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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 3843 of 2022

and

W.M.P. No. 3981 of 2022

Chintadripet Co-operative Society Limited,
No.C-267, Represented by its Secretary,
Having Office at No.99,
Swami Naicken Street,
Chennai-600 002.

...Petitioner

-vs-

1. The Joint Commissioner of Labour for Gratuity,
Labour Commissionerate, DMS Complex,
Teynampet,
Chennai-600 006.
2. The Deputy Labour Commissioner,
Office of first Deputy Labour Commissioner,
Chennai-600 006.
3. The Assistant Commissioner of Labour for Gratuity,
Office of first Deputy Labour Commissioner,
Chennai-600 006.

4. K.Arumugam

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to call for the records of the First Respondent made in P.G.A. No. 199 of 2017 dated 12.10.2021 and consequent, order of the Second Respondent bearing Na.Ka.No/6886/2014 dated 10.01.2022 and quash the same.

For Petitioner : Mr. U.Baranidharan

For Respondents : Mr. R.Siddharth
Government Advocate (For R1 to R3)



O R D E R

Heard Mr. U. Baranidharan, Learned Counsel for the Petitioner and Mr. R. Siddharth, Learned Government Advocate appearing for First to Third Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent by order dated 15.05.2014 in P.G. No. 17 of 2013 had granted the claim for gratuity under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act' for short) made by the Fourth Respondent against the Petitioner, who had challenged the same in the Writ Petition in W.P. No. 27942 of 2014 before this Court and had been dismissed by order dated 23.06.2017 in which it has been held as follows:-

"3. Admittedly, the order impugned is appealable. This Court does not find any violation of principles of natural justice, warranting interference through discretionary power available under Article 226 of the Constitution of India. In such view of the matter, the writ petition stands dismissed.

4. The petitioner is given four weeks' time for filing statutory appeal by applying the principle governing Section 14 of the Limitation Act. The said appeal will have to be taken up as if it is within limitation and thereafter decided on merits.

5. The petitioner has deposited 50% of the amount ordered by the Assistant Commissioner of Labour. The private respondent has suffered despite the order in his favour. Therefore, the private respondent is permitted to withdraw the aforesaid amount without prejudice to the contentions on merits by both sides. The said withdrawal is also subject to the final order to be passed in the appeal.

6. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. "

The Petitioner had thereafter preferred an appeal in P.G.A. No. 199 of 2017 before the First Respondent under Section 7(7) of the Act, which was declined to be entertained by order dated 12.10.2021 for not having deposited the entire amount payable in terms of the order passed by the Second Respondent as required in the second proviso to Section 7(7) of the Act, which reads as follows:-

" Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a



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certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount."

3. Learned Counsel for the Petitioner contended that inasmuch as this Court in the order dated 23.06.2017 in W.P. No. 27942 of 2014 had required the appeal filed by the Petitioner to be decided on merits, the First Respondent could not have refused to entertain the same by citing that the entire amount of pre-deposit had not been made. It is not possible to countenance such claim when the pre-deposit is a mandatory requirement to entertain the appeal. Moreover, this Court had not granted any exemption to the Petitioner from such pre-deposit and the mere circumstance that the Fourth Respondent had been permitted to withdraw 50% of the amount that had been earlier deposited cannot entitle the Petitioner to claim waiver of that statutory requirement.

4. In fine, the Writ Petition, which lacks any merit, is dismissed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Maya/gd

To

1. The Joint Commissioner of Labour for Gratuity,
Labour Commissionerate, DMS Complex,
Teynampet,
Chennai-600 006.
2. The Deputy Labour Commissioner,
Office of first Deputy Labour Commissioner,
Chennai-600 006.
3. The Assistant Commissioner of Labour for Gratuity,
Office of first Deputy Labour Commissioner,
Chennai-600 006.

+1cc to Government Pleader SR. No.13020

W.P. No. 3843 of 2022

SV (CO)

PR (08/04/2022)

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