

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.02.2021

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.1257 of 2016

The Management
Puthu Agraharam
PrimaryAgricultural Co-op. Credit Society Ltd
Puthur (P.O)
Salem-636 010.

.. Petitioner

Vs.

1.K.Ramakrishnan
2.Assistant Labour Commissioner
District Collectorate
Salem, Tamil Nadu-636 001.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the order passed by the second respondent in P.G.case No.67 of 2014 dated 17.04.2015 and the consequent notice in A4/896/2015 dated 23.10.2015 and 11.12.2015 passed by the second respondent against the petitioner management and quash the same.

For Petitioner : Ms.Sandhesh Mahalingam
for M/s.S. Varsha Shankar

For Respondent : Mr..L.Chandrakumar for R1

O R D E R

Inveighing the order passed by the Authority under the Payment of Gratuity Act, 1972(herein after referred to as the Act) the Deputy Commissioner of Labour in proceedings A4/8961/015 dated 23.10.2015, the Management has preferred the writ petition.

2. According to the management the 1st respondent/employee has committed offence u/s. 408 and 447 IPC. A criminal case was lodged against him and he was found guilty of the offences and sentenced to undergo imprisonment. On appeal, the Appellate

Court had acquitted him from both the charges by imposing more fine in view of repayment of the misappropriated amount. Thereafter, the 1st respondent has approached the Controlling Authority for payment of gratuity which was ordered in his favour. In the meanwhile, the 1st respondent, by resolution of the management dated 30.04.2014, was permitted to retire from service. On an appeal preferred by the management, the Appellate Authority has also confirmed the order of the Controlling Authority and directed the petitioner to pay gratuity to the tune of Rs. 6,71,416/- along with interest at 10% per annum.

3. Learned counsel for the petitioner would vehemently contend that the 1st respondent was charged for the moral turpitude. Therefore, as per Sec.4(6) of the Act, they are entitled to forfeit the amount. Therefore, the order passed by the Authority under the Act is not sustainable according to the petitioner.

4. Per contra, the learned counsel appearing for the 1st respondent would contend that on 30.04.2014, the petitioner management has passed resolution, whereby permitted the petitioner to retire from service. Pursuant to the same on 02.05.2014 proceedings were issued and the petitioner retired from service. Once the petitioner was not permitted to retire and not terminated from service, Sec.4(6) of the Act will not come into play.

5. The learned counsel for 1st respondent would rely on the judgment of this Court reported in 2014 (3) LLJ 693, The Management S.439, Salem Agricultural Producers' Co-operative Marketing Society Ltd, Salem Vs. V.Rajendran and Others, for the proposition that unless the employee is terminated from service, Sec.4(6) of the Act cannot be invoked for forfeiture of the amount.

6. In the instant case, I do find that the 1st respondent was not terminated from service, but on the other hand he was permitted to retire from service. Even in the criminal case, he was acquitted by imposition of fine in view of the fact that he has paid the entire amount misappropriated by him. In other words, there is no loss caused to the Society by the offence committed by the 1st respondent. Therefore, in view of the order passed by the management permitting the 1st respondent to retire from service and that no loss caused by him to the Society, the order of payment of gratuity cannot be withheld. The authority has rightly granted the relief and the order need not be interfered with. Hence, the petitioner shall make the payment of gratuity to the 1st respondent as directed by the Appellate Authority viz., the 2nd respondent.

Writ petition merits no consideration and the order passed by the 2nd respondent shall be complied with by the management within a period of four weeks from the date of receipt of a copy of this order along with interest till the date of disbursement. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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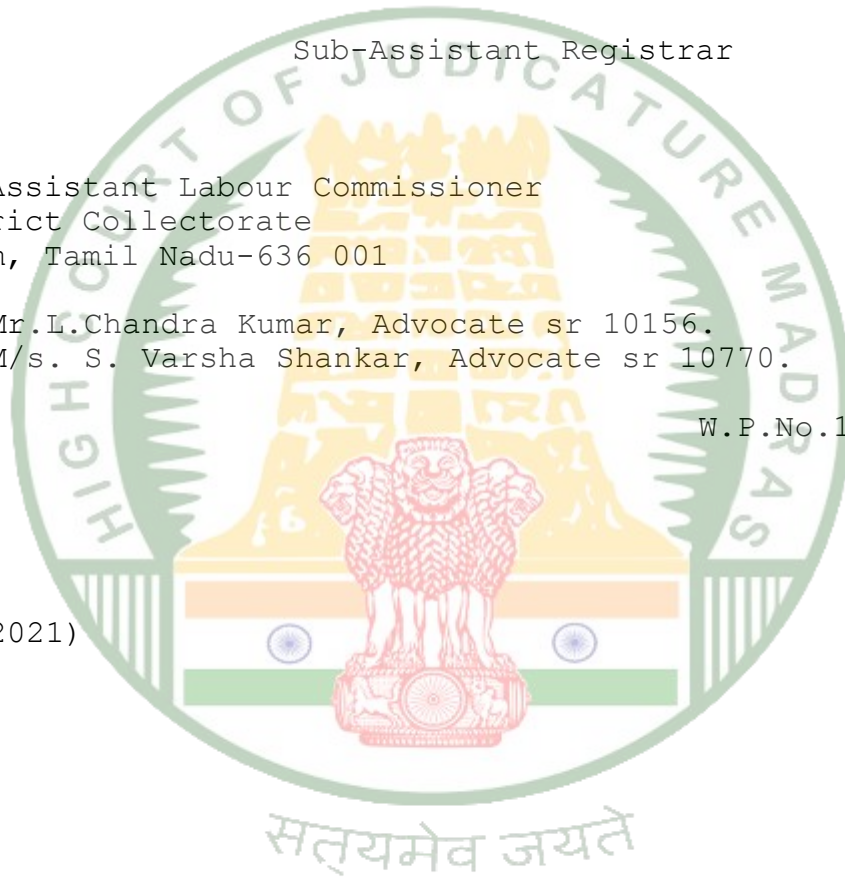
The Assistant Labour Commissioner
District Collectorate
Salem, Tamil Nadu-636 001

+1 Cc to Mr.L.Chandra Kumar, Advocate sr 10156.

+1 Cc to M/s. S. Varsha Shankar, Advocate sr 10770.

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AAB (CO)
SP(12/03/2021)



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