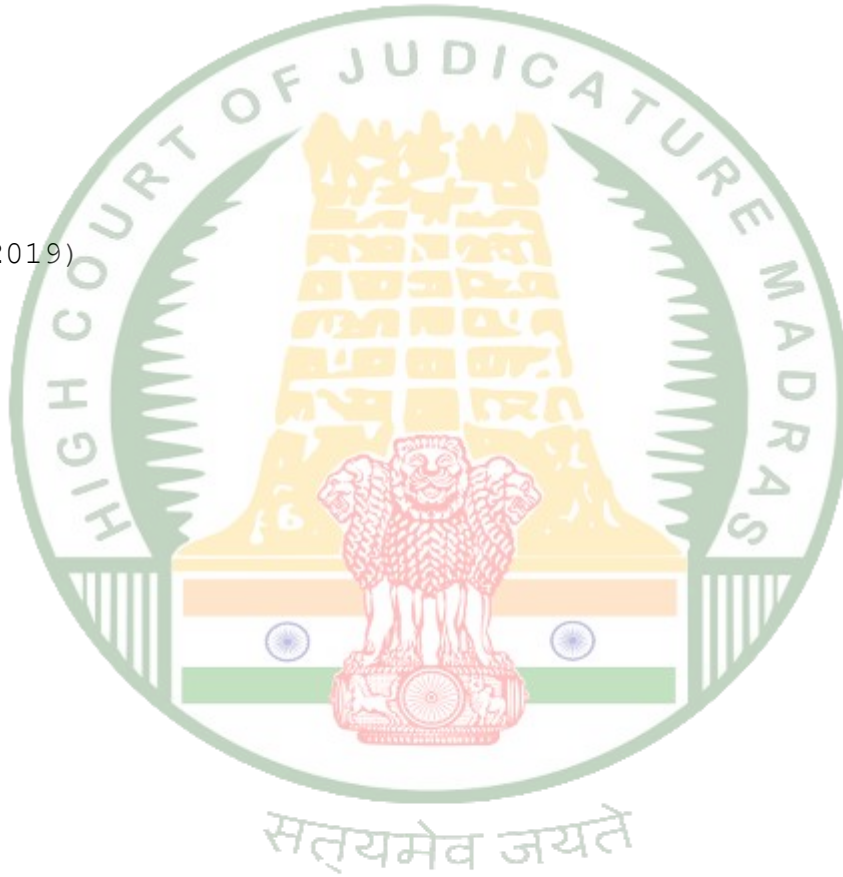
The Presiding Officer,
The Principal Labour Court,
Vellore District.

+1 CC to Mr.S.T.Varadarajulu, Advocate sr 89760.

+1 CC to Mr.R.Gopinath, Advocate sr 89745.

W.P.No.9666 of 2014
and M.P.No.2 of 2014

LN (CO)
SP (25/11/2019)



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