



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.19422 of 2019

Athitiagnaanam

... Petitioner

Vs.

1.The Commissioner,
HR & CE (Admn.) Department,
Nungampakkam High Road,
Nungampakkam,
Chennai.

2.The District Collector,
Madurai District,
Madurai.

3.The Controlling Authority/
Assistant Commissioner of Labour,
(Under Payment of Gratuity Act),
Bharathi Ula Road,
K.Pudur,
Madurai.

4.The Joint Commissioner/Executive Officer,
Arulmighu Meenakshi Sundareshwarar Thirukovil,
Madurai-625 001.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondents to proceed under the Revenue Recovery Act as against the fourth respondent and to implement the order passed by the third respondent in G.P.No.23 of 2017 to collect the Gratuity amount for a sum of Rs.6,85,250/- with interest at the rate of 15% from 1.5.2015 till the payment as per the proceedings of the third Respondent and disburse the amount to the petitioner within the time frame that may be stipulated by this Court.

For Petitioner : Mr.K.Guhan

For R1 & R4 : Mr.VR.Shanmuganathan,
Special Government Pleader



For R2 & R3 : Mr.S.Dhayalan,
Government Advocate

ORDER

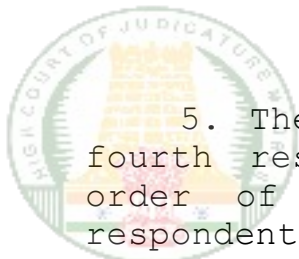
WEB COPY

The petitioner has come out with the present writ petition for a direction to the Respondents to proceed under the Revenue Recovery Act as against the fourth respondent and to implement the order passed by the third respondent in P.G.No.23 of 2017 to collect the Gratuity amount for a sum of Rs.6,85,250/- with interest at the rate of 15% from 1.5.2015 till the payment, as per the proceedings of the third Respondent and disburse the amount to the petitioner.

2. According to the petitioner, he was appointed as Electrician in the fourth respondent Temple on 1.6.1977 and retired from service on 31.03.2015 on attaining the age of superannuation. He approached the fourth respondent for payment of gratuity. The fourth respondent has not paid the gratuity amount. The petitioner filed P.G.No.23 of 2017 before the third respondent under Section 7 of the Payment of Gratuity Act, 1972, prayed for payment of gratuity. After contest, the third respondent ordered that the petitioner is entitled to a sum of Rs.6,85,250/- together with interest of 10% from the date of retirement. The learned counsel for the petitioner submitted that even though the order was passed by the third respondent on 25.09.2017, the fourth respondent has not paid the amount. In view of the same, the petitioner has come up with the present writ petition for the above relief.

3. The learned Special Government Pleader appearing for the respondents 1 and 4 submitted that the writ petition is not maintainable. The writ petition is liable to be dismissed as the petitioner has not approached the third respondent as per the provisions of Section 8 of the Payment of Gratuity Act. The fourth respondent has filed an appeal before the appellate authority on 28.08.2019 and the same is pending in E/1106/2019. The fourth respondent has deposited a sum of Rs.5,01,000/- (Rupees Five Lakhs and one Thousand only) with the third respondent and prayed for dismissal of the writ petition.

4. Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondents 1 & 4 and the learned Government Advocate appearing for the respondents 2 and 3 and perused the materials available on record.



5. The learned Special Government Pleader submitted that the fourth respondent has already filed an appeal challenging the order of the third respondent. According to the fourth respondent, the petitioner is entitled to only Rs.5,01,000/-. The fourth respondent deposited the said amount with the third respondent. According to the learned Special Government Pleader, the petitioner is entitled to only Rs.5,01,000/- and the fourth respondent has no objection to withdraw the said amount. Admittedly, the petitioner has not approached the authority for issuance of certificate as per Section 8 of the Payment of Gratuity Act for recovery under the Revenue Recovery Act.

6. In this context, it is relevant to extract below Section 8 of Payment of Gratuity Act.

"8. Recovery of gratuity.—If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector who shall recover the same, together with compound interest thereon ³³ [at such rate as the Central Government may, by notification, specify], from the date of expiry of the prescribed time as arrears of land revenue and pay the same to the person entitled thereto: ³⁴ [Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate: Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.]"

7. A reading of Section 8 makes it clear that the employee has to make an application to the authority for issue of certificate to second respondent and after notice to the employer to show cause against the issue of certificate, the authority can issue a certificate to the second respondent to recover the amounts from the fourth respondent employer by invoking the provisions of Revenue Recovery Act. The petitioner without approaching the third respondent under Section 8 of the Payment of Gratuity Act, has directly approached this Court for the relief sought for. The learned Special Government Pleader submitted that the gratuity amount has already been deposited and the fourth respondent has no objection for withdrawal of the said amount.

8. In view of the above materials, the writ petition is dismissed. No costs. It is open to the petitioner to file an



WEB COPY

W.P.(MD)No.19422 of 2019

appropriate application before the authority.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar (CS)

am

To

1.The Commissioner,
HR & CE (Admn.) Department,
Nungampakkam High Road,
Nungampakkam,
Chennai.

2.The District Collector,
Madurai District,
Madurai.

3.The Controlling Authority/
Assistant Commissioner of Labour,
(Under Payment of Gratuity Act),
Bharathi Ula Road,
K.Pudur,
Madurai.

4.The Joint Commissioner/Executive Officer,
Arulmighu Meenakshi Sundareshwarar Thirukovil,
Madurai-625 001.

+1 CC to M/s.K.GUHAN, Advocate (SR-86625[F] dated 13/09/2019)

+1 CC to M/s.SPL GP (SR-86911[F] dated 16/09/2019)

W.P. (MD)No.19422 of 2019
13.09.2019

_KM/ (25.10.2019) 4P 7C