



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2016

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WEB COPY

Writ Appeal (MD) Nos.1026 to 1037 of 2016

and

C.M.P (MD) Nos.6256 to 6278 of 2016

The Commissioner,
Tiruchirapalli Corporation,
Tiruchirapalli.

... Appellant in all W.As

Vs.

1.The Appellate Authority under the
Payment of Gratuity Act,
(Joint Commissioner of Labour),
Madurai 20.

2.The Controlling Authority under the
Payment of Gratuity Act and
Assistant Commissioner of Labour,
Tiruchirapalli.

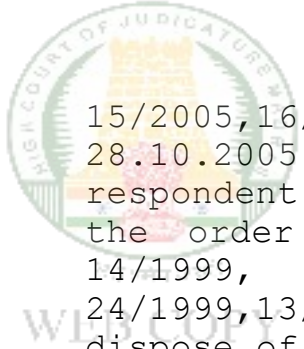
... Respondents in all W.As

3.Tmt.Rengammal	...	3 rd Respondent in WA (MD) No.1026/2016
3.Tmt.Muniyammal	...	3 rd Respondent in WA (MD) No.1027/2016
3.Maran	...	3 rd Respondent in WA (MD) No.1028/2016
3.Tmt.Pappa	...	3 rd Respondent in WA (MD) No.1029/2016
3.Tmt.Palaniyayee	...	3 rd Respondent in WA (MD) No.1030/2016
3.Tmt.Angammal	...	3 rd Respondent in WA (MD) No.1031/2016
3.Kaliammal/Karuppan	...	3 rd Respondent in WA (MD) No.1032/2016
3.Karuppayee/Kattuppan	...	3 rd Respondent in WA (MD) No.1033/2016
3.Mookkan	...	3 rd Respondent in WA (MD) No.1034/2016
3.Chinnammal/Malaiyan	...	3 rd Respondent in WA (MD) No.1035/2016
3.Mariyappan/Veeran	...	3 rd Respondent in WA (MD) No.1036/2016
3.Muthammal	...	3 rd Respondent in WA (MD) No.1037/2016

Prayer in Writ Appeals:- Writ Appeal filed under Clause 15 of Letters Patent against the Order dated 14.12.2006 made in W.P. (MD) No.1546,1547,1548,1549,1550,1551,1552,1553,1554,1555 and 1557 of 2006 on the file of this Court, respectively.

Prayer in Writ Petitions:-

Writ Petition filed under Article 226 of the Constitution of India, requesting this Court to issue a Writ of Certiorari and Mandamus calling for the records of the first respondent relating to I.A.Nos.8/2005,9/2005,10/2005,11/2005,12/2005,13/2005,14/2005,



15/2005, 16/2005, 17/2005, 18/2005, 19/2005 respectively, dated 28.10.2005 and quash the same and consequently direct the first respondent to number the appeal filed by the petitioner against the order of the second respondent in P.G.Nos.5/1999, 11/1999, 14/1999, 4/1999, 7/1999, 2/1999, 3/1999, 9/1999, 6/1999, 25/1999, 24/1999, 13/1999 respectively, dated 10.08.2000 and hear and dispose of the same on merits.

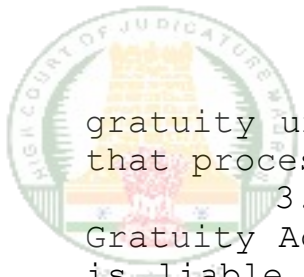
For Appellant : No appearance
 For Respondents 1&2 : Mr.V.R.Shanmuganathan,
 Special Government Pleader.

COMMON JUDGMENT

(Judgment of the Court was delivered by **NOOTY.RAMAMOHANA RAO, J**)

None appears for the appellant.

2These appeals are preferred by the Corporation calling in question the correctness of the order and judgment rendered on 14.12.2006 in a batch of writ petitions in W.P(MD)Nos.1546 of 2006 etc., batch. The learned single Judge has adverted to in great detail the factual backdrop leading up to the writ petitions. The employees/ respondent workmen claimed payment of gratuity and that was resisted by the appellant corporation on the ground that death cum retirement gratuity amount has already been paid and hence the provisions of the Payment of Gratuity Act, 1972 could not be applied to them. That objection has not been found favour with the Controlling Authority under the Payment of Gratuity Act and Assistant Commissioner of Labour, Trichy and the respective claim petitions made by the employees concerned were allowed and insofar as payment of interest for the delayed payment of gratuity the Controlling Authority negatived the right to receive interest. Then the matter was carried in revision to the Appellate Authority under the Payment of Gratuity Act cum Joint Commissioner of Labour. The Appellate Authority held that the employees/workmen are entitled to get interest for the delayed payment of gratuity from the date on which it became due. Calling in question the said order passed by the Appellate Authority, the Corporation filed writ petitions in W.P(MD)Nos.1546 of 2006 etc., batch. Those writ petitions were all dismissed holding that the respective employees/workmen/ respondent in the respective writ petitions are entitled to get interest for the belated payment. The matter was then carried by preferring writ appeals in W.A.Nos.2156 to 2164 of 2004 and those writ appeals were also dismissed holding that since the appellant Corporation has not challenged the primary order of the Controlling Authority holding the employees/workmen as entitled to payment of gratuity under the Payment of Gratuity Act, 1972. It is, thereafter, the Corporation woke up and went before the Appellate Authority under the Payment of Gratuity Act, 1972 seeking to prefer an appeal against the order of primary authority holding that the respective employees as entitled to receive



gratuity under the Act. The huge amount of delay that occurred in that process in preferring the appeals has not been condoned.

