

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 23079 of 2019 and
W.M.P. No. 22785 of 2019

The Management,
Rep. by its
The Regional Manager,
Tamil Nadu Civil Supplies Corporation Ltd.,
Thiruvannamalai Region,
Thiruvannamalai District. ...Petitioner

-vs-

1. The Additional Commissioner of Labour,
Chennai, 6th Floor, Teynampet,
Chennai.
(Appellate Authority as under the
Payment of the Gratuity Act, 1972)

2. K.V. Ramachandran ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari to call for the records of the order of passed by the first respondent, the Additional Commissioner of Labour, Chennai, the Appellate Authority as under the payment of the Gratuity Act, 1972 in P.G.A. No. 128 of 2017 dated 29.08.2018 and to quash the same.

For Petitioner : Mr. P.Paramasiva Doss

For Respondents: Ms. R.J.Radhika for R1
Government Advocate
Mr. T.Kishore Kumar
for Mr. K.Premkumar for R2

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O R D E R

The prayer sought for herein is for a Writ of Certiorari to call for the records of the order passed by the first respondent, the Additional Commissioner of Labour, Chennai, the Appellate Authority under the payment of the Gratuity Act, 1972 in P.G.A. No. 128 of 2017 dated 29.08.2018 and to quash the same.

2. That the second respondent was appointed as a Shift Engineer at the petitioner / Management on 29.06.1987 at Manamadurai. He had been serving at various places in the petitioner / Management and he attained superannuation on 31.05.2016. Since he has attained superannuation on 31.05.2016, the petitioner / Management permitted the second respondent to retire from service on condition that, without prejudice to the pending proceedings for recovery of shortage. This order was passed by the petitioner / Management on 31.05.2016, therefore conditionally the second respondent was retired from service.

3. Subsequently, the petitioner / Management has given a show cause notice on 30.11.2016, seeking the second respondent to show cause that why a sum of Rs.7,81,952/- should not be recovered from him, as the said loss was caused to the petitioner / Management due to the action or inaction on the part of the second respondent.

4. In response to the show cause notice, in December 2016, the second respondent has given a detailed reply. Thereafter it seems, nothing was moved from the petitioner's side. Therefore, the second respondent, in the meanwhile, has approached the Original Controlling Authority under the Payment of Gratuity Act, 1972 seeking to give a direction to the petitioner / Management to pay the gratuity amount payable to the second respondent.

5. The Assistant Commissioner of Labour, who was the Original Authority under the Payment of Gratuity Act, in his order dated 25.01.2017 in P.G. No. 46 of 2016 has rejected the said claim made by the second respondent, on the ground that, since on behalf of the petitioner / Management, it was stated that, there is a recovery proceedings pending against the second respondent / employee and therefore at this juncture, unless the said recovery proceedings is decided in one way or other, the second respondent cannot claim the gratuity. As against the said order passed by the Original Authority dated 25.01.2017, the second respondent preferred an appeal to the first respondent, who is the Appellate Authority in P.G.A. No. 128 of 2017 and the same was allowed by the first respondent vide order dated 29.08.2018, thereby the first respondent directed the petitioner / Management to pay the gratuity amount payable to the second respondent. Felt aggrieved over the said order passed by the first respondent on 29.08.2018, the petitioner / Management has filed the present Writ Petition.

6. Heard Mr. P.Paramasiva Doss, learned counsel appearing for the petitioner who would submit that, the second respondent was facing recovery proceedings, for which, show cause notice

was issued as early as on 30.11.2016 and reply though was given by the second respondent in December 2016, before the said issue is decided on merits by the petitioner / Management, the second respondent has rushed to the Original Authority under the Gratuity Act, claiming payment of gratuity, whereas, the Original Authority rejected the claim. However, the first respondent / Appellate Authority erroneously decided the appeal filed by the second respondent in his favour without taking into account the pendency of the recovery proceedings. Therefore, the said order is liable to be interfered with.

