



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2021

C O R A M

WEB COPY

THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU

W.P. (MD) No.16823 of 2014
and
M.P. (MD) No.1 of 2014

The Managing Director,
Alangudi Agricultural Producers,
Co-op, Marketing Society,
Alangudi Post and Taluk,
Pudukkottai District.

... Petitioner

Vs.

1.The District Collector,
Pudukkottai District,
Pudukkottai.

2.The Assistant Commissioner of Labour,
O/o.the Deputy Commissioner of Labour,
Trichy-20.

3.C.Selvaraj

... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorari, to call for the records of the impugned order passed by the second respondent in Pa.Ko.Va.No.12/12 dated 27.03.2013 and quash the same as illegal.

For Petitioner : Mr. L.George Paul Anto

For Respondents 1 & 2 : Mr. M.Karuppasamy

Government Advocate
For Respondent 3 : Mr. G.Thalai Mutharasu

**ORDER
(through video conference)**

Heard Mr. L.George Paul Anto, Learned Counsel for the Petitioner, Mr. M.Karuppasamy, Learned Government Advocate for the First and Second Respondents and Mr. G.Thalai mutharasu, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.



2. The Third Respondent had made a claim against the Petitioner for gratuity under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act' for short) and the Second Respondent, who is the Controlling Authority under the Act, by Order in g/bfh/t/vz;/12/12 dated 27.03.2013 held that the Third Respondent is entitled to a sum of Rs.3,46,206/- together with interest at the rate of 10% per annum from the date of retirement till realisation. Since the Petitioner did not make payment of the said amount, this Court in the order dated 10.07.2014 in W.P. (MD) No. 1876 of 2014 filed by the Third Respondent had directed the First Respondent to implement that order passed by the Second Respondent.

3. The Petitioner was entitled to prefer appeal against the order in g/bfh/t/vz;/12/12 dated 27.03.2013 passed by the Second Respondent within a period of 60 days from the date of its receipt under Section 7(7) of the Act before the Appellate Authority, who has been empowered to condone delay in filing such appeal for an extended period of 60 days, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioner did not prefer any such appeal before the Appellate Authority, but has instead filed this Writ Petition on 14.10.2014 challenging the order passed by the Second Respondent beyond the maximum period of 120 days prescribed in that regard.

4. There is no acceptable explanation from the Petitioner for not having resorted to that alternative remedy provided under the statute within the maximum period of limitation that has been prescribed for the same. In this context, it may be recapitulated here that the Hon'ble Supreme Court of India in **Assistant Collector of Central Excise -vs- Dunlop India Limited** [(1985) 1 SCC 260] has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction as follows:-

" 3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The



practice certainly needs to be strongly discouraged."

That apart, the Hon'ble Supreme Court of India in **Assistant Commissioner (CT) LTU, Kakinada -vs- Glaxo Smith Kline Consumer Health Care Limited** (Order dated 06.05.2020 in Civil Appeal No. 2413 of 2020) has emphatically laid down that the High Court in the exercise of powers under Article 226 of the Constitution of India ought not to entertain Writ Petition assailing the order passed by a Statutory Authority which was not appealed against within the maximum period of limitation before the concerned Appellate Authority. As such, it is not possible to entertain this Writ Petition challenging the order of the Second Respondent.

5. Be that as it may, the grievance ventilated by the Petitioner in this Writ Petition is focused on the surcharge proceedings initiated by the Petitioner against the Third Respondent for loss caused by him due to misappropriation of funds of an extent of Rs.4,15,175.94 which is the subject matter of challenge in C.R.P. (MD) No.900 of 2009 before this Court. Though the entitlement of the Third Respondent to receive gratuity from the Petitioner, which has been determined in the impugned order passed by the Second Respondent has attained finality, it is made clear that no view is expressed by this Court on the right of the Petitioner to seek attachment of the amount of gratuity for recovery of the amount due in the surcharge proceedings, if it is permissible under law, through appropriate legal proceedings.

6. In the result, the Writ Petition is dismissed with the aforesaid clarification. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CSI)

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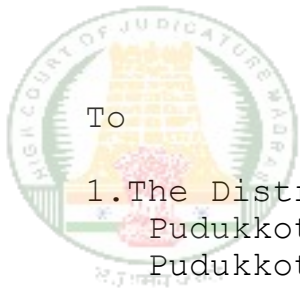
/ /2021

Sub Assistant Registrar(CS)

(ii) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

Ta/SRM/dm

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The District Collector,
Pudukkottai District,
Pudukkottai.

2.The Assistant Commissioner of Labour,
O/o.the Deputy Commissioner of Labour,
Trichy-20.

Copy to:

1. The Managing Director,
Alangudi Agricultural Producers,
Co-op, Marketing Society,
Alangudi Post and Taluk,
Pudukkottai District.

2. C.Selvaraj,
S/o.K.Chinnaya,
Kattupatti Village,
Alangudi Taluk,
Pudukkottai District.

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-18166[F] dated
30/04/2021)

W.P. (MD) No.16823 of 2014
29.04.2021

GS (16.06.2021) 4P 6C