



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9129 of 2021
and W.M.P.No.9669 of 2021

St.Joseph College of Engineering,
Rep. by its Chairman & Managing Director,
Mr.Babu Manoharan
Old Mahapalipuram Road,
Chennai - 600 119.

... Petitioner

-vs-

1. R.Vijayarajan
2. The Deputy Commissioner of Labour,
O/o.Joint Commissioner of Labour,
DMS Campus, Anna Salai,
Chennai-600 006.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified, calling for the records pertaining to the order dated 12.01.2021 made in P.G.No.108 of 2018 passed by the 2nd Respondent and quash the same and consequently direct the 2nd respondent to re-enquire the case in the manner set out under the law.

For Petitioner : Mr.Sashidhar Sivakumar

O R D E R

This writ petition has been filed, challenging the order dated 12.01.2021 made in P.G.No.108 of 2018 by the 2nd respondent, the Petitioner-College was directed to pay all the benefits to the 1st respondent within 30 days.

2. Heard the learned counsel for the Petitioner. Notice to the Respondents is dispensed with, as no adverse order is going to be passed against them.

3. It is the case of the Petitioner-College that the 1st Respondent served as a Professor in the Petitioner-College from



27.05.2007 to 06.04.2017 and was relieved from the service on his own accord. It is further case of the petitioner that the 1st Respondent filed a case in P.G.No.108 of 2018 before the 2nd Respondent under the provisions of the Payment of Gratuity Act, 1972 for disbursement of benefits payable to him and on receipt of the summon, though the Petitioner-College filed a detailed counter, disputing the period of service of the 1st Respondent, the 2nd Respondent, without recording any evidence, passed an order on 12.01.2021, as if the 1st Respondent led his evidence and the same was taken on record. Aggrieved by the said order, the Petitioner-College is before this Court, on the ground that there is a violation of principles of natural justice.

4. The Order of the Controlling Authority dated 12.01.2021 is under challenge on the main ground that no opportunity to cross examine the 1st Respondent was afforded to the Petitioner-College and the Controlling Authority, without allowing the Petitioner-College to mark documents, has passed an order, holding that the Petitioner-College is liable to pay the gratuity amount to the 1st Respondent to the tune of approximately Rs.8 Lakhs. Therefore, the Petitioner-College seeks to interfere with the Order of the Controlling Authority and to remit the matter back to the same Authority for fresh consideration on due compliance of the principles of natural justice.

5. It is pertinent to mention here that Section 7 (7) of the Payment of Gratuity Act, 1972 provides an appeal remedy against the order of the Controlling Authority and it cannot be said that the Controlling Authority alone is empowered to permit the parties to adduce evidence both oral and documentary. A reading of Section 7 of the Payment of Gratuity Act r/w Rule 18, more particularly Rule 18 (5) of the Tamil Nadu Payment of Gratuity Rules, 1973, is very clear that even the Appellate Authority has power to consider the request of the parties concerned to lead additional evidence in order to render a substantial justice. The words 'additional pleas' include additional documentary and verbal evidence insofar as the additional grounds are concerned, which were not taken before the Controlling Authority. In addition to the above, the Appellate Authority is also empowered to remand the matter, in case the Appellate Authority comes to the conclusion that the finding of the Controlling Authority is perverse and the Controlling Authority had not considered the material aspects placed before the Controlling Authority and that the parties have not filed additional documents as referred to in the Grounds of Appeal, which could not have been dealt with by the Controlling Authority. Instead of remanding the matter, it is better that the Appellate Authority decides the matter on merits to avoid multiplicity of litigation.



6. The Petitioner-College, without exhausting the appeal remedy, has straightaway approached this Court, which will, not only give rise to several litigations, but will also make the appeal remedy provision of the Payment of Gratuity Act, 1972 absolutely redundant. In the case of Onward Trading Company, Madras Vs. Deputy Commissioner of Labour, Madras and another reported in 1989 (2) LLN 672 and 673, this Court held that if the petitioner fails to deposit the amount of gratuity within the stipulated time, then the Appeal itself is incompetent.

7. Keeping in mind the aforesaid judgment, this Court is not inclined to grant the relief sought for by the Petitioner-College in this case. The Petitioner-College has received the order only in February, 2021 and that the time to prefer an appeal under the Payment of Gratuity Act, 1972 is not lapsed, as period, namely, from the date of filing the Writ Petition till a copy of this order is made ready, can be excluded for the purpose of computing the limitation, and the Appellate Authority has no power to entertain an appeal, if it is filed beyond the period of 120 days (60 days + 60 days), as adumbrated under the Act.

8. In the result, the Writ Petition is dismissed. The Appellate Authority is directed to entertain the appeal, if it is filed by the Petitioner-College, after compliance of deposit as per the order of the Controlling Authority. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To:

The Deputy Commissioner of Labour,
O/o.Joint Commissioner of Labour,
DMS Campus, Anna Salai,
Chennai-600 006.

+1cc to Mr.Sashidhar Sivakumar, Advocate, S.R.No.22363

W.P.No.9129 of 2021

RK(CO)
PM(16/07/2021)