7. The learned counsel appearing for the petitioner would also submit that, subsequently another show cause notice was given on 24.01.2017 and based on this show cause notice, the concerned authority of the petitioner / Management on 15.12.2018 has passed an order for recovery of a sum of Rs.7,81,952/- from the second respondent, therefore, as of now, since recovery order has been passed against the second respondent, the reasoning stated in the order of the Appellate Authority, which is impugned herein, may not be justifiable.

8. However, Mr. T.Kishore Kumar, learned counsel appearing for the second respondent would contend that, the second respondent, having served for several years at the petitioner's organization, reached superannuation on 31.05.2016, where the second respondent was permitted to be retired, of course with condition that, without prejudice to the recovery proceedings pending against him. In this context, he would further submit that, only on 30.11.2016, that is after six months of his superannuation / retirement, show cause notice was issued which was promptly replied immediately by the second respondent, thereafter nothing was forth coming.

9. In the meanwhile, the second respondent approached the Original Authority under the payment of Gratuity Act for seeking payment of the gratuity amount, which was erroneously rejected by the Original Authority since recovery proceedings was pending against the second respondent, as against which, when appeal was filed, the first respondent / Appellate Authority has decided the issue in correct perspective and accordingly, allowed the appeal filed by the second respondent.

10. In this context, the learned counsel appearing for the second respondent would further submit that, to the show cause notice dated 30.11.2016, reply was given by the second respondent in December 2016, that is within one month period itself. Thereafter, no decision was taken by the petitioner organization. Therefore, mere issuance of show cause notice will not stand in the way of the employee to claim the gratuity amount, which is statutory due under the Act. He would also

submit that, assuming that, if there are recovery proceedings, which have been calculated after due process of law, against the employee, pursuant to which, some amount has to be recovered towards the loss sustained by the petitioner / Management under the heads of storage loss, transit loss as well as short out turn etc., for recovering the said amount, the gratuity amount payable to the said employee cannot be retained or the said recovery cannot be made from the said gratuity amount. In this context, the learned counsel has relied upon the circular issued by the petitioner dated 28.07.2010, where he specifically relied upon the following:-

" In order to avoid such delayed settlement of gratuity and also to avoid legal litigation, it has been decided that while issuing orders of retirement without prejudice to recover any loss towards storage loss, transit loss, audit objection, etc., to an employee, it may also be clearly stated in the order itself that gratuity will be settled as per the payment of Gratuity Act notwithstanding the issue of order of retirement without prejudice to recover the loss sustained by the Corporation. However, it is made clear that the loss sustained by the Corporation towards storage loss, transit loss, short out turn etc., may be recovered from the other payments such as encasement of Earned Leave and Leave on Private Affairs and arrears of salary. If any payable to the retired employee after his retirement."

11. The learned counsel appearing for the second respondent has also contended that, though reply was given to the show cause notice in December 2016, unmindful of the same, the petitioner has once again issued a show cause notice on 24.01.2017. In the meanwhile, since orders have been passed by the Original Authority as well as the Appellate Authority, no enquiry was conducted and no further proceedings has been initiated by the petitioner / Management against the second respondent / employee for the alleged recovery proceedings. However, ultimately only on 15.12.2018, a cryptic order of recovery has been passed by the petitioner organization without conducting any enquiry even by way of summary proceedings. Therefore, challenging the same, the second respondent preferred an appeal before the Appellate Authority / Managing Director of Petitioner Corporation Limited, Chennai and the said appeal is pending before the said authority.

12. Therefore, relying upon these documents and the aforesaid grounds, the learned counsel for the second respondent contended that, absolutely there is no infirmity in the order

passed by the first respondent / Appellate Authority directing the petitioner to pay the gratuity to the second respondent, hence the said order has to be sustained.

13. I have heard the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

14. As has been rightly pointed out by the learned counsel appearing for the second respondent, after the show cause notice dated 30.11.2016 and the reply in December 2016 given by the second respondent to the said show cause notice of the petitioner, nothing was forth coming from the petitioner side and no proceedings seems to have been continued towards recovery proceedings. In the meanwhile, yet another show cause notice also was issued without mentioning the earlier one, on 24.01.2017. Thereafter, only on 15.12.2018, an order of recovery has been passed by the petitioner, of course, by way of summary proceedings in a cryptic manner, where it has been disclosed that no proceedings or enquiry has been conducted and merely based on the show cause notice, it was calculated by the petitioner that an amount of Rs. 7,81,952/- has to be recovered and accordingly, recovery order was passed. The sustainability of the said order dated 15.12.2018, since it is a subject matter before the Appellate Authority, this Court does not want to express the opinion on the same.

