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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.29279 OF 2016

The Managing Director,
Tamil Nadu Co-operative Milk
Producer's Federation Limited,
Aavin Illam, Madhavaram Milk Colony,
Chennai 600 051.

... Petitioner

-Vs-

1. The Assistant Commissioner of Labour II
Office of the Deputy Commissioner of Labour II
Chennai 600 006.

2. S.S.Hariharan

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the order in P.G.No.256 of 2012 dated 26.02.2016 on the file of the 1st respondent and quash the same as null and void.

For Petitioner : Mr.R.Bala Ramesh

For Respondents: Mr.P.Sanjai Gandhi
Government Advocate for R1
Mr.Balan Haridass for R2

O R D E R

Today, this matter is listed under the caption "for being spoken to". The order of the Authority, insofar as it orders payment of gratuity amount of Rs.6,10,906/- together with interest at the rate of 10% in favour of the petitioner is to put under challenge in the present Writ Petition.



2.The legal point raised by the learned counsel for the petitioner is that Section 4(3) of the Payment of Gratuity Act 1972, fixes the maximum amount of gratuity payable to an employee at Rs.3,50,000/- and therefore, the 1st respondent, having computed the gratuity at Rs.6,10,906/-, has exceeded its jurisdiction. This proposition has been reiterated by the Hon'ble Supreme Court in the case of Krishna Gopal Tiwary and another vs. Union of India and others passed in Civil Appeal No.4744 of 2021 dated 13.08.2021 in the following manner:

3.The appellants were paid such gratuity in terms of such office memorandum. However, later on, the payment of Gratuity Act was amended by Central Act No.15 of 2010 which received the assent of the Hon'ble President on 17.05.2010. The relevant provisions of the Amending Act read as under:

"1(1). This Act may be called the payment of Gratuity (Amendment) Act, 2010.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2.In Section 4 of the Payment of Gratuity Act, 1972, in sub section (3), for the words "three lakhs and fifty thousand rupees", the words "ten lakh rupees" shall be substituted."

4.In terms of sub-section (2) of Section 1 of the Amending Act, a notification was issued by the Government of India on 24.05.2010 appointing the said date as the date on which the Amending Act came into force.

17.In view of the above, we find that the date of commencement fixed by the Executive in exercise of power delegated by the Amending Act cannot be treated to be retrospective as the benefit of higher gratuity is one-time available to the employees only after the commencement of the Amending Act. The benefit paid to the appellants under the office memorandum is not entitled to exemption in view of specific language of Section 10(10)(ii) of the Income Tax Act.

3.The learned counsel appearing for the 2nd respondent would submit that as against the order of the authority, an appeal is provided under Section 7(7) of the Act and since the 1st respondent had not filed an appeal within the outer limitation



prescribed under Sub Section 7, there is a bar for them to agitate the original order of the authority.

4. Section 4(3) of the Act was amended through amendment Act of 15 of 2010 whereby the maximum amount of gratuity payable to an employee was raised from Rs.3,50,000/- to Rs.10,00,000/- with effect from 24.05.2010. Prior to the amendment, the maximum amount payable was Rs.3,50,000/- only. On the date of the 2nd respondent's retirement, (i.e.,) on 29.03.2010, the maximum gratuity that could be ordered to be paid was Rs.3,50,000/- only. Apparently, the authority had exceeded its jurisdiction by awarding payment of gratuity over and above the statutory provisions and thus exceeded its jurisdiction. As such, awarding the gratuity amount in excess of Rs.3,50,000/- cannot be sustained.

5. At this juncture, the learned counsel for the petitioner would submit that insofar as the amount of Rs.3,50,000/- which is required to be paid as gratuity is concerned, the same has been paid along with interest to the 2nd respondent. It is settled proposition of law that though there is an alternate remedy provided under the statute, the aggrieved persons would be entitled to invoke extraordinary jurisdiction of this Court under Article 227 of Constitution of India, whenever such authority exceeds its jurisdiction or passes an order without jurisdiction. In the present case, the order of the authority awarding gratuity over and above statutory limit would amount to exceeding its jurisdiction and consequently, the petitioner would be legally entitled to invoke Article 226 of Constitution of India, without exhausting the alternate remedy.

6. The learned counsel for the 2nd respondent made an attempt to place reliance on the order of the learned Single Judge of this Court in the case of M.Unnikrishnan Vs. The General Manager, Aeroflot Russian International Airlines passed in W.P.No.16104 of 2000 dated 08.06.2010 for the proposition that since there is a bar under the Act for preferring an appeal against the order of the authority after the period of 60 days + 60 days, the present Writ Petition cannot be maintainable. The citation relied upon by the learned counsel may not have any relevance to the present case at all, when it is a settled proposition of law that the Writ Petition without exhausting the alternate remedy would be maintainable when the authority concerned exceeds jurisdiction or has no jurisdiction to pass an order at all. Therefore, placing reliance on the aforesaid decision for the proposition that an appeal will not lie against the order of the authority after the period of 120 days, has no relevance to the facts of this case.



7. In the result, the Writ Petition stands allowed and the impugned order, insofar as the award of gratuity amount over and above Rs.3,50,000/- is concerned, stands quashed. No costs.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vkr

To:

The Assistant Commissioner of Labour II
Office of the Deputy Commissioner of Labour II
Chennai 600 006.

+1cc to the Government Pleader, S.R.No.69764

W.P.No.29279 of 2016

MG (CO)
PM/25/02/2022