(2017) 02 MAD CK 0151

In the Madras High Court

Case No : W.P. (MD) No. 155 of 2017

S. Shanmugam APPELLANT

Vs

District Collector, Dindigul District RESPONDENT

Date of Decision : 13-02-2017

Acts Referred:
Payment of Gratuity Act, 1972 — Section 7(3A), Section 8

Citation : (2017) 153 FLR 170

Hon'ble Judges : Mr. S. Vaidyanathan, J.

Bench : Single Bench

Advocate : Mr. D. Venkatesh, Advocate, for the Petitioner; Mr. S. Sathiya Singh, Advocate, for the Respondent Nos. 1 and 2; Mr. K. Govindarajan, Advocate, for the Respondent No. 3

Final Decision : Allowed

Judgement

Mr. S.Vaidyanathan, J.—The prayer in this writ petition is for issuance of a Writ of Mandamus, directing the respondents more particularly, the 1st respondent to proceed under Section 3(1) of the Revenue Recovery Act as against the 3rd respondent to collect a sum of Rs.3,93,016/- with simple interest at the rate of 10% from 31.07.2010 till the date of payment as per the written requisition of the 2nd respondent made in Na.Ka.No.Aa6/3152/2016 dated 18.11.2016 and get a D.D in favour of the Assistant Commissioner of Labour, Dindigul, from the 3rd respondent and deposit the same before the 2nd respondent within a time frame.

2. The petitioner had the benefit of the order of the Controlling Authority dated 22.01.2016 in P.G.No.25/2015, directing the 3rd respondent to disburse the petitioner a sum of Rs.3,93,016/- towards gratuity with 10% interest per annum. The 3rd respondent submits that they have not preferred any appeal against the order of the Controlling Authority and it has become final. The petitioner made a representation to the 3rd respondent for payment of money and also sent a representation to the 2nd respondent to recover the amount from the 3rd

respondent by proceeding under the Revenue Recovery Act and the 2nd respondent Controlling Authority will have to communicate to the District Collector for recovering the amount from the 3rd respondent through the Tahsildar. The 2nd respondent has communicated to the 3rd respondent on 12.07.2016 that if the amount has not been paid, steps to recover the amount under the Revenue Recovery Act, would be initiated.

3. Admittedly, as on date, the amount approximately Rs.4,00,000/- has not been recovered in terms of the Payment of Gratuity Act. Even though the petitioner has sought for recovery of the amount ordered by the Controlling Authority together with interest at 10% per annum, it is relevant to consider Sections 7(3A) and 8 together with the Notifications issued under these two provisions. For the sake of convenience, the same are extracted below:-

"Section 7(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground."

"Notification under Section 7(3A)

S.O-874. - In exercise of the powers conferred by sub-section (3A) of Section 7 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies ten percent per annum as the rate of simple interest payable for the time being by the employer to his employee in cases where the gratuity is not paid within the specified period.

2.This notification shall come into force on the date of its publication in the Official Gazette."

"Section 8 Recovery of gratuity.--- If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

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

"Notification under Section 8

S.O.1032(E).- In exercise of the powers conferred by Section 8 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies 15 per cent per annum as the rate of compound interest, recoverable by the Collector for the time being, along with the amount of gratuity and payable to the person entitled thereto.

This notification shall come into force on the date of its publication in the Official Gazette."

4. If the amount has been paid or voluntarily deposited by the 3rd respondent, the interest payable under Section 7(3A) is 10%. As the 2nd respondent is going to proceed with revenue recovery proceedings, Section 8 will come into play and in terms of Section 8 of the Payment of Gratuity Act, the petitioner will be entitled to interest at 15%. However, since the petitioner has restricted his relief only to 10% interest, the interest would be 10%.

5. Hence, the 1st respondent is directed to ensure that the order of the Controlling Authority dated 22.01.2016 is implemented in its letter and spirit and ensure that the Subordinate Tahsildar recovered the amount from the 3rd respondent in terms of the Revenue Recovery Act and paid the same to the petitioner within a period of one month from the date of receipt of a copy of this order together with interest at 10% per annum. It is open to the 1st respondent to take disciplinary action against the Tahsildar, if he is not complied with the directions of the 1st respondent for failure of discharge of duties. If the 1st respondent/District Collector does not take any action, the interest portion can be recovered from his salary, by applying the principles laid down in the cases of Central Co-operative Consumers'' Store Ltd. v. Labour Court, H.P. At Shimla and another reported in AIR 1994 SC 23 and A. Sachidanandam, Macneil and Magor Kilburn Group Companies Employees'' Union, Chennai v. S. Srinivasan and others, reported in 2011 (5) LLN 696 (DB) (Mad).

With the above direction, this Writ Petition is allowed. No costs.