



W.P.No.30150 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.30150 of 2023

T.Elango

... Petitioner

Vs.

- 1 The District Collector,
The District Collector Office
Thiruvannamalai.
- 2 The Thasildhar
Thiruvannamalai Region,
Thiruvannamalai District.
- 3 The Revenue Inspector,
Thiruvannamalai North.
- 4 The Managing Director,
Thiruvannamalai District Consumer
Cooperative Wholesale Stores,
Thiruvannamalai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of a Writ of Mandamus, directing the Respondents 1 to 3 to recover the amount due to the petitioner as per orders of the Deputy Commissioner of Labour, Vellore in P.G. No. 6 of 2019 dated 22.04.2019 under the Revenue Recovery Act from the 4th respondent and thereby considering petitioner representation dated 07.10.2023.



WEB COPY



W.P.No.30150 of 2023

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents

For R1 to R3 : Mr.M.Shahjahan,
Special Government Pleader

For R4 : Mr.C.Selvaraj

ORDER

The petitioner joined as a Sales man in the 4th respondent / Tiruvannamalai District Consumer Cooperative Wholesale Stores on 01.10.1975. Subsequently, he was promoted to the post of Clerk and subsequently as Superintendent and retired from service on attaining the age of superannuation on 30.06.2015. The 4th respondent did not pay the Gratuity payable to him and therefore, the petitioner approached the Controlling Authority / Deputy Commissioner of of Labour, Vellore by way of filing a petition in P.G.No.6 of 2019. The 4th respondent filed a counter in the said petition. The Deputy Commissioner of Labour, Vellore, after hearing both sides, passed an Award, dated 22.04.2019, directing the 4th respondent to pay the Gratuity amount of Rs.5,55,438/- together with interest at 10% per annum within a period of 30 days from the date of receipt of a copy of the order.

2. Since the 4th respondent did not pay any amount towards



W.P.No.30150 of 2023

WEB COPY

Gratuity to the petitioner, the petitioner filed a petition under Section 8 of the Payment of Gratuity Act, 1972 before the Controlling Authority/Deputy Commissioner of Labour Vellore on 25.06.2019, consequent upon which, the Deputy Commissioner of Labour, issued a Certificate on 05.09.2019 for recovery of the said amount under the Revenue Recovery Act. In this regard, a communication was sent by the Deputy Commissioner of Labour to the 1st respondent / District Collector, Tiruvannamalai on 29.06.2019. The 1st respondent/District Collector, Tiruvannamalai vide his proceedings in C3/24610/2019, dated 01.10.2019, directed the 2nd respondent, Tahsildar, Tiruvannamalai Region to proceed against the 4th respondent under the Revenue Recovery Act. The grievance of the petitioner is that till date, the respondents 1 and 2 namely the District Collector and the Tahsildar have not recovered the Gratuity amount payable to the petitioner. He therefore filed the present Writ Petition.

3. Mr.L.P.Shanmugasundaram, learned counsel for the



W.P.No.30150 of 2023

WEB COPY

petitioner contended that the orders for payment of Gratuity to the petitioner was passed by the Deputy Commissioner of Labour, Vellore as early as on 22.04.2019 and till date the petitioner has not received any Gratuity amount.

4. Per contra, Mr.M.Shahjahan, learned Special Government Pleader appearing for the respondents 1 to 3 contended that they are in the process of recovering the Gratuity amount from the 4th respondent.

5. The learned counsel for the 4th respondent contended that they cannot pay the entire amount together with interest at 10% per annum as directed by the Deputy Commissioner of Labour, Vellore.

6. At this juncture, it is relevant to refer Section 8 of the Payment of Gratuity Act, 1972, which reads as under:

"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



W.P.No.30150 of 2023

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:

[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.]

7. In terms of Section 7 (3-A) of the Act, the Management will have to pay the Gratuity at 10% per annum on the amount determined.

Section 7(3-A) of the Act is extracted hereunder:

"(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 date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not



W.P.No.30150 of 2023

exceeding the rate notified by the Central Government from time to time for repayment 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]"

8. As per Section 8 of the Act, at the stage of recovery, the Government will have to recover the amount of Gratuity at 10% per annum. It is appropriate to extract the notifications under Section 7(3-A) of the Act:

Notification under Section 7(3-A)

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

2. This notification shall come into force on the



W.P.No.30150 of 2023

date of its publication in the Official Gazette. (Vide the Gazette of India, Extraordinary, Pt. II, Sec. 3(ii) dated the 1st October 1987, at p.2)."

Notification under Section 8

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. (ibid., Pt. II Sec. 3(ii), Extraordinary, dated the 1st December, 1987)."

9. Once the order of the Controlling Authority has become final, the entire amount has to be recovered in terms of the provisions of the Payment of Gratuity Act, 1972. In the instant case, the Controlling Authority had issued a certificate with a communication to the District Collector, Tiruvannamalai to recover the amount of Gratuity together with interest at 10% per annum. Therefore the entire amount as per the direction of the Controlling Authority has to be recovered especially when



W.P.No.30150 of 2023

WEB COPY

the 4th respondent had not paid the Gratuity amount within a period specified in the Award passed on 22.04.2019.

10. Therefore, the respondents 1 and 2 are directed to proceed further under the Revenue Recovery Act and recover the entire Gratuity amount payable to the petitioner, from the 4th respondent within the period of four weeks from the date of receipt of a copy of this order.

11. With the above direction, this Writ Petition is allowed. No costs.

30.10.2023

Index: Yes/No
Speaking/Non-Speaking order
vum



W.P.No.30150 of 2023

To
WEB COPY

- 1 The District Collector,
The District Collector Office
Thiruvannamalai.
- 2 The Thasildhar
Thiruvannamalai Region,
Thiruvannamalai District.
- 3 The Revenue Inspector,
Thiruvannamalai North.

R. HEMALATHA, J.



WEB COPY



W.P.No.30150 of 2023

vum

W.P.No.30150 of 2023

30.10.2023