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W.P.(MD)Nos_8561 to 8564 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.11.2022

PRONOUNCED ON : 01.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.8561 to 8564 of 2013

and

M.P.(MD)Nos.2, 2, 2, 2, 3, 3, 3 and 3 of 2013

W.P.(MD)No.8561 of 2013:

The Management,
Dinakaran Tamil Morning Newspaper,
No.1, Alexandiriya Road,
Commandonment,
Thiruchirapalli-1.

Presently at
No.1, Trichy-Dindigul Main Road,
Ramji Nagar (P.O),
Trichy-9.



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W.P.(MD)Nos_8561 to 8564 of 2013

Represented by
KAL Publications Private Limited,
represented by its Authorised Signatory,
V.Rajendran,
299, Kutchery Road, Mylapore,
Chennai.

... Petitioner

vs.

- 1.The Joint Commissioner of Labour,
Office of Commissioner of Labour,
Appellate Authority under Payment of
Gratuity Act, 1972,
Trichy.
- 2.The Assistant Commissioner of Labour,
Office of Commissioner of Labour,
(Controlling Authority under Payment of
Gratuity Act, 1972),
Trichy.
- 3.L.Ponkumar
- 4.M/s.KPK Publications,
represented by its Proprietor K.Kumaran,
having Office at No.44, Williams Road,
Cantonment, Tiruchirappalli and
residence at No.10, Royal Enclave,
Besant Avenue, Adayar,
Chennai-600 020.

... Respondents



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W.P.(MD)Nos_8561 to 8564 of 2013

***(R4 is impleaded, vide Court order, dated
28.04.2021, in W.P.(MD)Nos.8561 to 8564 of 2013)***

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the order passed in P.G.Appeal No.12 of 2012, dated 31.12.2012, on the file of the 1st respondent and order passed in Payment of Gratuity case No.20 of 2008, dated 06.09.2011, on the file of the 2nd respondent and to quash the same.

W.P.(MD)No.8562 of 2013:

The Management,
Dinakaran Tamil Morning Newspaper,
No.1, Alexandiriya Road,
Commandonment,
Thiruchirapalli-1.

Presently at
No.1, Trichy-Dindigul Main Road,
Ramji Nagar (P.O),
Trichy-9.

Represented by
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Trichy.

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W.P.(MD)Nos_8561 to 8564 of 2013

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the order passed in P.G.Appeal No.03 of 2012, dated 31.12.2012, on the file of the 1st respondent and order passed in Payment of Gratuity case No.33 of 2006, dated 06.09.2011, on the file of the 2nd respondent and to quash the same.

W.P.(MD)No.8563 of 2013:

The Management,
Dinakaran Tamil Morning Newspaper,
No.1, Alexandiriya Road,
Commandonment,
Thiruchirapalli-1.

Presently at
No.1, Trichy-Dindigul Main Road,
Ramji Nagar (P.O),
Trichy-9.

Represented by
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299, Kutchery Road, Mylapore,
Chennai.

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W.P.(MD)Nos_8561 to 8564 of 2013

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- 2.The Assistant Commissioner of Labour,
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Trichy.
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W.P.(MD)Nos_8561 to 8564 of 2013

P.G.Appeal No.11 of 2012, dated 31.12.2012, on the file of the 1st respondent and order passed in Payment of Gratuity case No.32 of 2006, dated 06.09.2011, on the file of the 2nd respondent and to quash the same.

W.P.(MD)No.8564 of 2013:

The Management,
Dinakaran Tamil Morning Newspaper,
No.1, Alexandiriya Road,
Commandonment,
Thiruchirapalli-1.

Presently at
No.1, Trichy-Dindigul Main Road,
Ramji Nagar (P.O),
Trichy-9.

Represented by
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W.P.(MD)Nos_8561 to 8564 of 2013

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- 2.The Assistant Commissioner of Labour,
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- 3.R.Pounraj
- 4.M/s.KPK Publications,
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residence at No.10, Royal Enclave,
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Chennai-600 020.

... Respondents

***(R4 is impleaded, vide Court order, dated
28.04.2021, in W.P.(MD)Nos.8561 to 8564 of 2013)***

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the order passed in P.G.Appeal No.10 of 2012, dated 31.12.2012, on the file of the 1st respondent and



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W.P.(MD)Nos,8561 to 8564 of 2013

order passed in Payment of Gratuity case No.31 of 2006, dated 06.09.2011, on the file of the 2nd respondent and to quash the same.

In all writ petitions:

For Petitioner	: M/s.M.Sneha for Mr.V.Karthikeyan
For R1 & 2	: Mr.C.Baskaran Government Advocate
For R3	: Mr.N.Murugavel for Mr.S.Arunachalam
For R4	: M/s.J.Anandhavalli

COMMON ORDER

The writ petition in W.P.(MD)No.8561 of 2013, is filed for issuance of a writ of Certiorari, to quash the impugned order passed in P.G. Appeal No.12 of 2012, dated 31.12.2012, on the file of the 1st respondent and order passed in Payment of Gratuity case No.20 of 2008, dated 06.09.2011, on the file of the 2nd respondent.



