



W.P.(MD)No.6425 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:10.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.6425 of 2018
W.M.P(MD).No.6232 of 2018

The Special Officer (now the Managing Director),
Madurai Kamaraj University Co-operative
Printing Press Limited, Palkalai Nagar,
Madurai-625 021.

... Petitioner

Vs.

- 1.The Appellate Authority under the
Payment of Gratuity Act,
[Joint Commissioner of Labour]
Tamil Nadu Housing Board Building 1st Floor,
Ellis Nagar, Madurai.
- 2.The Authority under the Payment of Gratuity Act,
[Assistant Commissioner of Labour]
Office of the Deputy Commissioner of Labour,
Bharathi Ula Salai, Race Course Colony,
Madurai-625 002.

3.Sivabackiam

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent in P.G.Appeal No.23/17, quash the order passed therein on



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27.08.2017, consequently the order of the second respondent passed in P.G.No.31/10 dated 29.01.2017, grant such other reliefs as expedient to the facts and circumstances of the matter.

For Petitioner : Mr.S.Seenivasagam
For Respondents : Mr.G.V.Vairom Santhosh
Additional Government Pleader
for R1 and R2
Mr.S.M.Mohan Gandhi for R3

ORDER

This Writ Petition has been filed to call for the records pertaining to the order passed by the first respondent in P.G.Appeal No.23/17 on 27.08.2017 and the order passed by the second respondent in P.G.No.31/10 dated 29.01.2017 and quash the same.

2. The case of the petitioner is that the petitioner is the Managing Director of Madurai Kamaraj University Co-operative Printing Press Limited and the third respondent's husband was the employee of the petitioner Press. He has availed loan from the Madurai Taluk Co-operative Institution Staff Co-operative Society and on the date of his retirement, there was over due payable by him to the Society. Despite the



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advice of the petitioner to clear the loans or to give a letter of consent to the Press to clear the loan from the gratuity payable to him, he did not obey for any of the suggestions. However, he has filed an application claiming gratuity before the Authority under the Payment of Gratuity Act. Without considering the Section 48 of the Tamil Nadu Co-operative Societies Act, the Authority mechanically directed the petitioner Press to pay the gratuity as he claimed for. During the pendency of the above proceedings, the employee died and his wife, who is the third respondent herein, was impleaded in the proceedings. Thereafter, the appeal was preferred by the petitioner before the first respondent. However, the first respondent has confirmed the order passed by the Original Authority. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the third respondent's husband is the employee of the petitioner Press and while he was in service, he has availed the loan from the Madurai Taluk Co-operative Institution Staff Co-operative Society, in which the petitioner is the guarantor. However, he did not clear the loan and



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thereby, the petitioner has withheld his gratuity amount by exercising the power conferred under Section 48 of the Tamil Nadu Co-operative Societies Act. However, contrary to the said Act, the first and second respondent have passed the impugned orders under the Payment of Gratuity Act which is not sustainable one. Hence, he prays for allowing the present writ petition.

4. The learned counsel appearing for the third respondent would submit that the petitioner/employer has no right to withheld the gratuity amount of the employee except Section 4(6)(1) of the Payment of Gratuity Act and Section 48 of the Tamil Nadu Co-operative Societies Act provides for mechanism of withholding the gratuity amount. Hence, he prays for allowing the present writ petition.

5. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent.



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6. The facts in the present case are not in dispute. Admittedly, while the third respondent's husband was working in the petitioner Press, he has availed loan from the Madurai Taluk Co-operative Institution Staff Co-operative Credit Society. The petitioner Press claims that they have withheld the gratuity amount of the third respondent's husband on the ground that he has not cleared the loan availed from the Co-operative Society and as per Section 48 of the Tamil Nadu Co-operative Societies Act, they can retain the gratuity amount of the employee. However, the fact remains that the third respondent, after the death of her husband, has made an application for payment of gratuity amount, pursuant to which, the Original Authority has passed the order on 29.01.2017 in favour of the third respondent's husband. Aggrieved by the same, the petitioner Press has preferred the appeal before the first respondent and the first respondent, after considering all the factual aspects, has rightly dismissed the appeal filed by the petitioner Press on the ground that except Section 4(6)(1) of the Payment of Gratuity Act, the employer have no right to withhold the gratuity amount of the employee. Further, in this regard, the Co-operative Society has not made any claim before the Petitioner Press



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to recover the loan amount from the third respondent's husband and the petitioner Press, on its own decision, has withheld the gratuity amount.

Hence, this Court is not inclined to interfere with the impugned orders passed by the first and second respondent. The petitioner is directed to settle the gratuity amount to the third respondent within a period of six weeks from the date of receipt of a copy of this order.

7. Accordingly, this Writ Petition is dismissed. No costs.
Connected miscellaneous petition is closed.

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



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M.DHANDAPANI,J.

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