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W.A.No.1389/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.No.1389/2022 and CMP.No.8940/2022

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

.. Appellant

-VS-

1. The Joint Commissioner of Labour for Gratuity,
Labour Commissionerate, DMS Complex,
Teynampet, Chennai-600 006.
2. 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 Appeal filed under Clause 15 of Letter Patent to set aside the order dated 25.02.2022 passed in W.P.No.3843/2022 and allow the Writ Appeal.

For Appellant : Mr.Dhalapathy Vignesh Kumar

For Respondents : Mrs.E.Ranganayaki, AGP
1 to 3

Respondent No.4 : Mr.Govind Chandrasekar

J U D G M E N T

The present Writ Appeal has been preferred against the order dated 25.02.2022 passed in W.P.No.3843/2022 dismissing the writ petition on the ground that the employer has not complied with the pre-requisite of depositing the entire amount determined by the Controlling Authority under the Payment of Gratuity Act, 1972, before preferring an appeal before the Appellate Authority under the said Act.

2. The employer has filed a Writ Petition earlier, namely, W.P.No.27942/2014 by availing the appellate remedy and suffered an order of dismissal by this Court and the relevant paragraph is extracted here under:

"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.



W.A.No.1307 of 2022

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 employer, based on the said order, has approached the authority to deposit 50% of the amount and the appellate authority refused to entertain the appeal on the ground that the entire amount will have to be deposited in terms of Section 7(7) of the Payment of Gratuity Act and without such deposit, no appeal could be entertained. Aggrieved by the said portion of the Appellate Authority, a Writ Petition in W.P.No.3843/2022 has been filed and the learned Single Judge has passed the following Order:



W.A.No.1307 of 2014

"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."

3. When there is a statutory provision which contemplates a particular thing to be done in a particular manner, the employer will have to deposit the entire amount of payment of gratuity determined by the Controlling Authority and prefer an appeal within a period of 60 days from the date of receipt of the order of the Controlling Authority. However, the Appellate Authority is empowered to condone the period of 60 days if the appeal is not filed within the stipulated period and the maximum period for the authority to entertain the appeal is 120 days beyond which he becomes *functus officio*.



W.A.No.1307 of 2017

4.

In the present case on hand, the appeal has not been filed within a period of 120 days. That apart, no amount was deposited before the Controlling Authority before filing the appeal. Though this Court has passed an order directing the employer to remit 50% of the amount, the order of the appellate authority in not entertaining the appeal which is contrary to the provisions of the Payment of Gratuity Act is perfectly valid and the learned Single Judge has rightly interfered with the same. One of us (*Justice S.Vaidyanathan*) sitting single has also considered the powers of the appellate authority in entertaining the appeal in a case in **The Management, Tamil Nadu State Transport Corporation (Madurai) Limited, Madurai Region, Bye Pass Road, Madurai-10 vs. The Controller under Payment of Gratuity Act, Assistant Commissioner of Labour, Dindigul and another** reported in 2017 SCC OnLine Mad 13700. The relevant paragraph is extracted here under:

"5. The Division Bench of this Court in Onward Trading Company, Madras and Deputy Commissioner of Labour, Madras, and another reported in 1989(2) LLN 672, held that the statutory precondition must be obeyed and also held that failure to deposit the amount would mean that the appeal itself is incompetent. As the petitioner Management has not deposited the amount, the relief sought for by the petitioner has got to be rejected. Apart from that, the entire eligible amount after deducting a portion of the amount which is due to the Corporation by the petitioner,



W.A.No.199/2017

has got to be paid to the petitioner in terms of the order of the Controlling Authority. The petitioner has not preferred appeal."

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5. In view of the above, we find no error in the order of the learned Single Judge passed in W.P.No.3843/2022 dated 25.02.2022. The amount lying to the credit of P.G.A.No.199/2017 together with accrued interest shall be released by the Controlling Authority within a period of 15 days from the date of receipt of a copy of this Order, if not already withdrawn. The remaining 50% amount together with interest at 10% p.a. from the date the amount is payable shall be paid to the 4th respondent-workman within a period of three months from the date of receipt of a copy of this Order. In case, the amount is not paid within three months, in the light of Section 8 of the Payment of Gratuity Act, the rate of interest payable is 15% p.a. In this regard, it is relevant to extract the relevant provisions of Sections 7(3A) and 8 of the Payment of Gratuity Act, 1972 and the Notification here under :

"Section 7: Determination of the amount of gratuity:

(1) xxxxx

(2) xxxxx

(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the



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W.A.No.130 of 1987

date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for re-payment of long term deposits, as that Government may, by notification specify: Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground."

"Notification under Section 7(3-A) of the Payment of Gratuity Act:

S.O. 874--In exercise of the powers conferred by subsection (3A) of Section 7 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies ten percent per annum at the rate of simple interest payable or the time being by the employer to his employees in cases where the gratuity is not paid within the specified period.

This Notification shall come into force on the date of its publication in the Official Gazetter (vide the Gazette of India, Extraordinary, P.II, Section 3(i) dated 1st October, 1987 at p.2)"

"Section 8: Recovery of Gratuity: If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority, shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:



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Provided that the Controlling Authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case, exceed the amount of gratuity payable under this Act."

"Notification under Section 8 of the Payment of Gratuity Act:- S.O.1032(E). - In exercise of the powers conferred by Section 8 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies 15 per cent per annum as the rate of compound interest, recoverable by the Collector for the time being, along with the amount of gratuity and payable to the person entitled thereto.

This notification shall come into force on the date of its publication in the Official Gazette."

6. With the above observation and direction, the Writ Appeal is disposed of.

No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.] [J.S.N.P., J.]
06.02.2023

Index: Yes / No
Internet: Yes / No
tsi



W.A.No.1300 of 2022

To

1. The Joint Commissioner of Labour for Gratuity,
Labour Commissionerate, DMS Complex,
Teynampet, Chennai-600 006.
2. 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.



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S. VAIDYANATHAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

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