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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM

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

W.P. No. 13690 of 2018
and
W.M.P. No. 16150 of 2018

The Management,
T.860, Tiruvarur Consumer,
Co-operative Wholesale Stores Ltd.,
Rep. by its Managing Director,
No. 39, Ellaiamman Sannadhi,
Tiruvarur - 610 001.

... Petitioner

-vs-

1. The Presiding Officer,
Appellate Tribunal,
Under the Payment of Gratuity Act,
Trichy - 20.

2. The Assistant Commissioner of Labour (Gratuity),
Office of the Deputy Commission of Labour,
Trichy - 20.

3. D. Vetrithingal.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari calling for the records of the First Respondent in P.G.A. No. 25 of 2017 dated 04.12.2017 quash the same.

For Petitioner : Mr. M.S.Palaniswamy
For Respondents: R1 - Tribunal
Mr. Vadivelu Deenadayalan
Additional Government Pleader
(for R2)

Mrs. M.Meenatchi (for R3)

O R D E R

Heard Mr. M.S.Palaniswamy, Learned Counsel for the Petitioner and Mr. Vadivelu Deenadayalan, Learned Additional Government Pleader appearing for the Second Respondent and Mrs. M.Meenakshi, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.



2. The Third Respondent, who was in the employment of the Petitioner, had been dismissed from service on 26.08.2002 and the Labour Court, Cuddalore (hereinafter referred to as 'the Labour Court' for short) by order dated 04.07.2013 in I.D. No. 48 of 2003 had set aside that punishment and in lieu thereof, imposed reduction in rank by one step with continuity of service and backwages as applicable to that post, and this Court by order dated 23.07.2014 had dismissed the Writ Petition in W.P. No. 29838 of 2013 filed by the Petitioner against the same. In the absence of any materials placed on record to the contrary, the said decision has to be taken as having attained finality.

3. In the meanwhile, the Third Respondent had made a claim for gratuity before the Second Respondent in P.G. No. 143 of 2016 under Section 7(4) of the Payment of Gratuity Act, 1972, which was rejected by order dated 08.07.2016. The First Respondent by order dated 04.12.2017 in P.G.A. No. 25 of 2017 had set aside that order and had adopted the last drawn wages of the Third Respondent as Rs. 10,930/- and determined the gratuity amount payable to him as Rs. 1,95,479/- without explaining as to how the last drawn wages of the Third Respondent has been ascertained, which is challenged in this Writ Petition.

4. This Court during the earlier hearing on 15.02.2022 had required to the Petitioner to explain as to what would be the last drawn wages of the Third Respondent and how it has been calculated with details of implementation of the award passed by the Labour Court, such as, revised wages that the Third Respondent would be entitled on notional reinstatement in service and the consequential amount of last drawn pay on 30.06.2007 when he retired from service on attaining the age of superannuation. The Registrar of Co-operative Societies under whose control the Petitioner falls was also called upon to verify such report from the Petitioner and send it with his remarks to the Court. In furtherance to that order, the Joint Registrar Co-operative Societies has filed a report dated 16.03.2022 in which the calculation for the gratuity payable to the Third Respondent has been explained as follows:-

"8. It is submitted that the Managing Director, Tiruvarur District Consumer Cooperative Wholesale Stores has calculated the pay of the Third Respondent Thiru. Vetrithingal as detailed below:-

Time Scale of pay of	2,665-100-3165-120-3405-140-
the Third Respondent }	3695-
Thiru. Vetrithingal	160-4605-200-5605-270-6415

1) Basic Pay of the individual as on 01.07.2002 -
Rs.4,445/-

2) Basic Pay of the individual as on 01.07.2003 -
Rs.4,605/-



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- 3) Basic Pay of the individual as on 01.07.2004 - Rs.4,805/-
- 4) Basic Pay of the individual as on 01.07.2005 - Rs.5,005/-
- 5) Basic Pay of the individual as on 01.07.2006 - Rs.5,205/-

Date of retirement - = Rs. 5,205.00
30.06.2007

Basic pay as on 30.06.2007

DA as on June 2007 = Rs. 4,424.00

Total of B.P. + D.A. = Rs. 9,629.00

Total No. of years of service = 27 + 4 = 31
years

Eligible gratuity = (9629 = Rs.
x 31 x 15)/26 1,72,211.00"

Learned Counsel for the Petitioner has produced the cheque bearing No. 222922 dated 31.03.2022 drawn at Kumbakonam Central Co-operative Bank Ltd., Thiruvavarur Branch for Rs. 1,72,211/-, but disputes the correctness of the said calculation and states that if an opportunity is provided, the Petitioner would be able to establish the error in the calculation before the First Respondent. Though the Third Respondent has claimed an higher sum of Rs. 1,95,479/-, Learned Counsel for the Third Respondent, on instructions, states that the said cheque for the sum of Rs. 1,72,211/- is received towards the gratuity claimed by the Third Respondent reserving the right to recover interest for the belated payment in the proceedings before the First Respondent.

5. Having regard to the aforesaid submissions made by Learned Counsel for both sides, the following order is passed:-

- (i) the impugned order dated 04.12.2017 in P.G.A. No. 25 of 2017 passed by the First Respondent is set aside and the matter is remitted back for fresh consideration and both parties are at liberty to lead further evidence in the matter;
- (ii) the Appeal in P.G.A. No. 25 of 2017 shall be listed for next hearing on 22.06.2022 before the First Respondent and the parties or their respective Counsel shall attend the hearing on the said date as well as on the subsequent dates to which it has been adjourned and extend their co-operation for the early disposal of the matter;
- (iii) the First Respondent after following prescribed procedure in consonance with the principles of the natural justice shall pass reasoned order ascertaining the last drawn pay of the Third Respondent dealing with respective contentions of the parties in that regard and



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thereupon determine the actual amount of gratuity due by the Petitioner to the Third Respondent and the sum of Rs. 1,72,211/- received today by the Third Respondent from the Petitioner shall be deducted while carrying out such exercise;

(iv) the Petitioner shall pay the remaining amount, if any, to the Third Respondent within a period of 30 days from the date of receipt of a copy of the order from the First Respondent.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

skr

To

1. The Presiding Officer,
Appellate Tribunal,
Under the Payment of Gratuity Act,
Trichy - 20.
2. The Assistant Commissioner of Labour (Gratuity),
Office of the Deputy Commission of Labour,
Trichy - 20.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No. 23154
+1cc to Mr.P.Anarasan, Advocate, S.R.No. 23104
+1cc to the Government Pleader, S.R.No. 23615

W.P. No. 13690 of 2018

AJB (CO)
GN (13/06/2022)