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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.21855 of 2017 and
W.M.P.No.22859 of 2017

1. K.R.L.Narashiman
2. S.Chandrasekaran

... Petitioners

-vs-

1.The Joint Commissioner of Labour,
The Appellate Authority under the Payment of Gratuity Act,
DMS Compound, 6th Floor, Teynampet,
Chennai-600 006.

2.The Assistant Commissioner of Labour,
The Controlling Authority under the Payment of Gratuity Act,
DMS Compound, Teynampet,
Chennai-600 006.

3.The Joint Commissioner/Executive Officer,
Arulmigu Kapaleeswarar Temple,
Mylapore, Chennai-600 004.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the first respondent to maintain the appeal from the third respondent Temple management against the order of the second respondent dated 29.12.2016 made in P.G.Case No.178 of 2015 & 177 of 2015 without the third respondent depositing the interest component as put forth by the petitioners in their representation dated 20.07.2017.

For Petitioner : M/s.G.Thilakavathi, Senior Counsel
For Mr.R.Gophinath

For R1 & R2 : No Representation

For R3 : M/s.Usha Tholgappian



O R D E R

The petitioners have come with the contention that the Appellate Authority under the Payment of Gratuity Act, 1972 shall not entertain the Appeal, unless or otherwise the order of the Controlling Authority is duly complied with, i.e., the principal amount together with interest as ordered by the Controlling Authority has got to be deposited before filing an appeal. In the present case on hand, there are 25 employees, who are the beneficiaries of the order of the Controlling Authority and the Department has preferred an appeal without deposit of interest and therefore, the application filed by the 3rd respondent is liable to be rejected at the threshold.

2. In response, the learned Counsel for the 3rd respondent has contended that there is no need for deposit of the interest amount, when they had deposited the principal amount itself. The Petitioners, who are among the 25 employees benefited by the order of the Controlling Authority and have also filed a claim before the Authority cannot maintain this petition, as these two employees are not authorized to file any appeal or Writ Petition on behalf of others, who are not before this Court. However, the Government has passed an order in G.O.No.53 dated 27.05.2019, stating that they are willing to pay the amount to these two employees without prejudice to their rights in the matters pending before the Apex Court in C.A.Nos.4505 to 4508 of 2013 [SLP (Civil)], etc., batch, in which the issue regarding the applicability of the provisions of the Payment of Gratuity Act to Temples is the subject matter. It is further contended that it is for the other employees to make necessary claim and collect the amount and the request of the petitioners with regard to other employees, who are not before this Court is not maintainable. It is also stated that without prejudice to the contention to be raised before the Appellate Authority by the 3rd respondent and also the matter pending before the Apex Court, the 3rd respondent Management is willing to pay the gratuity amount together with interest and that this cannot be treated as precedent.

3. Heard the learned counsel on either side and perused the material documents available on record.

4. It is true that as per the provisions of the Act and the order of the Controlling Authority, it is mandatory that the principal amount together with interest has got to be deposited before the appeal is entertained by the Appellate Authority. It is not the case of the petitioners that the Management had not deposited any amount, as admittedly, the principal portion had already been deposited by the Management and now, the Management



is willing to deposit the interest portion also, so that they can plead as to the applicability, eligibility and other aspects before the Appellate Authority. This Court, in Onward Trading Co., Madras vs. Dy. Commissioner of Labour, Madras, reported in 1990 LLR 28 (MHC), had clearly held that without deposit of any amount, the Appellate Authority cannot entertain any appeal.

5. In view of the above, it is left open to the Management to deposit the interest portion from the date of retirement till the date of deposit, before the Controlling Authority within a period of four weeks from the date of receipt of a copy of this order, so as to enable the Appellate Authority to take up the matter on merits and on such deposit, the principal amount together with accrued interest shall be released to these two petitioners within a period of 45 days from the date of deposit.

6. Insofar as other 23 employees, who are similarly placed, are concerned, this Court cannot render any finding, as they are not before this Court and it is for them to make a representation to the Management and take a stand before the Appellate Authority that they are also entitled to the amount in terms of the order of the Apex Court in C.C.Nos.6008-6009/2013 and SLP CC Nos.8448-8449 of 2013 dated 03.05.2013, holding that the Appellate Authority will have to make payment to the employees as and when they retire and will not drive them to go to the Authority under the Payment of Gratuity Act.

7. The contention raised on the side of the 3rd respondent that the above judgment has been rendered with regard to Thiruthani Temple and the present employees are working in Kapaleeswarar Temple and therefore, the decision is not applicable to the present case, cannot be accepted, as the applicability of the provisions of the Payment of Gratuity Act to Temples (and not the particular Temple) is the issue called in question before the Apex Court. It is needless to state that the Appellate Authority, while passing orders on the appeal after hearing the respective parties, shall take into consideration the order passed herein-above and the orders of the Apex Court.

With the above observation and direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



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To:

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+1cc to Mr.Gophinath, Advocate Sr.50501
+1cc to M/s.Usha Tholgappian, Advocate Sr.50568

W.P.No.21855 of 2017

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