

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.10067 of 2018
and
W.M.P.No.12025 of 2018

The Zonal Officer
Zone-XII

(Formerly the Commissioner
Alandur Municipality)
Corporation of Chennai
Alandur, Chennai.

... Petitioner

vs.

1.The Presiding Officer
II Additional Labour Court
Chennai.

2.G.Krishnamurthy
S/o.Govindasamy

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records on the file of the 1st respondent herein in P.G.No.6 of 2016 and quash the impugned order dated 07.09.2017 passed by the 1st respondent herein as highly illegal and arbitrary.

For Petitioner : Ms.M.Dhanisha
for Mr.Karthikaa Ashok
For Respondents : Mr.R.Karthikeyan
for R2

For R1 : Court

ORDER

This writ petition is filed challenging the order of the first respondent dated 07.09.2017 made in P.G.No.6 of 2016.

2. The Corporation of Chennai is the writ petitioner herein. Under the impugned order, the petitioner-Corporation was directed to pay a sum of Rs.1,28,239/- to the second respondent herein towards gratuity, after deducting a sum of Rs.3,90,176/-

paid by way of Death-cum-Retirement Gratuity. According to the petitioner-Corporation, they are not liable to pay the gratuity at all.

3. Heard the learned counsel for the petitioner and the learned counsel for the second respondent.

4. The contention of the second respondent is that he is entitled to get gratuity from the petitioner-Corporation and that the first respondent, while passing the impugned order has erroneously deducted the sum of Rs.3,90,176/- paid by way of DCRG and directed the Corporation to pay only the sum of Rs.1,28,239/-. Therefore, it is contended by the learned counsel for the second respondent that as against the deduction of the said sum of Rs.3,90,176/-, the second respondent has already filed an appeal before the Appellate Authority viz., Joint Commissioner of Labour, Chennai, in P.G.A.No.9 of 2018 and the same is still pending. Therefore, it is contended that the petitioner-Corporation is not justified in filing this writ petition and challenging the very same order. It is also brought to the notice of this Court that the petitioner-Corporation has already filed their counter in the appeal, filed by the second respondent, before the Joint Commissioner of Labour.

5. The learned counsel for the petitioner-Corporation is not disputing the above said facts.

6. Arising out of the same order, the petitioner-Corporation filed the present writ petition, whereas the second respondent has chosen to file appeal before the statutory Appellate Authority. Therefore, in my considered view, when an appeal remedy is available and one of the party has already chosen to file such appeal and that the said appeal is also still pending, it would not be proper for this Court to consider the present writ petition and pass any order, since it would ultimately affect the appeal already pending before the Appellate Authority. Therefore, this Court is of the view that liberty may be given to the petitioner-Corporation to file an appeal before the concerned Appellate Authority challenging the very same order by raising all the contentions. Needless to say that both the appeals shall be heard together by the Appellate Authority and an order be passed on merits and in accordance with law.

7. Accordingly, this Writ Petition is disposed of with the following terms and conditions:

- (a) The petitioner is granted liberty to file an appeal against the impugned order

before the Joint Commissioner of Labour, Chennai, within a period of four weeks from the date of receipt of a copy of this order.

(b) While preferring such appeal, the petitioner-Corporation shall comply with the statutory requirements for filing such appeal.

(c) If any such appeal is filed within the time stipulated supra, the concerned Appellate Authority shall entertain the same without reference to the period of limitation, if any and tag it along with P.G.A.No.9 of 2018 filed by the second respondent and hear both the appeals together and pass orders on merits and in accordance with law, after giving due opportunity of hearing to both parties.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

mk

To

The Presiding Officer
II Additional Labour Court
Chennai.

+1cc to Mr.Karthikaa Ashok, Advocate, SR.No.11869.

+2ccs to Mr.R.Karthikeyan, Advocate, SR.No.12293.

PP(CO)
CSR: 04.03.2020

W.P.No.10067 of 2018

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