



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.44528 of 2016 and
WMP No.38357 of 2016

The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Head Office,
12, Thambu Chetty Street,
Kilipakkam, Chennai - 600 010.

...Petitioner

-vs-

1. Assistant Commissioner of Labour,
O/o I-Additional Deputy commissioner,
Chennai - 6.
(Controlling Authority as under the -
-Payment of the Gratuity Act, 1972)

2. K.Selvarasu

...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 of the 1st respondent, Assistant Commissioner of Labour, Controlling Authority as under the Payment of the Gratuity Act, 1972 in P.G.No.231/2013, dated 10.07.2015, and to quash the same as illegal and against the provisions of the Industrial Dispute Act, 1947.

For Petitioner : No appearance

For Respondents: Mr.L.S.M.Hasan Fizal,
Government Advocate (for R1)

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, 10.07.2015 made in P.G.No.231/2013, which is the subject matter of the Writ Petition.



2. It is the case of the petitioner that, the 2nd respondent/employee was paid a sum of Rs.1,34,529/- as gratuity on 25.02.2013. Claiming that the said amount is not calculated as per the Payment of Gratuity Act, 1972, the 2nd respondent/workman filed a petition in P.G.No.231 of 2013 before the 1st respondent/Controlling authority seeking for a payment of Rs.1,16,778/- as difference in gratuity. The 1st respondent allowed the Petition accepting the contentions raised by the workman.

3. It is the contention of the petitioner Management that the 2nd respondent is a seasonal employer and the order of the Controlling authority is against the provisions of the Payment of Gratuity Act, as the 2nd respondent has not worked for 240 days in a calendar year continuously and if the said period of service is treated to be a casual one, he will not be entitled to the relief sought for.

4. The order of the Controlling authority has been passed as early as on 10.07.2015 and the Writ petition was filed on 29.11.2016. Though, there is an appellate remedy available under the Payment of Gratuity Act, 1972, time to prefer an appeal under the Payment of Gratuity Act, 1972 was lapsed, as the period i.e., from the date of filing the Writ Petition till a copy of the order is made ready, can be excluded for the purpose of computing 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. The petitioner, without exhausting the appeal remedy, has straightaway approached this Court, belatedly.

5. The employer ought to have filed an Appeal within a period of maximum 120 days and it is mandatory on the part of the employer to deposit the money within the stipulated period. In the present case on hand, delay cannot be condoned, as the Authority becomes functus officio and after expiry of one year, the Writ Petition has been filed. Hence, the question of permitting the petitioner Management to file an appeal after deposit of amount with interest does not arise at all, as it will not serve any purpose. Hence, the Controlling authority is directed to release the amount, if the same has already been deposited or take steps to recover the amount by producing the order of recovery, before the concerned District Collector or Tahsildar.

6. If the amount has not been deposited, and in case, the Revenue Recovery proceedings are initiated by the concerned employee or his nominee or legal heirs, the District Collector / Tahsildar shall take effective steps to recover and disburse the amount to the person concerned, i.e., the employee / nominee /



legal heirs, failing which, the Government is entitled to take action against the District Collectors and Tahsildars, who adorned the posts, for their failure to recover the amount and disburse the same, more so, in the light of the order of this Court, dated 08.04.2021 passed in W.P.No.4654 of 2021.

7. With the above observation, this Writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum
To:

The Assistant Commissioner of Labour,
O/o I-Additional Deputy commissioner,
Chennai - 6.

+1 CC to The Government Pleader, Sr.No. 31411.

W.P.No.44528 of 2016 and
WMP No.38357 of 2016

KG(CO)
LS(15/09/2021)