

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.9197 of 2021

M.Ramesh

... Petitioner

..Vs..

1. The District Collector
Dharmapuri District,
Dharmapuri.

2. The Tahsildar,
Dharmapuri Taluk,
Dharmapuri.

3. The Managing Director,
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Dharmapuri Zone,
Barathipuram,
Dharmapuri - 636 705.

... Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 and 2 to recover the amount as per the certificate issued on 31.12.2020 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 3rd respondent.

For Petitioner : Mr.R.Dilli Kumar

For Respondents: Mr.M.Elumalai

Addl. Govt.Pleader for R1 & R2

Mr.D.Raghu for R3

O R D E R

This writ petition has been filed, seeking a direction to the respondents 1 and 2 to recover the amount as per the certificate issued on 31.12.2020 by the Deputy Commissioner of Labour, Salem as on date and to remit the same, apart from any other damages for the sufferings caused to the petitioner by the negligent act of the 3rd respondent.

2. According to the petitioner, he, after rendering 36 years of service as Staff in the third respondent Corporation, retired from service on 30.06.2017 as Senior Tradesman. Since his gratuity was not paid within 30 days upon cessation of employment, he moved the Authority claiming the gratuity amount, the gratuity amount was computed which was confirmed and the Management, instead of paying the entire amount, paid a portion of the same. The Controlling Authority, by order dated 30.09.2020, directed the Management to pay the amount together with interest at 10% per annum in terms of Section 7 (3A) of the Payment of Gratuity Act 1972. The Management has already paid a part of the amount as stated supra and the Management also did not prefer any appeal as contemplated under Section 7 of the Payment of Gratuity Act and allowed the order of the Controlling Authority to attain finality. Since the amount has not been paid, the petitioner has approached the Controlling Authority for issuance of certificate and to recover the amount with interest at 15% p.a. in terms of Section 8 of the Payment of Gratuity Act 1972 and a Revenue Certificate was issued. The Authorities concerned, instead of taking steps under the Revenue Recovery Act, did not take any action based on the certificate, issued by the Controlling Authority. The petitioner, after requesting the Collector, has approached this Court by way of present writ petition.

3. Learned counsel for the petitioner submitted that there is a decision of this Court dated 09.11.2020 passed in W.P.No.15515 of 2020, by which, this Court passed a final order, directing the Collector and Tahsildar / Respondents 1 and 2 therein to take effective steps to recover the amount payable in terms of the certificate issued by the Controlling Authority dated 03.02.2020.

4. In the present case on hand, still, the order of the Controlling Authority is in force, as it is not stayed by any of the Higher Forum and there is no appeal preferred before the Appellate Authority. Therefore, it is the duty case upon the Collector and Tahsildar to act in a rapid manner and recover the amount as per the Certificate. Beyond 120 days from the date of receipt of the order, Appeal under the Payment of Gratuity Act, 1972, cannot be filed and entertained. Even this Court cannot condone the delay and it would run counter to the decision, reported in 1989 (2) LLN 672 and 673 in the case of Onward Trading Company, Madras Vs. Deputy Commissioner of Labour, Madras and another, and the provisions of the Payment of Gratuity Act, 1972.

5. In fine, this Writ Petition is disposed of, with a direction to the Respondents 1 and 2, namely, District Collector and Tahsildar respectively to recover the amount, within a

period of 60 days from the date of receipt of a copy of this order and pay it to the Workman.

6. It is made clear that in case they fail to comply with the order, Government is empowered to take action, invoking the relevant Conduct Rules for dereliction of their duty, which is unbecoming of a member of the service and such irresponsible Officials should be dismissed from service. Before initiating action and dismissing from service, they must be transferred to a non-sensitive post and their dereliction should be entered into their Service Records within three months from the date of their disobedience, so that their promotions and other terminal benefits can be deprived. Before depriving the gratuity, an opportunity must be given to the person concerned, who are involved in the act of moral turpitude, as otherwise, there is every possibility of getting their benefits on the technical ground of violation of principles of natural justice.

