BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.09.2019
CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A.(MD).No.965 of 2019

M/s.Madura Sugars,
Unit-Tamil Nadu Sugar Corporation Ltd.,
Pandiarajapuram-625 209,
Vadipatti Taluk, Madurai District,
through its Chief Executive (in-charge) ... Appellant/Petitioner

Vs.

1. The Appellate Authority under the
Payment of Gratuity Act,
(Additional Commissioner of Labour)
Ellis Nagar, Madurai-625 016.

2. Controlling Authority under the Payment of Gratuity Act,
(Deputy Commissioner of Labour)
O/o.Joint Commissioner of Labour,
Bharathi Ula Road – Race Course Colony,
Madurai-625 002.

3.V.Ganesan ... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.(MD).No.16163 of 2019 dated 08.08.2019.

Prayer in WP(MD). 16163/ 2019 :
Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, Directing the 1st respondent to entertain the appeal to be filed by the petitioner mill against the orders passed by the 2nd respondent in P.G.NO.14/2013 along with the other cases in the Common Award dt.27.03.2019 received on 02.05.2019 without deposting the ordered amount of Rs.2,20,800/- as per Sec.7 of Payment of Gratuity Act.

For Appellant : Mr.R.Murali
for Mr.K.Govindarajan
For R1 and R2 : Mr.S.Angappan
Government Advocate

JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.R.Murali, learned counsel appearing for the appellant and Mr.S.Angappan, learned Government Advocate appearing for the first and the second respondents.

2.This appeal is filed by a State owned Company called M/s.Madura Sugars, Unit of Tamil Nadu Sugar Corporation Ltd., challenging the order passed in W.P.(MD).No.16163 of 2019 dated 08.08.2019.

3.The appellant/writ petitioner prayed for a direction upon the first respondent/the Appellate Authority under Payment of Gratuity Act(hereinafter referred as 'the Act') , to entertain the appeal to be filed by the appellant against the order passed by the second respondent, the controlling authority under the Act in the common award dated 27.03.2019 without depositing the amount computed as gratuity payable to the third respondent, in terms of Section 7 of the Act. The learned Writ Court by the impugned order dated 08.08.2019, held that the writ petition is not maintainable and the appellant has to exhaust the alternative remedy and left it open to the appellant to prefer an appeal before the first respondent under the provisions of the Payment of Gratuity Act within a period of two weeks.

4.Mr.P.H.Arvind Pandian, learned Additional Advocate General, assisted by Mr.K.Govindarajan, learned counsel appearing for the appellant would submit that the prayer sought for in the writ petition was to direct the first respondent to entertain the appeal without insisting upon the pre-deposit of the computed gratuity amount, whereas, the direction issued by the Writ Court was entirely different to the relief sought for by the appellant.

5.Be that as it may, in terms of the provision of the Payment of Gratuity Act, any person aggrieved by an order passed by the Controlling Authority under the Act, is it entitled to file an appeal before the Appellate Authority, the first respondent herein. The precondition being that at the time of presentation of the appeal, the appellant if it is the Management has to deposit the entire amount of gratuity as computed by the controlling authority failing which, the Appellate Authority will not entertain the appeal. The condition stipulated in the statute directing for pre-deposit of the computed gratuity amount has been upheld in various decisions.

6.The learned Senior Counsel appearing for the appellant would strenuously contended that the appellant Sugar Mill had become defunct in the year 2002 and there has been no production activities thereafter and even prior to that, the appellant Sugar Mill was undergoing severe financial crisis and suffering loss as a result of which, the entire operations of the appellant Sugar Mill stood affected. It is submitted that though the appellant had submitted voluminous documents before the second respondent, the same were not considered and the second respondent uniformly reckoned the date on which, the workmen were relieved on 11.07.2013 without taking note of the fact that on and after 2002, the appellant Mill was not functioning. Therefore, it is submitted that there is gross error in the procedure adopted by the second respondent as well as the computation of gratuity payable to the individual employees.