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2. The brief facts as stated in the affidavit filed in W.P.(MD)No.8561 of 2013 are that the petitioner is the Chief General Manager of KAL Publications Private Limited representing the Management Dinakaran Tamil Morning Newspaper. The 3rd respondent was an employee under the erstwhile employer namely KPK Publications and subsequent to the purchase of the Tamil Daily "Dinakaran" by KAL Publications during November 2005, those employees working during that time were taken over by KAL Publications Private Limited. When the KAL publications taken over the "Dinakaran" Tamil Daily, the 3rd respondent was not in service and hence, there is no employer-employee relationship between the 3rd respondent and the petitioner and hence the 3rd respondent cannot claim gratuity from the petitioner. If at all any claim is there, then the 3rd respondent shall claim by filing suit against the erstwhile owner and he cannot approach the Labour Commissioner against the petitioner. The petitions are not maintainable, since the Management of Dinakaran Daily Newspaper is not



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a legal entity and no order can be enforced against it. The said "Dinakaran Daily News Paper and few other magazines and dailies in particular "Tamizh Murasu", in which the 3rd respondent was working, are owned by KAL publications Private Limited and hence, if there is any claim, then it can be made against KAL publications alone. Moreover, the 3rd respondent having worked for "Tamizh Murasu" had made a claim against "Dinakaran" and the 1st and 2nd respondents without considering the same in a mechanical and erroneous manner allowed the claim of the 3rd respondent. The 1st and 2nd respondents failed to consider the fact that, for the calculation of gratuity only basic and dearness allowance alone should be considered. However, the 1st and 2nd respondents had taken into consideration the last drawn salary of the 3rd respondent as per the entry in the bank pass book for the month of August, which will include all benefits and emoluments. Moreover, there was money due to the petitioner from the 3rd respondent to a tune of Rs.21,529.25/- by way of advertising outstanding bill



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which the 3rd respondent had misappropriated and hence, the petitioner has every right as per the Act to deduct the said amount, to which the 3rd respondent also agreed and accepted the cheque for the balance amount without any protest from the erstwhile owners, KPK publications. Subsequent to the change in the management with an evil intention to extort money from the petitioner the present claim is made by the 3rd respondent. The gratuity amount was received by the 3rd respondent from the erstwhile employer.

3.The present claim before the Labour commissioner against the Management of Dinakaran Daily which is not at all a legal entity can never be entertained. Moreover, the 3rd respondent was employed in "Tamizh Murasu" daily has filed his claim against "Dinakaran" Daily. The petitioner management deposited a sum of Rs.39,724/- for preferring PG Appeal against order of the Assistant Commissioner of Labour. For the reasons stated above, the interest



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awarded by the 1st and 2nd respondents is against law and norms.

4. Pending writ petition, the erstwhile employer namely KPK Publications was impleaded as one of the party, vide order, dated 28.04.2021. The impleaded erstwhile employer had filed counter affidavit stating that the entire assets and liabilities and the duties and obligations of the transferor company as on the appointed date 01.04.2006 shall be deemed to be debt / liabilities of the transferor company. Since the entire debts and liabilities were transferred to the petitioner Company including the statutory obligations, dues, debts, provident funds, gratuity concerning the employees and all other payments concerning the labours and employment also were transferred. Hence, the petitioner Company alone is liable to pay the same. In view of the Share Purchase Agreement, dated 15.06.2005 and in view of the order passed in the Company Petition No.46 of 2007, the entire assets and liabilities vest with the petitioner and the impleaded



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respondent is not liable to pay any amount to the 3rd respondent employee. Moreover, the 3rd respondent has resigned from the service on 08.09.2005 and he was paid gratuity through cheque on 04.09.2006 to the tune of Rs.3,401/- by KPK Publications Private Limited and the same was paid by the Chairman of KPK Publications / Tamizh Murasu, since the petitioner has purchased only Dinakaran and not Tamilzh Murasu. Hence, the 3rd respondent cannot claim any amount from Dinakaran. Moreover, in the Share Purchase Agreement under Clause 6, it has been specifically agreed that the Societies of the Company does not include the investments made by the Company in Nelson Paper Mills Limited, Tanjore and Solar Paper Mills Limited, Tamil Nadu. In such circumstances, the plea of the petitioner ought to be against the erstwhile owner and not the petitioner who is subsequent owner is not liable cannot be entertained. The KPK Publications submitted even though there is a change of management, the liability being a statutory liability, the petitioner is bound to pay the amount. The assets and



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liabilities were taken by the subsequent purchaser and the liabilities include the gratuity payable to the 3rd respondent.

