

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2020

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

W.P. No. 35964 of 2019

and

W.M.P. Nos. 36874 of 2019 and W.M.P. No. 5793 of 2020

Tamil Nadu Handloom Weavers' Co-op. Society Ltd.,
Co-optex Regional Office,
Guest House Building (Gr. Floor),
No. 150, Pantheon Road, Egmore,
Chennai - 600 008.

Rep.by its Senior Regional Manager ... Petitioner

-vs-

1. The Deputy Commissioner of Labour,
[Authority under the payment of Gratuity Act, 1972]
Office of Joint Commissioner of Labour,
Chennai - 600 002.

2. S. Mahalingam

3. The Collector,
Chennai District,
62, Rajaji Salai, Fourth Floor,
Chennai - 600 001.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari, to
call for the records of the First Respondent in proceedings No.
D1/3892/18 culminating in the impugned order dated 11.11.2019 in
proceedings No. D1/3892/18 and quash the same and award costs to
the Petitioner.

For Petitioner :Ms. Shudharanjani Ananth

For Respondents:Mr. D.Sathyaraj

Special Government Pleader (For R1 & R3)

Mr. B.Radhakrishnan (For R2)

O R D E R

(through video conference)

Heard Ms. Shudharanjani Ananth, Learned Counsel for the
Petitioner and Mr. D.Sathyaraj, Learned Special Government

Pleader for the First and Third Respondents and Mr. B.Radhakrishnan, Learned Counsel for the Second Respondent, and perused the materials placed on record.

2. The First Respondent by an order dated 05.10.2017 in P.G. No. 206 /2015 had granted the claim for gratuity with interest made by the Second Respondent against the Petitioner under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act' for short). According to the Petitioner, since the Second Respondent by a letter dated 18.01.2019 had requested the Petitioner to pay the principal sum of gratuity determined as Rs.2,02,963/- and had agreed to give up the claim for interest thereon, the said amount was paid to him by cheque dated 05.02.2019, for which he has issued stamp receipt. However, the Second Respondent had thereafter made an application under Section 8 of the Act before the First Respondent contending that the entire amount in terms of the order dated 05.10.2017 had not been paid by the Petitioner and sought for recovery of the remaining amount with compound interest @ 15% per annum as arrears of land revenue, which was granted by Order No. D1/3892/18 dated 11.11.2019. Aggrieved thereby, the Petitioner has filed this Writ Petition.

3. The grievance now sought to be ventilated by the Petitioner is that proper enquiry had not been conducted before passing the impugned order inasmuch as the copy of the prescribed Form-T had not been furnished and the Petitioner was not afforded opportunity to place evidence on the acceptance of the Second Respondent to receive the determined sum of Rs.2,02,963/- without interest in full satisfaction of claim made for gratuity.

4. Learned Counsel for the Second Respondent vehemently contended that the determined amount of gratuity has to be paid with interest @ 10% per annum in terms of Section 7(3A) of the Act and there is no discretion available even to the First Respondent to reduce the same, except when it has been established that the employee was at fault and the permission in writing of the Controlling Authority had been obtained, which is not the case of the Petitioner here. He justifies the impugned order by emphasizing that the Petitioner has not complied with the order dated 05.10.2017 passed by the First Respondent in entirety within the prescribed time and consequently, the operation of Section 8 of the Act automatically follows, for which no exception could be taken.

5. Having due regard to the rival submissions, it is beyond any pale of doubt that interest @ 10% per annum under Section 7(3A) of the Act is automatic except under the circumstances mentioned supra as highlighted by the Learned

Counsel for the Second Respondent, but when an order is passed under Section 8 of the Act, it is not confined to recovery alone, but mulcts the employer with additional liability to pay compound interest @ 15% per annum, which certainly entails adverse civil consequences to the employer. Viewed from that perspective, there is substantial force in the contention raised by the Petitioner that there ought to have been meaningful and effectual adjudication by the First Respondent before fastening the additional liability on the Petitioner. As the First Respondent has not carried out that exercise as noticed earlier, the impugned Order No. D1/3892/18 dated 11.11.2019 cannot be sustained and is accordingly set aside.

6. Though the matter would have to be remitted to the First Respondent for fresh consideration regarding the additional liability for compound interest in accordance with law in the proceedings under Section 8 of the Act, Learned Counsel for the Second Respondent has filed a memo dated 14.08.2020 through e-mail along with a working-sheet on the calculation for arriving at the sum of Rs. 1,94,844/- as due as on date in terms of the order dated 05.10.2017 in P.G. No. 206 of 2015 passed by the First Respondent and he has informed that the Second Respondent is agreeable to receive that sum in full satisfaction of the claim for gratuity with accrued interest, if paid immediately. Learned Counsel for the Petitioner today submits that the said calculation has been accepted and a Demand Draft dated 17.08.2020 for the said amount of Rs. 1,94,844/- in favour of the Second Respondent is handed over to the Second Respondent. Further, the Petitioner and the Second Respondent have entered into Joint Memorandum of Compromise dated 18.08.2020 signed by both of them and their respective Counsel, which has been placed before this Court through e-mail, and reads as follows:-

- "(i) The Petitioner Management and Second Respondent have since arrived at an amicable settlement of all past/pending/future claims of the Second Respondent Employee towards Gratuity (together with interest -statutory, delayed and whatsoever).
- (ii) Towards such amicable settlement, the Petitioner Management hereby tenders Rs.1,94,844/- (Rupees One Lakh Ninety Four Thousand Eight Hundred & Forty Four Only) as full and final settlement to the Second Respondent by way of Demand Draft No. 600091012 dated 17.08.2020 drawn on the Tamil Nadu State Apex Co-operative Bank Ltd, payable at Chennai.
- (iii) The Second Respondent has unequivocally and of his own volition accepted the same in full and final settlement of all his claims (dues under the head "Gratuity" including interest/damages etc.)

and shall have no further or other claim in respect of Gratuity (now or in the future) against the Petitioner Management.

- (iv) This Settlement shall not be treated as a precedent for any other claim by either party to this Joint Memorandum of Compromise.
- (v) Neither party shall hereafter litigate against the other in respect of Gratuity of the Second Respondent before any Forum.
- (vi) Both parties to bear their respective costs.
- (vii) Both parties pray for disposal of the present Writ Petition in terms of the present Joint Memorandum of Compromise."

The aforesaid settlement entered between the parties in full satisfaction of claim for gratuity with accrued interest made by the Second Respondent against the Petitioner is recorded, and nothing remains for further consideration in the matter.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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W.P. No. 35964 of 2019

RJI (CO)
SP(31/08/2020)