3. It will be appropriate to notice that the Payment of Gratuity Act, 1972 being a beneficial social piece of legislation is liable to be construed in the manner which would enhance the objective for which the statute has been ushered in by the Parliament.

4. Section 7 of the Act dealt with the matter of determination of amount of gratuity. Under sub-section (4) thereof, if there is any dispute as to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim of an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

5. The Controlling Authority is thereafter entitled to proceed further and pass appropriate order. Under sub-section (7) of Section 7 of the Act, any person aggrieved by an order under sub-section (4) passed by the Controlling Authority may, within sixty days from the date of receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in that behalf.

6. Thus, the time limit of sixty days is prescribed for preferring an appeal against the exercise of power by the Controlling Authority under sub-section (4) of Section 7 of the Act. The proviso incorporated under sub-section (7) of Section 7 of the Act is relevant for our inquiry. It reads as under:-

"Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is 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."

Thus, the Appellate Authority can legitimately entertain an appeal preferred within the first sixty days, from the date of receipt of the order passed by the Controlling Authority under sub-section (4) of Section 7 or within the further extended period of limitation of 60 days as provided for under the proviso to sub-section (7) of Section 7 of the Act.

7. It is, therefore, a case where the power to condone the delay in preferring any appeal under sub-section (7) of Section 7 is circumscribed by the Parliament. There was no power vested with the Appellate Authority to condone the delay beyond the extended period of 60 days provided for under the proviso to sub-section (7) of Section 7 of the Act.

8. In that view of the matter, the Appellate Authority has refused to condone the huge delay of four years in preferring the



appeals. Challenging the correctness of the order refusing to condone such a huge delay, the writ petitions have been preferred and the learned single Judge has dismissed those writ petitions finding no merit therein. Hence, these writ appeals.

9. From the narration of the events, it becomes clear that in the earlier round of litigation, the same appellant corporation has raised the issue relating to the right of granting interest for delayed payment of gratuity. At that stage, the Corporation had clearly every right to challenge, the right of the employee concerned for payment of gratuity under the Act itself. However, the Corporation has not chosen to call in question the adjudication made by the Controlling Authority holding that the employee concerned is entitled for payment of gratuity under the said Act. It is a salutary principle of law that when a *lis* is brought before a Court, the whole of the claim is liable to be included therein in respect of the cause of the action. But however, it shall be open to the suitor to relinquish any portion of his claim. Therefore, if the suitor who is entitled to claim more than one relief in respect of the same cause of action omits to sue for all such other reliefs, he shall not afterwards sue for any such relief so omitted, if the leave of the Court at the time of instituting the claim is not obtained. The above salutary principle is incorporated under Order II, Rule 2 C.P.C and it rested upon a public policy not to encourage staggered litigations. Therefore, when the writ petitions were instituted by the very same appellant Corporation, on the previous occasion, it had a right to seek a relief against the very right of the respective employees to receive gratuity under the Payment of Gratuity Act, 1972. Since the Corporation has not chosen to call in question the correctness of the adjudication made by the Controlling Authority declaring the employee concerned as entitled to seek payment of gratuity under the Act, notwithstanding receiving 'death cum retirement gratuity', the appellant Corporation shall be deemed to have abandoned or omitted to seek the said relief while instituting earlier writ petitions and no leave admittedly had been obtained from the Court to sue only for the limited extent of calling in question the correctness of the order directing the Corporation to pay interest on delayed payment of gratuity. Therefore, the appellant Corporation is not justified in maintaining the present writ petitions for its failure to obtain leave from this Court when it instituted a batch of writ petitions in W.P(MD)Nos.1546 of 2006 etc., The present writ petitions are thus instituted contrary to the well laid out principles of law.

10. It is also equally settled principle of law that when a statute provides for a far shorter duration of period of limitation for bringing an appropriate *lis* before the Court for its adjudication, it shall not be open to construe and confer a larger period of limitation. Equally, it is well settled that where power to enlarge the period of limitation or what is

otherwise in effect known as condonation of delay in preferring any such appeal is limited to the extent of periods specified therein, the Courts cannot apply the general principles enunciated under Section 5 of the Limitation Act, 1963. The principle in this regard has been clearly spelt out by the Supreme Court in **Hukum Narain Yadav v. Lalit Narain Mishra, 1974 AIR 480 and in Union of India Vs. Popular Construction Co., 2000 Supp(3) SCR 619.**

11. In that view of the matter, we are constrained to hold that the provision under Section 5 of the Limitation Act, 1963 cannot be invoked by the appellant Corporation before the Appellate Authority for condoning the delay beyond 60 days as contemplated and provided for under sub-section (7) of Section read with the proviso thereunder. We are, therefore, clearly of the opinion that for more than one good reason, the appeals lack any merit and they are accordingly dismissed at the admission stage. However, we may hasten to add that this Order is not a pronouncement upon the right of the workmen to receive gratuity under the provisions of Payment of Gratuity Act, 1972 despite receiving 'death cum retirement gratuity'. That question was left open to be debated in an appropriate case. No costs. Consequently, C.M.P (MD) Nos. 6256 to 6278 of 2016 are closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Appellate Authority under the
Payment of Gratuity Act,
(Joint Commissioner of Labour), Madurai 20.
2. The Controlling Authority under the
Payment of Gratuity Act and
Assistant Commissioner of Labour, Tiruchirapalli.
3. The Commissioner, Tiruchirapalli Corporation, Tiruchirapalli.

+1 cc to The Special Government Pleader in SR.No. 35631

sms

CSL/SKS-RR/SAR-I/01.08.2016 :5p/5c

Writ Appeal (MD) Nos. 1026 to 1037 of 2016
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