

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.1744 of 2021

N.Sivalingam

... Petitioner

Vs.

1. The District Collector,
Salem District,
Salem - 636 001.

2. The Tahsildar,
Salem Taluk,
Salem - 636 007.

3. The Managing Director,
Tamilnadu State Transport Corporation,
Corporation (Salem) Ltd.,
No.12, Ramakrishna Road,
Salem - 636 007.

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents 1 and 2 to recover the amount as per the certificate issued on 27.09.2019 by the Deputy Commissioner of Labour, Salem, as on date and to remit the same as per the certificate apart from any other damages for the sufferings caused to the petitioner by negligent act of the third respondent.

For Petitioner : Mr.T.Pichappa

For Respondent Nos.1 & 2 : Mr.B.Anand
Government Advocate

For Respondent No.3 : Mr.D.Raghu
Standing Counsel

O R D E R

The prayer sought for herein is for a writ of mandamus directing the first respondent, the District Collector, Salem and the second respondent, the Tahsildar, Salem to recover the amount, as per the certificate issued on 27.09.2019 by the Deputy Commissioner of Labour, Salem, as on date and to remit

the same as per the certificate apart from any other damages for the sufferings caused to the petitioner by negligent act of the third respondent.

2. The petitioner was serving as an employee at the third respondent Transport Corporation and lastly he was serving as Senior Conductor and on superannuation, he retired from service on 30.04.2014. The petitioner, before retirement, has rendered unblemished service for 32 years to the said Transport Corporation and therefore, after retirement, since he is entitled to get the gratuity under the provisions of the Payment of Gratuity Act, 1972, the same should have been paid within 30 days from the retirement, which was not paid to the petitioner, since he has filed P.G.Case No.81 of 2016 in the year 2016, where, a direction was given to the third respondent to pay the gratuity amount of Rs.5,78,954/- to the petitioner. Out of the said amount, only a sum of Rs.5,05,133/- was paid on 23.05.2017 and further a sum of Rs.88,398/- was paid on 16.08.2018.

3. After making all these payments, still there is a due to the extent of Rs.1,73,235/-, by calculating the remaining due payable by the third respondent to the petitioner as gratuity with interest of 10% per annum, as allowed by the Gratuity Authority and in order to recover the said amount, since the petitioner had approached the Deputy Labour Commissioner concerned, who, on considering the request of the petitioner, has passed an order dated 27.09.2019 in Na.Ka.No.A4/2042/2019 addressed to the first respondent District Collector to invoke the provision under RR Act i.e. Revenue Recovery Act for recovery of the said sum of Rs.1,73,235/- from the third respondent and deposit the same on the PG account at the Labour Commissioner office.

4. Since the said request made by the Deputy Labour Commissioner to the first respondent District Collector has not been considered and no action since have been taken by the District Collector, the petitioner has filed the present writ petition with aforesaid prayer.

5. Heard Mr.T.Pichappa, learned counsel for the petitioner, who would reiterate that, in view of the said communication dated 27.09.2019, it is a duty on the part of the first respondent to initiate the revenue recovery proceedings, which the said authority since has failed to do, a direction to that effect can be issued, therefore, the mandamus as sought for can be considered, he contended.

6. On the other hand, Mr.B.Anand, learned Government Advocate appearing for the respondents 1 and 2, on instruction would submit that, the said request made by the Deputy Labour

Commissioner, in Na.Ka.No.A4/2042/2019 dated 27.09.2019, would certainly be considered by the first respondent and in this regard, necessary direction would be given to the second respondent to recover the said amount of gratuity payable by the third respondent to the petitioner within a time frame that may be stipulated by this Court and accordingly, the said amount of recovery would be deposited in the said account of the Labour Commissioner.

