

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 5588 of 2020

and

W.M.P. Nos. 6545 and 6547 of 2020

M/s. Rubicon Handlings,
A proprietorship concern,
Represented by its Proprietor,
M.E.Kumar,
Having Office at:
No.4/13, New Street,
Thirumullaivoyal,
Chennai - 600 062.

... Petitioner

-vs-

1. The District Collector,
Office of the District Collector,
Tiruvallur.
2. The Thasildar,
Office of the Thasildar,
Avadi.
3. The Deputy Commissioner of Labour,
Office of the Joint Commissioner of Labour-II,
Chennai - 600 006.

4. K.Jayaprakash

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Writ of Certiorarified Mandamus to call for the records relating to the impugned certificate issued by the 3rd Respondent under Sec.8 of the Payment of Gratuity Act, 1972 in D1/4862 of 2019, dated 18.07.2019, consequential impugned orders passed by the 1st

Respondent vide proceedings in Na.Ka.No.20386/2020/D3, dated 07.02.2020 and the 2nd Respondent in Na.Ka.No.209/2020/A4, dated 24.02.2020 quash the same and direct the respondents not to take any action except in accordance with law.

For Petitioner :Mr. D.Prabhu Mukunth Arun Kumar

For Respondents:Mr. D.Sathyaraj,
Special Government Pleader (for R1 to R3)

No appearance (for R4)

O R D E R
(through video conference)

Heard Mr. D.Prabhu Mukunth Arun Kumar, Learned Counsel for the Petitioner and Mr. D.Sathyaraj, Learned Special Government Pleader appearing for the First to Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. It was pointed out by the Learned Special Government Pleader appearing for the First to Third Respondents that the Order No. D1/4862 of 2019 dated 18.07.2019 passed by the Third Respondent, the Order No. Na. Ka. 20386/ 2020/D3 dated 07.02.2020 passed by the First Respondent and the Order No. Na. Ka. 209/ 2020/A4 dated 24.02.2020 passed by the Second Respondent, which are impugned in this Writ Petition, are consequential orders in furtherance to the order dated 03.10.2018 in P.G. Case No. 197/17 passed by the Third Respondent determining the gratuity amount payable by the Petitioner to the Fourth Respondent under Section 7(4) of the Payment of Gratuity Act, 1952 (hereinafter referred to as 'the Act' for short) and in the absence of any challenge to that parental order, the Petitioner cannot prosecute this Writ Petition for the relief claimed. In response thereto, Learned Counsel for the Petitioner contended that the aforesaid parental order had not been served to the Petitioner at any point of time earlier. Thereafter, on verification of records that there is no proof available in that regard, Learned Standing Counsel appearing for the Respondents has handed over a copy of the aforesaid order dated 03.10.2018 in P.G. Case No. 197/17 to the Learned Counsel for the Petitioner today (10.09.2020) under written acknowledgment. In view of the dictum laid down by the Hon'ble Supreme Court of India in Collector of

Central Excise, Madras -vs- M/s. M.M. Rubber and Co., Tamil Nadu [(1992) Supp (1) SCC 471], the said order dated 03.10.2018 in P.G. Case No. 197/17 shall be treated as delivered to the Petitioner today (10.09.2020) for the purpose of reckoning limitation to challenge that order in appropriate legal proceedings. It is represented by the Learned Counsel for the Petitioner that the Petitioner would prefer appeal against the order dated 03.10.2018 in P.G. Case No. 197/17 passed by the Third Respondent under Section 7(7) of the Act before the Appellate Authority and he has filed a memo dated 10.09.2020 to that effect through e-mail, which is placed on record.

3. Since the impugned orders for recovery have been issued without factually ascertaining as to whether the order determining the amount liable to be paid under Section 7(4) of the Act, has been delivered to the Petitioner, it is not possible to sustain the same and they are accordingly set aside. Though obvious, it is made clear that the respective parties may work out their further rights following the prescribed procedure in the manner recognized by law and that no view has been expressed by this Court in that regard.

4. In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The District Collector,
Office of the District Collector,
Tiruvallur.
2. The Thasildar,
Office of the Thasildar,
Avadi.
3. The Deputy Commissioner of Labour,
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SAI (CO)
CB(17/09/2020)



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