



WEB COPY



W.P.No.30560 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.30560 of 2015

Madras school of Social Work
32-A & 33, Casa Major Road,
Egmore, Chennai-08.

Rep by its Honorary Secretary

... Petitioner

Vs.

1.Joint Commissioner of Labour
(Appellate Authority Under the
Payment of Gratuity Act, 1972)
Labour Welfare Building 6th floor
Teynampet, Chennai-600006

2.Assistant Commissioner of Labour
(Controlling Authority under the
Payment of Gratuity Act, 1972)
Labour Welfare Building 6th floor
Teynampet, Chennai-600006

3.M.Nandhini

4.The Director
Programme Officer, NSS
Ministry of Youth Affairs and Sports
Department of Sports
Shastri Bhavan, New Delhi-110 001.

...Respondents



W.P.No.30560 of 2015

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the records and quash the order dated 25/02/2015 passed in P.G.A.No. 14 of 2014 on the file of the 1st Respondent, Joint Commissioner of Labour, Chennai, confirming the order dated 28/02/2014 passed in P.G.No.303 of 2004 on the file of the 2nd Respondent Assistant Commissioner of Labour, Chennai.

For Petitioner : M/s.Gupta for
M/s.Gupta & Ravi

For Respondents : M/s.V.Ajay Khose
[for R3]

: No appearance [for R1, R2 & R4]

ORDER

Dissatisfied with the order passed by the 1st respondent in P.G.A.No.14 of 2014 in and by which the 1st respondent has confirmed the order passed by the 2nd respondent in P.G.No.303 of 2004, the petitioner is before this Court.

2. The short facts are as follows:-



2.1. The petitioner association is a registered society and amongst its varied activities it also runs the petitioner institution for imparting training in specialised subjects. Recognising the objectives of the society, governmental agencies entrust development activities to the petitioner institution and its parent society for carrying out and running these activities for the benefit of the general public.

2.2. The petitioner would submit that the 4th respondent had entrusted the petitioner institution with a Training Orientation and Research Centre (TORC) for the National Services Scheme (NSS). TORC was solely concerned with the activities relating to the NSS and its scheme totally sponsored and assisted by the Central Government. The TORC in the petitioner's institution was treated as a separate establishment totally under the control and funding of the Government of India. It had only four employees, namely, one Coordinator, two lecturers and one supporting staff/typist. The expenses like salaries and other benefits payable to these personnel were only by the Government of India. Though the Society had appointed the employees of the NSS, the salaries are fully reimbursed



by the 4th respondent. Neither the Society nor the institution is imposed with the financial liability or responsibility of paying these employees. In short, there is no master-servant relationship between the 3rd respondent and the petitioner.

2.3. While so, the 3rd respondent had filed an application before the 2nd respondent claiming a sum of Rs.1,74,411.35/- as a gratuity for the services rendered by her for the period 18.08.1971 to 31.03.2004, i.e. for the period of 32 years and 7 months. Originally, the 3rd respondent had impleaded only the petitioner as a party and after the petitioner had filed a counter stating that there was no master-servant relationship between the 3rd respondent and the petitioner and that it was only the 4th respondent who was liable, the petitioner had impleaded the 4th respondent.

2.4. The petitioner would submit that the 3rd respondent has herself understood that it is the 4th respondent who has to settle her dues since the legal notice prior to the filing of the application was addressed both to the petitioner and to the 4th respondent. However, while filing the case only the petitioner was impleaded. In fact, it was



the petitioner who had impleaded the 4th respondent. The impleading petition was contested by the 3rd respondent and the authority had dismissed the implead petition filed by the petitioner. Challenging the same, the petitioner had filed W.P.No.4228 of 2006 on the file of this Court which was allowed on 09.03.2006 and the 4th respondent has been impleaded as a party to the proceedings in P.G.No.303 of 2004.

2.5. On being impleaded, the 4th respondent had filed a counter in which they had neither denied their liability to pay gratuity nor had they denied the facts made by the petitioner regarding the financial arrangement between the petitioner and the 4th respondent. Thereafter, the authority had passed an order dated 28.02.2014 directing the petitioner to pay a sum of Rs.1,70,432/- as gratuity to the 3rd respondent for the period of 18.08.1971 to 31.03.2004 with interest at 10% per annum within 30 days from the date of receipt of the order. Aggrieved by this order the petitioner had filed P.G.A.No.14 of 2014 on the file of the 1st respondent, after depositing a sum of Rs.3,40,864/- which is the pre-condition for filing the appeal.



2.6. The 4th respondent had not contested this appeal. However, the 1st respondent had after hearing the parties dismissed the appeal as against which the present writ petitioner has been filed.

3. Heard the learned counsels on either side.

4. It is not in dispute that all the payments made by the petitioner herein in the form of salaries to the staff etc; has been reimbursed by the 4th respondent. The 3rd respondent in her cross examination has admitted this fact. She has also stated that there is a separate attendance register for the employees of TORC which clearly shows that TORC is not a part of the petitioner institution but is a separate entity. It is seen that the orders fixing the pay scale and revising it etc; are all done by the 4th respondent. The petitioner is aggrieved by the fact that by the impugned order the entire liability has been imposed solely on the petitioner ignoring the arrangement between the petitioner and the 4th respondent.

5. Considering the fact that there is no dispute between the petitioner and the 4th respondent that it is the 4th respondent who has



to pay the salaries and other emoluments to the four employees of the TORC, the impugned order passed by the 1st respondent in P.G.A.No.14 of 2014 dated 25.02.2015 has to necessarily be quashed and is accordingly quashed.

6. It is brought to the notice of the Court that the entire amount has already been deposited by the petitioner to the credit of the proceedings in P.G.A.No.303 of 2004 before the 2nd respondent. It is also informed that the 3rd respondent has withdrawn a portion of the amount so deposited. The balance amount that is now lying to the credit of the above proceedings shall be withdrawn by the 3rd respondent. To which the petitioner has no objection. The 4th respondent is directed to reimburse to the petitioner the entire amount that the petitioner has deposited to the credit of the proceedings in P.G.A.No.303 of 2004 on the file of the 2nd respondent, within a period of 8 weeks from the date of receipt of a copy of this order.

7. With the above directions, the Writ Petition is allowed. No costs.



W.P.No.30560 of 2015

12.06.2024

WEB COPY

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.Joint Commissioner of Labour
(Appellate Authority Under the
Payment of Gratuity Act, 1972)
Labour Welfare Building 6th floor
Teynampet, Chennai-600006

2.Assistant Commissioner of Labour
(Controlling Authority under the
Payment of Gratuity Act, 1972)
Labour Welfare Building 6th floor
Teynampet, Chennai-600006

3.The Director
Programme Officer, NSS
Ministry of Youth Affairs and Sports
Department of Sports, Shastri Bhavan, New Delhi-110 001.

P.T. ASHA. J.,

(shr)



WEB COPY



W.P.No.30560 of 2015

W.P.No.30560 of 2015

12.06.2024