7. I have considered the said submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

8. As has been rightly pointed out by the learned counsel for the petitioner, though the Deputy Labour Commissioner has sent a communication in Na.Ka.No.A4/2042/2019 dated 27.09.2019 to the first respondent District Collector for invocation of the provisions under Revenue Recovery Act for recovery of a sum of Rs.1,73,235/- towards the remaining balance of the gratuity payable to the petitioner from the third respondent, the said request since have not been considered, rightly the petitioner has approached this Court, therefore, by taking into account the present stand taken by the first and second respondents, as projected by the learned Government Advocate appearing for them, this Court feel that, this writ petition can be disposed of by passing the following orders:-

"The first and second respondents are hereby directed to act upon, as per the request made by the Deputy Labour Commissioner, Salem, who is the controlling authority under the Payment of Gratuity Act, by his proceedings in Na.Ka.No.A4/2042/2019 dated 27.09.2019 and accordingly, by invoking the provisions of Revenue Recovery Act, the due payable by the third respondent to the petitioner towards the remaining balance of the gratuity to the extent of Rs.1,73,235/- shall be recovered and be deposited, as directed by the Deputy Labour Commissioner in the PG account and the needful, as has been indicated above, shall be undertaken by the first and second respondents within a period of eight (8) weeks from the date of receipt of a copy of this order".

With the above directions, the Writ Petition is disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CCC)

/True Copy/

Sub Assistant Registrar

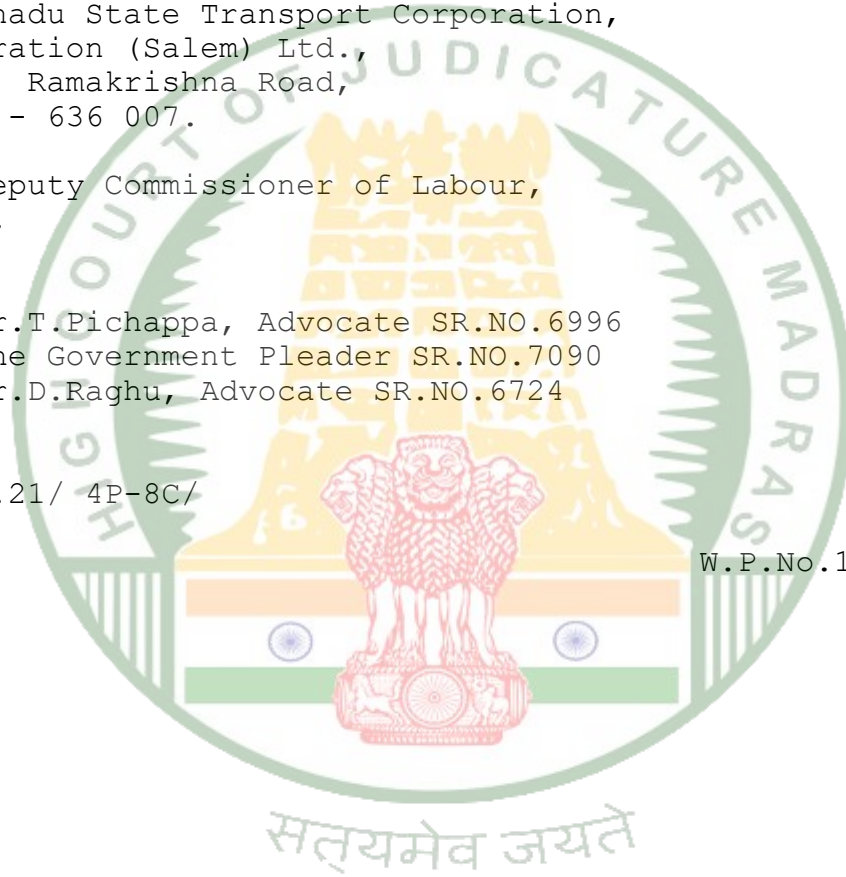
To

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2. The Tahsildar,
Salem Taluk,
Salem - 636 007.
3. The Managing Director,
Tamilnadu State Transport Corporation,
Corporation (Salem) Ltd.,
No.12, Ramakrishna Road,
Salem - 636 007.
4. The Deputy Commissioner of Labour,
Salem.

+1cc to Mr.T.Pichappa, Advocate SR.NO.6996
+1cc to The Government Pleader SR.NO.7090
+1cc to Mr.D.Raghu, Advocate SR.NO.6724

AKM/02.03.21/ 4P-8C/

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