15. Be that as it may, either by issuance of show cause notice dated 30.11.2016 or another show cause notice dated 24.01.2017, it will not entitle the petitioner to retain the gratuity payable to him. Assuming that, if any enquiry is conducted and after adopting the due process of law, ultimately, the petitioner comes to the conclusion that, the amount has to be recovered from the second respondent and order of recovery is passed to that effect, even then, the said amount can be recovered from the second respondent only from the due payable to the second respondent in various other heads and not from the amount payable under the Gratuity Act. This has been clearly spelt out in the circular issued by the petitioner on 28.07.2010, which has been already quoted herein. In view of the same, absolutely there is no plausible reason to interfere with the impugned order of the first respondent, who is the Appellate Authority under the Act and after having considered all these aspects, the said Authority passed the impugned order allowing the appeal filed by the second respondent, directing the petitioner to pay the gratuity payable to the second respondent. The time limit to pay, as directed by the first respondent / Appellate Authority, is within two months period from the date of receipt of a copy of this order.

16. Accordingly, this Court feels that, this Writ Petition fails, hence it is deserved to be dismissed, and it is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-VII)

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Sub-Assistant Registrar

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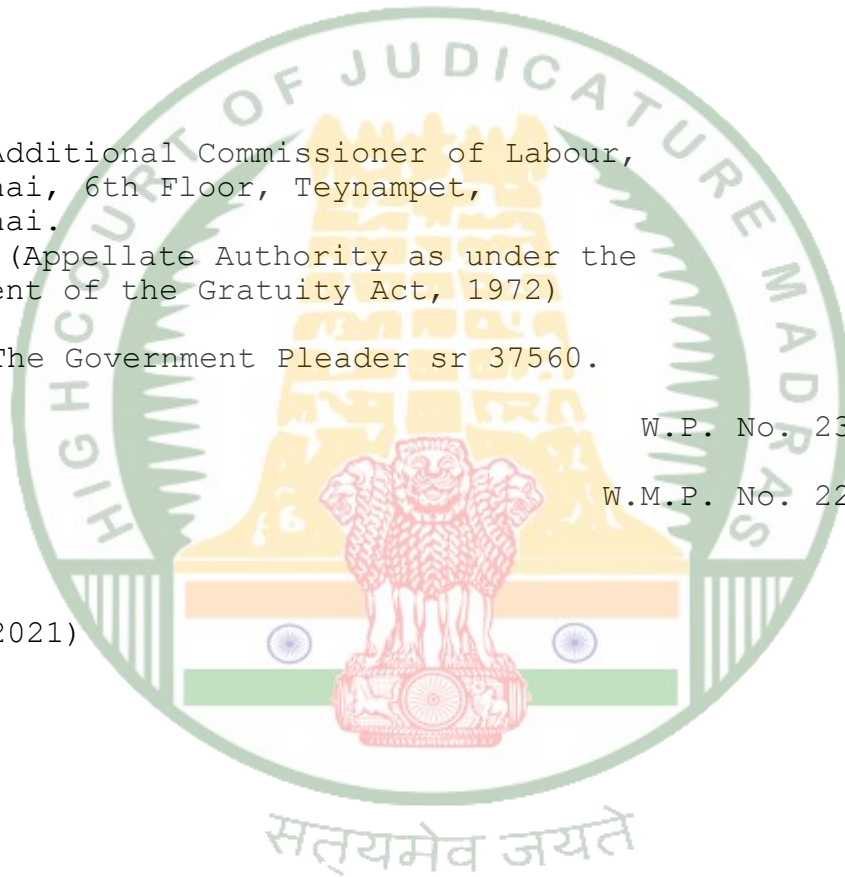
The Additional Commissioner of Labour,
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+1 CC to The Government Pleader sr 37560.

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RSI (CO)
SP(01/03/2021)



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