5. On hearing the rival submissions, this Court is of the considered opinion that it is an admitted fact that the 3rd respondent has received Rs.3,401/- from Tamizh Murasu for the gratuity amount as early as 04.09.2006. The 3rd respondent is liable to pay Rs.21,529.25/- by way of advertising outstanding bill. The 3rd respondent has deliberately not stated this fact regarding the pending bill payable to the employer. It is the contention of the erstwhile employer as well as the present employer that the 3rd respondent is eligible to gratuity after deducting the payment that is due from the 3rd respondent under the head of outstanding bills towards advertising after deducting the amount. The erstwhile employer has come to the conclusion that the 3rd respondent is eligible for gratuity to the tune of Rs.3,401/-. Thereafter, it has been paid through the cheque after deducting the



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outstanding bill amount. The 1st and 2nd respondents ought not to have entertained the petition under Payment of Gratuity Act, since the 1st and 2nd respondents have quantified the amount to the tune of Rs.26,927/-, after deducting Rs.21,529/-, the employer had paid the amount Rs.3,401/-. The said amount is more or less tallying with the contention of the employer. Even according to the order of the Gratuity Authority the employee is entitled to Rs.28,005/-, since Rs.3,401/- is already paid the balance payable is Rs.24,604/-. From this amount if the amount Rs.21,529/- (which the employee is liable to pay under outstanding bill for advertisement) is deducted ($24,604 - 21,529 = 3,075/-$) then the balance amount Rs.3,075/- is payable by the employer. Based on the above calculation the 3rd respondent is entitled to **Rs.3,075/- with 8% interest.**

6. In W.P.(MD)No.8562 of 2013, the 3rd respondent has availed loan against the gratuity to the tune of Rs.60,000/- on 09.08.2000. Moreover, the 3rd



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respondent was sanctioned share certificate in M/s.Nelsun Paper Limited as early as 08.06.1998 to the tune of Rs.19,968/- with an understanding that such amount would be deducted from gratuity since it was considered as loan against gratuity which the 3rd respondent cannot claim once again. After deducting both the amount the petitioner paid Rs.28,502/-. Hence, the claim of the petitioner is that the entire amount is settled by this counter claim and the share amount. On perusal of the records, it is seen even according to the Gratuity Authority, the employee is entitled to Rs.1,23,203/-. But the employee was already paid Rs. 1,08,470/- (Rs.28,502/- + Rs.60,000/- + Rs.19,968/-), the balance Rs.14,733/- is payable by the employer. Based on the above calculation the 3rd respondent is entitled to **Rs.14,733/- with 8% interest.**

7. In W.P.(MD)No.8563 of 2013, the 3rd respondent has availed loan to the tune of Rs.39,000/- on 20.04.2000 and Rs.25,744/- was paid on 08.06.1998 to



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purchase share in M/s. Nelsun Paper Limited. According to the Gratuity Authority the 3rd respondent is entitled to Rs.64,107/-. But the petitioner was already paid Rs.Rs.64,744/-, which is more than the amount determined by the Gratuity Authority. **Therefore the 3rd respondent in this petition is not entitled to any amount.**

8. In W.P.(MD)No.8564 of 2013, the 3rd respondent availed Rs.70,000/- as advance payment against gratuity amount. The said amount was deducted and thereafter, gratuity amount of Rs.41,546/- was paid. According to the Gratuity Authority the 3rd respondent is entitled to Rs.1,28,063/- and after deducting the amount already paid Rs.41,546/-, the balance amount payable as per the Gratuity Authority order is Rs.87,417/-. However, the Gratuity Authority has not deducted the advance amount of Rs.70,000/- availed by the 3rd respondent. After deducting the said advance amount the 3rd respondent is entitled to Rs.17,417/- (Rs.87,417/-



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– Rs.70,000/-). Based on the above calculation the 3rd respondent is entitled to **Rs. 17,417/- with 8% interest.**

9. Therefore, this Court is of the considered opinion that the claim of the 3rd respondent in all writ petitions were ordered without considering the true facts.

10. The claim of the petitioner is that the 3rd respondent had worked for Tamil Murasu, but he is claiming the amount from Dinakaran Newspaper. This Court is of the considered opinion that whether the 3rd respondent had worked in Dinakaran or Tamil Murasu is not the criteria to determine the liability. It whether the KAL Publications ought to pay or the erstwhile owner K.S.Publications ought to pay the amount. On perusal of the share purchase agreement dated 15.06.2005, it is seen that the agreement was entered between the seller namely Mr.K. Kumaran who has agreed to sell the K.S.Publications Pvt Limited, a private



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limited company to the purchaser namely Mr.Kalanithi Maran and M/s.Kal Comm Pvt Ltd. It is also seen that all the assets and liabilities including employee statutory liabilities were sold to the purchasers. Therefore, this Court is of the considered opinion that the aforesaid the petitioner KAL Publications Private Limited is liable to pay the said amount to the 3rd respondent in W.P.(MD)Nos. 8561, 8562 and 8564 of 2013.

11. Hence, the writ petitions are disposed of as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No

01.03.2023

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To

- 1.The Joint Commissioner of Labour,
Office of Commissioner of Labour,
Appellate Authority under Payment of
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Trichy.
- 2.The Assistant Commissioner of Labour,
Office of Commissioner of Labour,
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S.SRIMATHY, J

Tmg

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