

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.39322 of 2015 &
M.P.No. 1 of 2015

M/s. Tamilnadu Magnesite Limited [PETITIONER]
Salem District.

Vs

- 1 The Controlling Authority
Under the Payment of Gratuity Act 1972 and
Assistant Labour Commissioner (Central)
Shastri Bhavan
No.26 Haddows Road
Chennai-600 034.
- 2 Sri. D.Balu [RESPONDENTS]

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of certiorari to call for the records in G.A.No.44/2014 on the file of the Controlling Authority Under the Payment of Gratuity Act 1972 and Assistant Labour Commissioner (Central) Shastri Bhavan No.26 Haddows Road Chennai-34 the 1st respondent herein quash the order dated 9.12.2014 passed therein.

For Petitioner : Mr.M.R.Raghavan

सत्यमेव जयते
O R D E R

Heard Mr.M.R.Raghavan, learned Counsel appearing for the petitioner.

2.The petitioner is the Tamil Nadu Magnesite Limited and the challenge in this Writ Petition is to an order passed by the first respondent, who is the Controlling Authority, under the provisions of the Payment of Gratuity Act, 1972 (in short 'Act').

3.At the first instance, this Court raised the issue of maintainability of the Writ Petition as against the impugned

order, since in terms of section 7(7) of the Act, the petitioner has an effective alternate remedy of appeal, as there is an appellate authority who has been constituted to deal with appeals filed against the orders passed by the Controlling Authority under sub-section (4) of section 7. In response to this query raised by the Court, the learned counsel for the petitioner submitted the light of the peculiar facts, the petitioner is before this Court.

4.It is seen that the impugned order was passed on 09.12.2014 and the same was received by the petitioner on 12.12.2014. In terms of sub-section (7) of Section 7 of the Act, the petitioner has to prefer an appeal within a period of sixty days from the date of receipt of the order of the Controlling Authority. The first proviso to section 7(7) of the Act states that the appellate authority if satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days. Therefore, the appeal could be presented not later than 120 days from the date of receipt of the copy of the order passed by the Controlling Authority. The second proviso to section 7(7) of the Act states that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4) or deposits with the appellate authority such amount.

5.The problem faced by the petitioner was not on account of their fault, but, on account of the fault committed by the office of the first respondent. It is seen that on 07.01.2015, the petitioner has deposited the entire amount as computed by the controlling authority by tendering the demand draft. The said demand draft ought to have been deposited by the Office of the first respondent on the said date itself or at the earliest. However, it appears that the Office of the first respondent did not take any effective steps to present the demand draft and they realised their mistake only after the said demand draft had lost its validity and by communication dated 03.07.2015, they addressed the petitioner, requesting them to re-validate the demand draft bearing No.032114 dated 07.01.2015 drawn on HDFC Bank, Salem. In response thereto, the said demand draft was re-validated by the petitioner within a short period and presented on 14.07.2015 along with the representation requesting for a certificate to be immediately issued to prefer an appeal before the appellate authority. Pursuant to the said request, after about ten days, on 24.07.2015, the Assistant Commissioner of Labour issued the certificate that the petitioner has deposited

the entire gratuity amount of Rs.7,54,610/-. Now, the issue would be as to whether the petitioner would be entitled to prefer the appeal.

6.The learned counsel for the petitioner fairly submits that the appellate authority has no power to condone the delay beyond the period of limitation of sixty days. Therefore, any appeal preferred beyond 120 days cannot be entertained.

7.Under normal circumstances, this contention is correct. But, in the peculiar facts and circumstances of the case that too for no fault committed by the petitioner, the petitioner should not be put to disadvantageous position from filing appeal before the appellate authority. The undisputed facts is that the petitioner has deposited the entire gratuity amount as computed on 07.01.2015. However, for the fault committed in the Office of the first respondent, the petitioner should not be penalised and therefore, for all purposes, the date on which the deposit was made shall be taken as 07.01.2015, which is admittedly well within a period of limitation. Therefore, when the petitioner prefers an appeal before the appellate authority, the appellate authority should entertain the appeal, without rejecting the same on the ground of limitation, since though the petitioner tendered the entire amount by way of demand draft on 07.01.2015, the Office of the Assistant Commissioner of Labour did not present the demand draft and allowed it to lapse and realised their mistake after about seven months and the petitioner had re-validated the same and only thereafter, the Assistant Commissioner of Labour has issued the certificate on 24.07.2015.

8.In the light of the above, the Writ Petition is disposed of granting liberty to the petitioner to file an appeal along with the copy of this order, before the appellate authority under the provisions of the Act, within a period of one week from the date of receipt of a copy of this order and the appellate authority shall entertain the appeal without rejecting the same on the ground of limitation, since the petitioner has effected the deposit of the amount as early as on 07.01.2015 and for all purposes, that date alone shall be taken as the date for computing the limitation. This order has been passed in the light of the peculiar facts and circumstances of the case and not to be treated as a precedent. Further, this Court has not gone into the merits of the contentions raised by the petitioner with regard to the impugned order and it is open to the petitioner to raise all contentions in the appeal.

Since Appellate Authority is not a party to the proceedings, Registry is directed to communicate of the copy of this order to the Regional Labour Commissioner (Central), 'Shastri Bhavan, Chennai 600 034.

The Writ Petition is disposed of accordingly. No costs.
Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

True Copy

Sub Assistant Registrar

To

1 The Controlling Authority
Under the Payment of Gratuity Act 1972 and
Assistant Labour Commissioner (Central)
Shastri Bhavan
No.26 Haddows Road
Chennai-600 034.

2. The Regional Labour Commissioner (Central),
'Shastri Bhavan, Chennai 600 006.

+1cc to Mr.R.Raghavan, Advocate sr.67329

W.P. No.39322 of 2015

ug[col]
srg 21/12/2015

सत्यमेव जयते

WEB COPY