7. Whenever an application for recovery is made, the Deputy Commissioner of Labour or the Authority under the Workmen's Compensation Act, 1923 is expected to issue a certificate for recovery of the amount within a period of 60 days from the date of such request made by the person concerned / employees or by the Dependants, duly intimating the Collector and Tahsildar, if there are no legal impediments. On receipt of such intimation / certificate, the Collector and Tahsildar shall comply with the statutory requirements, attach properties and comply with the certificate as demanded by the Deputy Commissioner of Labour within a period of 90 days from the date of receipt of the certificate.

8. After taking orders from the Hon'ble Chief Justice, Registry is directed to forward this order to the Secretary to Government of Tamil Nadu, Labour and Employment, who shall, in turn forward it to the Commissioner of Labour and other Authorities, dealing with cases under the provisions of the Payment of Gratuity Act 1972, the Workmen's Compensation Act, 1923, Tamil Nadu Payment of Subsistence Allowance Act, 1981 and the like, to follow the directions issued in Paragraphs Nos.6 & 7 of this order herein-above to avoid delay. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

dpq

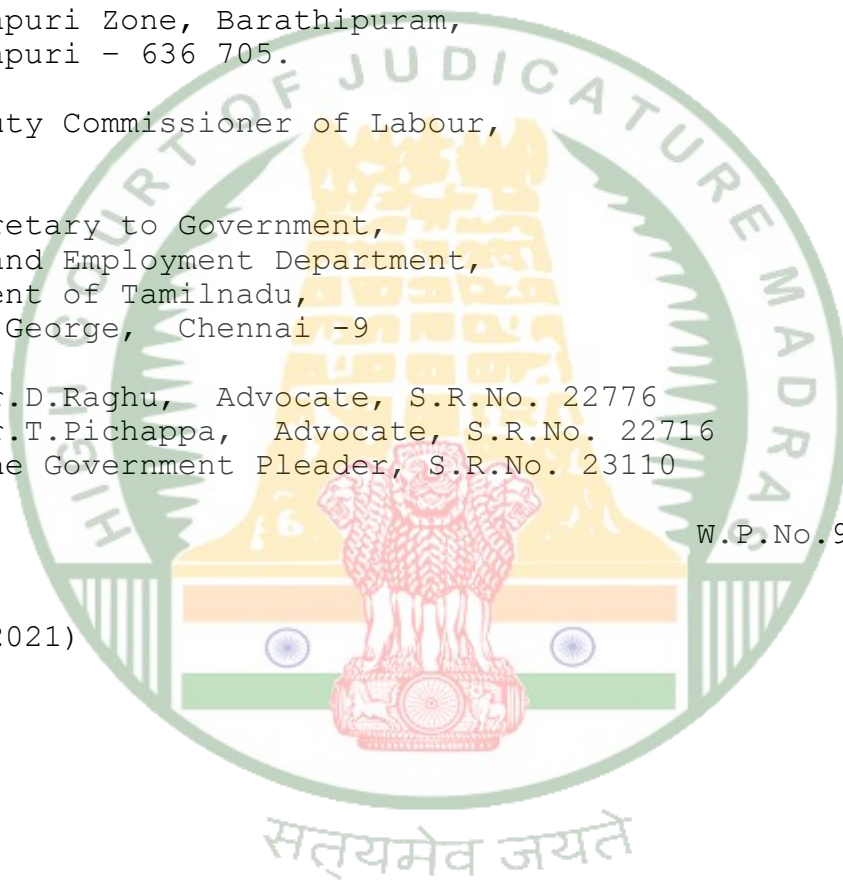
To:

1. The District Collector
Dharmapuri District,
Dharmapuri.
2. The Tahsildar,
Dharmapuri Taluk,
Dharmapuri.
3. The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Dharmapuri Zone, Barathipuram,
Dharmapuri - 636 705.
4. The Deputy Commissioner of Labour,
Salem.
5. The Secretary to Government,
Labour and Employment Department,
Government of Tamilnadu,
Fort St. George, Chennai -9

+1cc to Mr.D.Raghu, Advocate, S.R.No. 22776
+1cc to Mr.T.Pichappa, Advocate, S.R.No. 22716
+1cc to the Government Pleader, S.R.No. 23110

W.P.No.9197 of 2021

LN(CO)
GN(23/06/2021)



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