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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

:CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.15657 of 2004 and
WMP Nos.24652 and 18589 of 2004

PLR Textiles Ltd.,
Singanallur
Coimbatore- 641 005
Rep. by its Vice Chairman Cum
Managing Director

...Petitioner

-vs-

1. Assistant Commissioner of Labour,
Office of the Deputy Commissioner of Labour,
Coimbatore- 641 018.
2. M.K.Kangadharan
3. K.Viswanathan
4. M.K.George
5. P.T.Vinodhan
6. A.Murthy
7. A.Sivarajan

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records of the 1st respondent made in his proceedings Na.Ka.No.4729/2004 dated 19/05/2004 and quash the same.

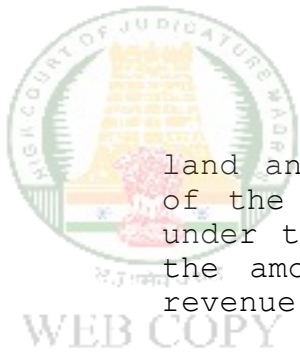
For Petitioner : Mr.S.Silambannan
Senior Counsel
for Mr.N.Umapathi

For Respondents : Mr.VPR. Elamparithi (R1)
Government Advocate
No appearance (R2 to R7)

O R D E R

The petitioner has come forward with the Writ Petition challenging the order of the first respondent made in his proceedings Na.Ka.No.4729/2004 dated 19/05/2004.

2. When the matter is taken up for hearing, Mr.Silambannan learned Senior counsel for the petitioner submitted that the



land and Machineries were already sold, pursuant to the orders of the Assistant Commissioner of Labour, controlling authority under the payment of Gratuity Act, 1972 (in short 'the Act') and the amount has already been deposited, after the issuance of revenue recovery notice.

3. Admittedly, the order of the controlling authority has become final and the Management did not prefer any Appeal within 120 days as contemplated under Section 7 of the Payment of Gratuity Act, 1972 and the Appellate Authority will become functus officio thereafter. If this Court is going to permit the Management to prefer an appeal beyond the time limit, Management will approach this Court after 120 days and try to defeat the purpose of Payment of Gratuity Act, 1972. If this Court permits, it would amount to legislation, and the same is not permissible. Once the order has become final, taking note of Section 7 (3A) of the Act amount the employer needs to deposit the amount together with interest @ 10%. For better appreciation, Section 7(3-A) and Section 8 of the Payment of Gratuity Act, 1972 and the relevant Notifications are extracted below:

“(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

Notification under Section 7(3-A):-

S.O.874: In exercise of powers conferred by sub-Section (3A) of Section 7 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies ten per cent per annum as the rate of simple interest payable for the time being by the employer to his employee in cases where the gratuity is not paid within the specified period.



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2. This notification shall come into force on the date of its publication in the Official Gazette (vide the Gazette of India, Extraordinary, Pt.II, Section 3(ii) dated the 1st October 1987, at p.2).

Section 8: Recovery of gratuity.—If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon[at such rate as the Central Government may, by notification, specify], from the date of expiry of the prescribed time as arrears of land revenue and pay the same to the person entitled thereto.

[Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.]”

Notification under Section 8:-

S.O.1032(E). - In exercise of the powers conferred by Section 8 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies 15 per cent per annum as the rate of compound interest, recoverable by the Collector for the time being, along with the amount of gratuity and payable to the person entitled thereto.

4. In case of non deposit of the amount and at the stage of recovery, the rate of interest is @ 15% per annum. Since, the order has become final there is no perversity in the order of the revenue recovery officer dated 19.05.2004 and as the amount has already been deposited, as stated by the learned Senior



counsel for the petitioner, the employees concerned in the Writ Petition are permitted to withdraw the same and if there is any deficit in deposit, revenue recovery proceedings shall proceed and the personal properties of the Management can be attached.

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This Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner of Labour,
Office of the Deputy Commissioner of Labour,
Coimbatore- 641 018.

+1 cc to the Government Pleader, Advocate, Sr.31695

W.P.No.15657 of 2004

PMK[co]
NSK 21/09/2021