

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WP.No.22863 of 2019

and

WMP.No.22481 of 2019

The Commissioner
Mettur Municipality
Mettur Dam, Salem District.

...Petitioner

Vs.

1.The Additional Commissioner of Labour
Coimbatore
Coimbatore - 641 018.

2.S.Vanji
S/o.Late S.V.Seshan

3.The Assistant Commissioner of Labour
Labour Court, Salem
Salem District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in A.Thi.Mu.No.A/2528/2019 dated 25.06.2019, quash the same and consequently, directing the first respondent to number the appeal filed by the petitioner against the order dated 12.08.2014.

For Petitioner : Mr.P.Srinivas

For Respondents: Mr.J.Pothiraj
Special Government Pleader
for R1 & R3

O R D E R

The petitioner has come forward with this Writ Petition challenging the order of the first respondent dated 25.06.2019, wherein the Appellate Authority has returned the application stating that the appeal has been filed after 120 days, which is in violation of Section 7(7) of the Payment of Gratuity Act, 1972 (in short "the Act").

2. According to the petitioner-Management, the second respondent worked as a Revenue Assistant from 28.09.2000 to 30.09.2003 and retired from service on superannuation. The Death-cum-retirement Gratuity amount of Rs.12,723/-, and the family pension of Rs.1,275/- p.m. was paid to the second respondent from the date of his retirement. The second respondent filed an application before the third respondent seeking grant of Gratuity under the Act, for his entire service period, including temporary service period. The third respondent, by an order dated 12.08.2014, has directed the petitioner-Management to pay the Gratuity to the second respondent to the tune of Rs.1,52,392/- @ 10% from the date of his retirement i.e. from 30.09.2003 till the date of deposit of the said amount, against which, the petitioner-Management did not file any appeal, however, they have chosen to file a writ petition in WP.No.6491 of 2016 after a period of nearly 18 months. By an order dated 23.02.2016, in W.P.No.6491 of 2016, the learned Single Judge of this Court permitted the petitioner-Management to file an appeal after depositing the entire amount.

3. Had the decision of this Court in the case of Onward Trading Company Vs. Deputy Commissioner of Labour, (1989) 2 LLN 672 and 673 been brought to the notice of the learned Single Judge, he would have dismissed the writ petition, instead of granting liberty. In any event, there is no evidence to show as to whether the employee was heard in the said writ petition on 23.02.2016.

4. It is stated that after complying with the order dated 23.02.2016 made in WP.No.6491 of 2016, the petitioner-Management filed an appeal on 17.06.2019 with a delay of 3 years and 4 months. It is further stated that the entire amount has not been deposited within 120 days. When the Statute prescribes the time limit for depositing the amount, the petitioner-Management ought to have deposited the entire amount within the time stipulated. The Appellate Authority has rightly pointed out that there is a delay of 1637 days in filing the appeal. When the entire amount has not been deposited even after the order of this Court dated 23.02.2016 made in W.P.No.6491 of 2016, time limit for deposit will start from day one after the expiry of 60 days, as contemplated under the Payment of Gratuity Act, 1972, as 120 days period expired not once, but twice.

5. Section 7(3-A) of the Act stipulates that the employer will have to pay interest at the rate of 10% per annum, in case the gratuity is paid within time and in case of recovery, Section 8 of the Act will come into operation, in which case, the rate of interest for recovery is 15% per annum.

6. As the petitioner-Management has deposited the amount much belatedly, the employee will be entitled to get the interest from the date of the amount became due till the date of deposit of the amount. If the interest is not paid, nothing would prevent the employee to recover the amount as contemplated under the Act along with 15% interest.

7. Accordingly, this Writ Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

mk

To

1.The Additional Commissioner of Labour
Coimbatore
Coimbatore - 641 018.

2.The Assistant Commissioner of Labour
Labour Court, Salem
Salem District.

+1 CC to Mr.P.Srinivas, Advocate sr 67437.

+1 CC to The Govt. Pleader sr 67135.

W.P.No.22863 of 2019

RGN (CO)

SP(16/09/2019)

WEB COPY