

The Management Vs. V.Rajendran

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Court : Chennai

Decided On : Jul-10-2014

Judge : D.Hariparanthaman

Appellant : The Management

Respondent : V.Rajendran

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 10.07.2014
CORAM THE HONOURABLE Mr.JUSTICE D.HARIPARANTHAMAN
W.P.NO.27296 OF 2013 AND M.P.NOS.1 AND 2 OF 2013 The Management S.439,
Salem Agricultural Produce Rs.Co-operative Marketing Society Ltd., 305,
Suramangalam Main Road, Salem 636 005.Petitioner Versus 1.V.Rajendran 2.The
Joint Commissioner of Labour (Appellate Authority under Payment of Gratuity Act,
1972) Coimbatore.

3.The Assistant Commissioner of Labour (The Controlling Authority under
Payment of Gratuity Act, 1972) Salem 636 001.Respondents PRAYER: Writ
Petition filed under Article 226 of the Constitution of India praying for the issuance
of Writ of Certiorari and Mandamus, to call for the records relating to the order
dated 21.07.2013 passed by the Appellate Authority of Payment of Gratuity Act,
The Joint Commissioner of Labour, Coimbatore in P.G.A.No.39 of 2012 confirming
the order dated 09.05.2011 passed in PG.No.72 of 2008 on the file of the
Controlling Authority under Payment of Gratuity Act, The Assistant Commissioner

of Labour, Salem, quash the same and further direct the respondents 2 and 3 to defer the payment of gratuity to the 1st respondent and consider the same subject to the finality to the challenge against the surcharge order.

For Petitioner : Mr.D.Shivakumaran For Respondent-1 : Mr.S.Venkata Raman

ORDER

Heard both sides.

By consent, the writ petition is taken up for final disposal.

2.The petitioner is a Co-operative Society.

The fiRs.respondent was an employee of the petitioner Society.

He reached the age of superannuation on 30.06.2007, after completing 32 years 9 months and 25 days of service and accordingly, he retired from service.

However, the gratuity payable to him was not paid.

There is no dispute over the same.

The non-payment of gratuity is due to the fact that surcharge proceeding under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 is pending against the fiRs.respondent.

Therefore, the fiRs.respondent approached the third respondent Controlling Authority under the Payment of Gratuity Act, 1972.

The defence taken by the writ petitioner was rejected and the Controlling Authority under the Payment of Gratuity Act directed payment of gratuity, vide order dated 09.05.2011 in PG.No.72/2008.

Thereafter, an appeal was filed by the petitioner Society, before the Appellate Authority under the Payment of Gratuity Act, the second respondent in the writ petition.

The Appellate Authority, dismissed the appeal in P.G.A.No.39/2012 on 21.07.2013.

3.The petitioner Society has now filed this writ petition to quash the aforesaid orders on the sole ground that the surcharge proceeding did not come to its logical conclusion, since the order dated 17.09.2013 in W.P.No.664 of 2009 quashing the surcharge proceeding was taken on appeal.

4.It is now represented that the petitioner Society has filed writ appeal against the aforesaid order of this Court.

In my view, even if the Society is successful in the writ appeal, they could not recover the amount of gratuity, that is payable to the fiRs.respondent.

5.As rightly contended by the learned counsel for the petitioner, Section 13 of the Payment of Gratuity Act gives protection to the amount of gratuity payable to an employee from being attached in execution of any decree or order of any civil, revenue or Criminal Court.

At this juncture, it is relevant to extract Section 13 of the Payment of Gratuity Act, 1972, as follows: 13.Protection of gratuity.

- No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under Section 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal Court. 6.Section 13 of the Payment of Gratuity Act gives protection to the gratuity earned by an employee for rendering the service.

Unless the employee is terminated from service, Section 4(6) of the Act cannot be invoked for forfeiture.

7.Admittedly, the fiRs.respondent was not dismissed.

Even in the case of termination, very limited scope is available for the employer for forfeiting the gratuity.

In view of the same, I have no hesitation to uphold the orders of the Authority.

8. Accordingly, the writ petition is dismissed.

The fiRs.respondent is permitted to withdraw the amount that is being deposited with the third respondent Controlling Authority.

As soon as the order of this Court is produced by the fiRs.respondent workman, the third respondent Controlling Authority is directed to release the amount deposited by the petitioner Society towards the gratuity payable to the fiRs.respondent workman, as expeditiously as possible, not later than two weeks from the date of producing a copy of this order.

No costs.

Consequently, connected miscellaneous petitions are closed.

10.07.2014 Index : Yes Internet : Yes TK To 1.The Joint Commissioner of Labour (Appellate Authority under Payment of Gratuity Act, 1972) Coimbatore.

2.The Assistant Commissioner of Labour (The Controlling Authority under Payment of Gratuity Act, 1972) Salem 636 001.

D.HARIPARANTHAMAN, J.

TK W.P.NO.27296 OF201310.07.2014

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