

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE**W.P. (MD) No. 8236 of 2019****and****W.M.P. (MD) Nos. 6470 to 6472 of 2019**

The Assistant Commissioner
/Executive Officer,
Arulmigu Mariamman Temple,
Irukkangudi, Virudhunagar District.

... Petitioner

Vs.,

1) The Joint Commissioner of Labour/
Controlling Authority under
Payment of Gratuity Act 1972,
Madurai.

2) The Assistant Commissioner of Labour/
Controlling Authority under
Payment of Gratuity Act 1972,
Tirunelveli.

3) S.Kandasamy

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in Na.Ka.A6/5339/2018 dated 08.03.2019 on the file of the 2nd respondent and quash the same as illegal

For Petitioner : Mr.S.Manohar

For Respondents : Mr.N.Shanmugaselvam,
Additional Government Pleader

O R D E R

The instant writ petition has been filed challenging the order in Na.Ka.A6/5339/2018 dated 08.03.2019 passed by the second respondent.

2. The petitioner is a Temple governed by the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The petitioner, being a Temple employee filed P.G.No.02 of 2011 on the file of the second respondent claiming Gratuity under Payment of Gratuity Act, 1972. The petition was allowed directing the



petitioner to pay gratuity to the third respondent as per the Payment of Gratuity Act, 1972.

3. The petitioner preferred an Appeal against the orders passed in P.G.No.2 of 2011 before the first respondent. According to the petitioner, the said Appeal was filed within the time as per Section 7(7) of the Act, (i.e.,) within 120 days. But, the Appeal was filed without enclosing a certificate for Payment of Gratuity as per the statutory requirement.

4. The first respondent returned the Appeal on the ground that the pre-deposit amount has been deposited only on 14.03.2018 and the Appeal was re-presented only on 12.07.2018 along with the certificates. It is the case of the petitioner that the return of Appeal by the first respondent is erroneous and against the provisions of the Payment of Gratuity Act, 1972. Therefore, the petitioner filed a writ petition before this Court in W.P.(MD) No.20768 of 2018 seeking for a direction to the first respondent to take the appeal on file. According to the petitioner, the said writ petition is still pending on the file of this Court.

5. It is also stated by the petitioner that pursuant to the Public Interest Litigation(PIL) filed before this Court in W.P.(MD) No.1084 of 2019, in respect of non-payment of Gratuity amount to Temple employees, the Division Bench of this Court directed the Department to pay Gratuity for the Temple employees and according to the petitioner, the Government Order is yet to be passed to implement the Division Bench order.

6. According to the petitioner, in the meanwhile, the second respondent by virtue of the order passed in P.G.No.2 of 2011 has approached the first respondent to obtain release of the deposit amount made by the petitioner while preferring an appeal as against the order passed in P.G.No.2 of 2011. By the impugned order dated 08.03.2019, the second respondent was also directed to release all the gratuity amount to the third respondent. Aggrieved by the said order, the instant writ petition has been filed.

7. Heard Mr.S.Manohar, learned counsel for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader appearing for the respondents.

8. According to the petitioner, while an appeal is pending, the third respondent cannot withdraw the statutory deposit made by the petitioner while preferring an appeal as against the order passed in P.G.No.2 of 2011. Admittedly, in the instant case, even though the Appeal was filed within the prescribed period, the deposit was made by the petitioner after the prescribed period of 120 days. This issue is covered by various judicial pronouncements made by this Court wherein it has been held that an Appeal is not maintainable even though it is filed within the time but the statutory pre-deposit amount has to be paid within the prescribed period.



9. Further, it is brought to the notice of this Court that the Division Bench of this Court in W.P.(MD) No.1084 of 2019 directed the H.R & C.E Department to pay all the Temple employees the Gratuity amount on or before 15.03.2019. Taking into consideration all these factors and since the Appeal filed by the petitioner itself is not maintainable as the same has been filed beyond the prescribed period of 120 days, this Court is of the considered view that there is no infirmity in the impugned show cause notice passed by the second respondent. Accordingly, the **Writ Petition is dismissed**. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1) The Joint Commissioner of Labour/
Controlling Authority under
Payment of Gratuity Act 1972,
Madurai.
- 2) The Assistant Commissioner of Labour/
Controlling Authority under
Payment of Gratuity Act 1972,
Tirunelveli.

+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.59530
+1 CC to M/s.S.MANO HAR, Advocate in SR-59996

W.P. (MD) No.8236 of 2019
05.04.2019

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