7.In our considered view the contention now advanced before us touch upon the merits of the case, which the appellant has to canvass before the Appellate Authority. The Payment of Gratuity Act is a Labour Welfare Legislation and the appeal remedy provided under the Act is not only efficacious, but an effective remedy, there can be no ground to bye-pass such remedy.

8.The learned Senior Counsel by referring to the decision of the Hon'ble Supreme Court in the case of ***MORINDA CO.OP. SUGAR MILLS LTD., V. RAM KISHAN AND OTHERS*** reported in ***1995 SCC (5)653*** submitted that a sugar mill is a seasonal industry and this aspect of the matter is very relevant because there will not be continued employment for the workmen. To the same effect reliance was placed on the decision of the Hon'ble Division Bench of this Court, in the case of ***PERAMBALUR SUGAR MILLS EMPLOYEES UNION LTD., V. PERAMBALUR SUGAR MILLS, LTD., PERAMBALUR AND ANOTHER*** reported in ***(2002) 2 LLN 345***. Further, it is contended that the second respondent failed to take note of the vital fact that the appellant mill ceased to carry on its operation from the year 2002 onwards and the NMR employees of the appellant Mill had not received any wages from the appellant after 24.02.2002. Further it is submitted that the second respondent has ignored the documentary evidence placed before it with regard to the last drawn wages of NMR employees which was Rs.153.75/- per day in April 2002 and arbitrarily fixed the last drawn wages at Rs.11960/- by presuming the closure date as 11.07.2013. Further, it is contended that the second respondent is not entitled to go into the wage structure nor decided the correctness of the wage and the gratuity has to be computed only based on the last drawn salary.

9.In support of such contention, the reliance was placed on the decision in the case of ***MANAGEMENT, MM 350, VAIYAMPATTIPRIMAY AGRICULTURE CO, OPERATIVE BANK, TRICHY V. APPELLATE TRIBUNAL (APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT) AND OTHERS*** reported in ***2014 III CLR P.947***. Further, it is submitted that as on date, the appellant Mill has incurred loss of more than 100 crore and by directing the appellant to predeposit the entire gratuity amount as computed by the second respondent would cause great prejudice to the appellant and it will be gross injustice to the appellant.

10.In our considered view, the above grounds raised by the learned Senior counsel for the appellant are all touching upon the merits of the order passed by the second respondent, which obviously has to be canvassed only before the first respondent appellate authority.

11.In the light of the above, taking note of the peculiar facts and circumstances of the case, it would be well open to the appellant to approach the first respondent by way of appropriate application and it is left open to the first respondent to take a decision on such application, which may be filed by the appellant before it along with the appeal, which requires to be filed against the order of the second respondent/controlling authority.

12.For the above reasons, we hold that the appellant cannot canvass the correctness of the order passed by the second respondent in this appeal nor in the writ petition, but first the appellant has to exhaust the appeal remedy available under the Act. For such reason, while declining to issue any positive direction to the first respondent as sought for by the appellant in the writ petition, we grant liberty to the appellant to file an appeal before the first respondent, on or before 16.12.2019. If the appeal is filed within the said date, the appeal shall not be rejected on the ground of limitation, with regard to the pre-deposit, we give liberty to the appellant to raise whatever contentions, which are available to them on law and facts before the first respondent, which shall be considered by the first respondent on merits and in accordance with law.

13.With the above observations, this writ appeal stands disposed of. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Appellate Authority under the
   Payment of Gratuity Act,
   (Additional Commissioner of Labour)
   Ellis Nagar, Madurai-625 016.

2. Controlling Authority under the Payment of Gratuity Act,
(Deputy Commissioner of Labour)
O/o.Joint Commissioner of Labour,
Bharathi Ula Road – Race Course Colony,
Madurai-625 002.

+1 CC to Mr.K.GOVINDARAJAN, Advocate (SR-89305[F] dated 25/09/2019)
+1 CC to spl.GP (SR-89806[F] dated 26/09/2019)

ORDER MADE IN
W.A.(MD).No.965 of 2019
24.09.2019

ns
MK (23.10.2019) 5P 5C