

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 18681 of 2016

&

W.M.P. No. 16332 of 2016

The Management of Metro Transport  
Corporation (Chennai) Ltd., rep. by its  
Senior Deputy Manager, HRD Mr.P.Ravindran  
Pallavan House,  
Anna Salai, Chennai - 600 002. ..Petitioner

Vs.

1. Thiru A. Thanikatchalam
2. The Assistant Commissioner of  
of Labour - I,  
DMS Complex, I Floor,  
Teynampet,  
Chennai - 600 006.
3. The Joint Commissioner of Labour-I,  
DMS Complex, I Floor,  
Teynampet, Chennai - 600 006. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India  
praying for issue of a Writ of Certiorari to call for the  
records pertaining to the rejection order No. E/111/15 dated  
20.05.2015 on the file of the 3<sup>rd</sup> respondent herein and quash the  
same.

For Petitioner :: Mr.M. Chidambaram

For Respondents:: Mr.S.T. Varadarajulu for R1  
Mr.V. Jayaprakash Narayanan,  
Spl. Govt. Pleader for R2 & R3

O R D E R

The petitioner Corporation has approached this Court as  
against the rejection of the appeal filed by the petitioner on  
the ground of limitation as the appeal was filed beyond the  
period of 90 days.

2. The facts of the case are as follows:

The 1<sup>st</sup> respondent was employed as a Driver in the petitioner Corporation and he attained superannuation on 31.07.2004. The petitioner Corporation settled the Gratuity amount of Rs.1,12,607/- based on his last drawn salary and Dearness Allowance. After the retirement of the 1<sup>st</sup> respondent from the petitioner Corporation, the State Government had announced enhanced Dearness Allowance. Due to delay in sending the Dearness Allowance by the State Government, the 1<sup>st</sup> respondent could not be paid the difference in Gratuity Amount, based on enhanced Dearness Allowance. Therefore, the 1<sup>st</sup> respondent claimed difference in Gratuity Amount before the Assistant Commissioner of Labour I, Teynampet, Chennai, the 2<sup>nd</sup> respondent herein. On considering the facts and circumstances of the case, the Assistant Commissioner of Labour I, Chennai, passed an award on 01.10.2014 directing the petitioner to pay a sum of Rs. 26,445/- along with interest @ 10%. The said award was challenged by the petitioner by way of an appeal before the 3<sup>rd</sup> respondent. However, the said appeal was rejected on the ground of limitation and aggrieved by the said rejection, the petitioner has preferred the present writ petition.

3. Heard Mr. M. Chidambaram, learned counsel for the petitioner and Mr.S.T. Varadarajulu, learned counsel for the 1<sup>st</sup> respondent and Mr.V. Jayaprakash Narayanan, learned Special Government Pleader for R2 & R3.

4. Mr.S.T. Varadarajulu, learned counsel for the 1<sup>st</sup> respondent would submit that the award was passed on 01.10.2014 and the amount of Rs.53,338/- was deposited by the petitioner on 19.12.2014 within the period of limitation. However, the appeal was filed on 05.03.2015 with a delay of 150 days. If the appeal is not filed within 90 days, then the authority has got no power to condone it and therefore, the Appellate Authority rightly rejected the petitioner's appeal. The learned counsel relied on the judgment of this Court in Special Officer, Salem Co-operative Primary Lands V. Deputy Commissioner of Labour, reported in CDJ 1996 MHC 1048 and another decision of this Court in Commissioner, Trichirapalli Corporation V. Appellate Authority; Controlling Authority under Payment of Gratuity Act and Others reported in 2013 CJ (Mad) 138 and submitted that if the appeal is filed beyond the period of limitation, as per the Act, the authority has got no power.

5. No doubt, the authority has got no power to entertain the appeal when limitation period has been clearly prescribed in the statute and it is trite law that law of limitation will be applicable. However, in this case, within 90 days, the petitioner had deposited the award amount, ie. on 19.12.2014, which is a pre-condition for filing the appeal. The act of

depositing the award amount, is a step taken by the petitioner, prior to filing of the appeal and probably, due to unforeseen circumstances, the petitioner was unable to file the appeal in time. Even as per the judgment in 2013 CJ (Mad) 138 (cited supra) relied on by the learned counsel for the 1<sup>st</sup> respondent, it has been observed by this Court that an appeal filed without making pre-deposit, is no appeal. Even that judgment is in support of the petitioner. In this case, the deposit has been made in time, which is a pre-requisite for filing the appeal and only the appeal papers have been filed beyond time. Substantial compliance of the statutory provisions has been made by the petitioner by depositing the award amount, which is a pre-condition for filing the appeal and it cannot be said that the petitioner filed the appeal beyond time. The act of filing the appeal papers cannot be termed as beyond limitation period, since the petitioner already initiated the filing of appeal by making pre-deposit. When the pre-condition has been complied with, by depositing the award amount, the authority should have exercised his discretion and entertained the appeal. Therefore, the order of the Appellate Authority is liable to be set aside.

