IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.28811 OF 2017
AND
M.P.NO.31003 OF 2017

M/s.Pulliccar Mills Ltd.,
Rep. by its Managing Director
Post Box No.7, Tiruchengode - 637 211,
Namakkal District. ... Petitioner

.Vs.

1. The Assistant Commissioner of Labour,
   Salem.

2. Dhanasekaran ... Respondents

PRAYER:-

This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent dated 12.09.2017 passed in P.G.Case No.264 of 2016 and quash the same as illegal, arbitrary, unlawful and against the principles of natural justice.

For Petitioner : Mr.T.Arokiadoss
for M/s.Dass and Viswa Associates

For Respondents : No appearance

ORDER

This Writ Petition has been filed, challenging the order dated 12.09.2017 made in P.G.No.264 of 2016 by the 1st respondent, by which, the Petitioner-Mill was directed to pay all the benefits to the 2nd respondent within 30 days.

2. It is the case of the Petitioner-Mill that the Mill was wound up on 20.01.2014 and all the eligible employees were extended the benefits. The Workman/2nd respondent herein, having

received all his emoluments, had approached the 1st Respondent with unclean hands, claiming some amount towards gratuity benefits. The 1st Respondent, without providing an opportunity to the Mill to lead evidence to prove that the Workman is not entitled to any amount, hurriedly passed an order, holding that the Workman is entitled to certain amount as gratuity. Aggrieved by the same, the Mill is before this Court.

3. Heard the learned counsel for the Petitioner-Mill. There is no representation on behalf of the Workman/R2.

4. The Order of the Controlling Authority dated 12.09.2017 is under challenge on the main ground that no opportunity was given to the petitioner-Mill to let in evidence and the Controlling Authority, without allowing the Petitioner-Mill to mark documents, has passed an order, holding that the Petitioner-Mill is liable to pay the gratuity amount to the 2nd Respondent to the tune of Rs.64,950/-.

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-Mill, 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-Mill in this case. The Petitioner-Mill has received the order only in September, 2017 and filed the present Writ Petition in November, 2017 itself and that the time to prefer an appeal under the Payment of Gratuity Act, 1972 is not lapsed, as the 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, this Writ Petition is dismissed. The Appellate Authority is directed to entertain the appeal, if it is filed by the Petitioner-Mill, after compliance of deposit as per the order of the Controlling Authority. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dpq

To

The Assistant Commissioner of Labour,
Salem.

+1cc to the Government Pleader, S.R.No.32617

W.P.NO.28811 OF 2017

SS(CO)
PBS/26/11/2021