



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.8643 of 2015 and
M.P.No.1 of 2015

The Management,
E.2701, Lalpettai Primary Agricultural
Co-operative Credit Society,
Rep. by its President,
Lalpettai & Post,
Cuddalore District.

... Petitioner

-vs-

1. The Assistant Commissioner of Labour,
Controlling Authority under the
Payment of Gratuity Act 1972
Office of the Deputy Commissioner of Labour - II,
Chennai - 60 006.

2. V.Sundaresan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the order, dated 20.01.2015 made in P.G.No.04/2011 on the file of the first respondent herein and quash the same.

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents : Mr.V.P.R.Elamparithi (for R1)
Mr.C.Prakasam (for R2)

O R D E R

The petitioner has come forward with the present Writ Petition, challenging the order of the Controlling Authority computing accrued amount payable to the employee vide order dated, 20.01.2015 made in P.G.No.04 of 2011, which is the subject matter of the Writ Petition.

2. The main legal plea urged by the Management is that since less than 10 number of employees have been employed in the petitioner/society, the provisions of Payment of Gratuity Act, will not apply.



3. It is to be noted that the said factual plea has not been taken before the Controlling Authority. Even assuming for the sake of arguments that it is not been answered, the petitioner has got an appellate remedy under Section 7 (7) of the Payment of Gratuity Act, 1972.

4. 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. Without exhausting the appeal remedy, the employer cannot file the present Writ petition challenging the order of the Controlling Authority. The petitioner by filing this Writ petition, has made an attempt to bypass the appeal remedy so as to evade from Payment of Statutory deposit of the amount, which is mandatory under the Payment of Gratuity Act. 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.

5. On a perusal of records, it is seen that the order of the Original Authority is dated 20.01.2015 and the Writ Petition has been filed on 24.03.2015, which is over and above 60 days from the date of the order. The society has received the order, as could be seen from the endorsement, only on 25.02.2015. Hence, 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.

6. In view of the above, the Writ Petition is dismissed with the following observation:

- i. After deposit of the entire amount with interest, the petitioner shall file an appeal before the appellate Authority within a total period of 120 days from the date of receipt of the order of the Controlling Authority as per the Payment of Gratuity Act, by excluding the period namely, from the date of filing of this Writ petition till



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- a copy of this order is made ready;
- ii. The Appellate Authority is directed to entertain the said appeal, if any filed within a period of 120 days from the date of receipt of a copy of the order of the Controlling Authority, viz., 25.02.2015, excluding the period during which the Writ petition is pending and decide the same in accordance with law, as expeditiously as possible, preferably within a period of four months from the date of filing of the appeal. However, the appellate Authority shall entertain the appeal only after deposit of entire amount with interest; if any.

Consequently, connected miscellaneous petition is closed.
No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vum

To

The Special Deputy Commissioner of Labour,
Chennai - 600 006.

Copy to :
The Section Officer,
Writ Section, High Court, Madras.

+lcc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.30088
+lcc to the Government Pleader, S.R.No.30270

W.P.No.8643 of 2015 and
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PCH(CO)
HS(29/07/2021)