6. Moreover, no prejudice would be caused to the 1<sup>st</sup> respondent, since the award amount has already been deposited. What is required to be done is that the 3<sup>rd</sup> respondent has to hear the matter on merits. If the 1<sup>st</sup> respondent is able to get favourable orders, it is always open to the 1<sup>st</sup> respondent to withdraw the money deposited. In case, if the petitioner is not given an opportunity to contest the matter, it will be in violation of the petitioner's right. Therefore, the impugned order is set aside and the writ petition is allowed. The 3<sup>rd</sup> respondent is directed to entertain the appeal and decide the matter within 45 days from the date of receipt of a copy of this order. However, it is cautioned that the petitioner should be vigilant enough to file the appeal in time, especially, when it involves the rights of employees. No costs. Connected W.M.P. is closed.

nv

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Assistant Commissioner of  
of Labour - I,  
DMS Complex, I Floor,  
Teynampet,  
Chennai - 600 006.

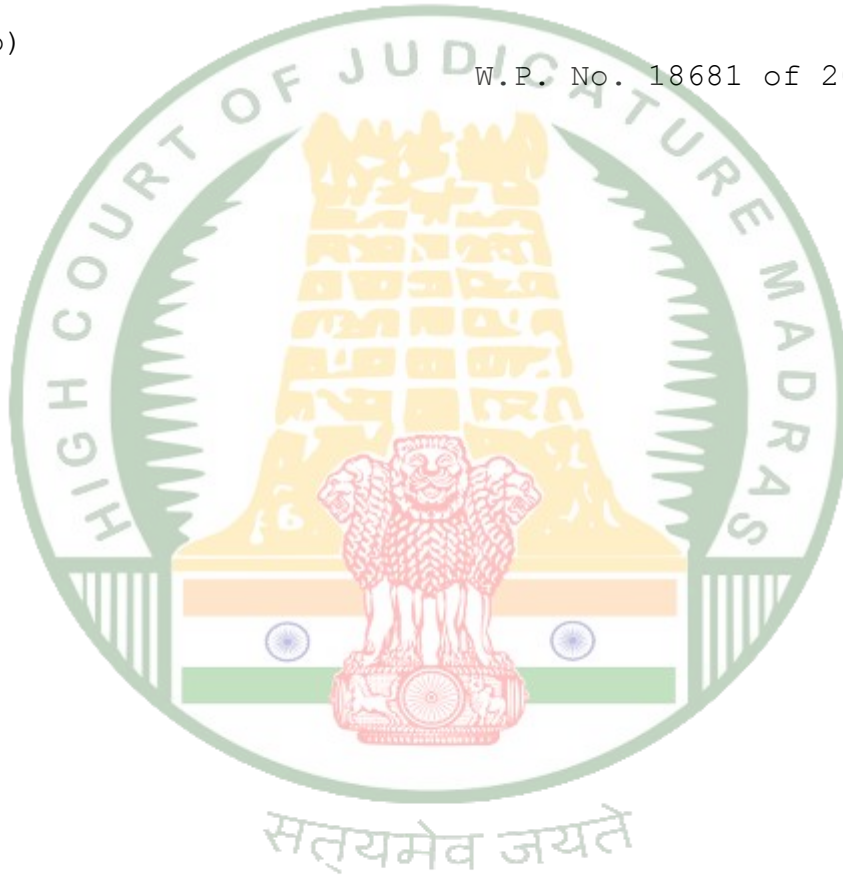
2. The Joint Commissioner of Labour-I,  
DMS Complex, VI Floor,  
Teynampet, Chennai - 600 006.

3. The Senior Deputy Manager, HRD  
Mr.P.Ravindran, The Management  
of Metro Transport Corporation  
(Chennai) Ltd, Pallavan House,  
Chennai-2.

+ 1 cc to M/s.S.T.Varadarajulu, Advocate SR 35509

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