



W.P.(MD) No.17033 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.17033 of 2020

and

W.M.P.(MD) No.14239 of 2020

The Executive Officer,
Arulmigu Nellaiyappar Gandhimathi Amman Temple,
Thirunelveli.

... Petitioner

Vs.

1.The Assistant Commissioner of Labour,
Thirunelveli.

2.M.Shangara Subramaniyavel

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records in pursuant to the order dated 29.10.2020 passed in P.G.No.28 of 2017 on the file of the 1st Respondent and quash the same.

For Petitioner : Mr.S.Madhavan

For R2 : Mr.M.Gangatharan



W.P.(MD) No.17033 of 2020

For R1 : No appearance

ORDER

Respondent No.2 herein was an employee of the petitioner-Temple and retired from service on 31.12.2007. Thereafter, he submitted an application for payment of gratuity in the year 2013 and the petitioner herein, having considered the said application, paid an amount of Rs.77,538/- towards gratuity, for which Respondent No.2 herein was entitled to. However, Respondent No.2 herein, having not satisfied with the same, moved an application before Respondent No.1 claiming interest on the delayed payment of gratuity, as the said amount of gratuity was paid nearly eleven years after his retirement. The said application submitted by Respondent No.2 was allowed by Respondent No.1, by the impugned order dated 29.10.2020 awarding an amount of Rs.92,399/- towards interest on the delayed payment of gratuity. Aggrieved by the said order, dated 29.10.2020, the petitioner-Temple approached this Court by filing the present writ petition.



W.P.(MD) No.17033 of 2020

WEB COPY

2. Sri S.Madhavan, learned counsel for the petitioner contended that Respondent No.1 has no jurisdiction to award interest exceeding the amount of gratuity, for which the employee was entitled to. In other words, it is the contention of the learned counsel for the petitioner that the gratuity amount, that was paid to Respondent No.2, is only Rs.77,538/- and Respondent No.2 is entitled for interest on the delayed payment of the said gratuity for a maximum amount of Rs.77,538/- towards interest, but not more than that. In support of his contention, he placed reliance on second proviso to Section 8 of the Payment of Gratuity Act, 1972 (hereinafter referred to as “the Act, 1972”) for brevity. The said proviso reads as under:

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

3. The language used in the above proviso is very clear and it mandates that the amount of interest payable under Section 8 of the Act, 1972 shall, in no case exceed the amount of gratuity payable under the said Act.



W.P.(MD) No.17033 of 2020

WEB COPY

4. As already noted above, Respondent No.2 was paid only an amount of Rs.77,538/- towards gratuity for which he is entitled to. There is no dispute about the amount of gratuity that was paid to Respondent No.2. If that be the case, in terms of second proviso to Section 8 of the Act, 1972, Respondent No.2, under any circumstances, is entitled for payment of maximum amount towards interest to a tune of Rs.77,538/- only. The claim of Respondent No.2 for interest is only in terms of Section 8 of the Act, 1972. But in the instant case, Respondent No.1 has ordered for payment of an amount of Rs.92,399/- towards interest on the delayed payment of gratuity. Thus, the impugned order, to the extent of directing payment of gratuity to a tune of Rs.92,399/-, is directly in contravention to the second proviso to Section 8 of the Act, 1972.

5. Learned counsel for Respondent No.2 also has not seriously disputed about the legal position and the effect of second proviso to Section 8 of the Act, 1972 and nothing is brought to the notice of this Court to deviate from the plain language used in the second proviso to Section 8 of the Act, 1972. The Respondent No.1, who is discharging statutory function and



W.P.(MD) No.17033 of 2020

supposed to be well versed with the provisions of the Act, 1972, failed to follow the mandatory restriction imposed under second proviso to Section 8 and exceeded his jurisdiction. In the circumstances, the impugned order, awarding an amount of Rs.92,399/- towards interest on the delayed payment of gratuity in favour of Respondent No.2 is bound to be declared as illegal and accordingly, the same is declared as illegal duly declaring that Respondent No.2 is entitled only for an amount of Rs.77,538/- towards interest on the delayed payment of gratuity. Consequently, the petitioner shall pay the said amount of Rs.77,538/- to Respondent No.2 as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this order.

6. This Writ Petition is partly allowed in terms indicated above. No costs. Consequently, connected miscellaneous petition is closed.

15.02.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes
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W.P.(MD) No.17033 of 2020

MUMMINENI SUDHEER KUMAR, J.

ABR

To

The Assistant Commissioner of Labour,
Thirunelveli.

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W.P.(MD) No.17033 of 2020

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