

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.4144 of 2017

N.Sankar

.. Petitioner

Vs.

1.The Joint Commissioner of Labour,
DMS Campus, Teynampet,
Chennai - 6.

2.The Assistant Commissioner of Labour,
Office of Deputy Commissioner of
Labour II, Teynampet,
Chennai - 6.

3.The Management of
Mr.E.Thirunavukarasu,
Civil Engineers and Contractors and
Group

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining to the order passed in Na.Ka.No.E/397/2016 dated 05.02.2016 passed by the first respondent and quash the same and consequently direct the first respondent to consider the payment of gratuity appeal filed by the petitioner along with condone delay application filed by the petitioner to challenge the order in payment of Gratuity 25 of 2010 dated 19.03.2015.

For Petitioner .. Mr.P.G.Thiyagu

For Respondents .. Mr.R.A.S.Senthilvel,
Addl. Govt. Pleader
for R1 & R2

ORDER

Mr.R.A.S.Senthilvel, learned Additional Government Pleader takes notice for respondents 1 and 2.

2.The petitioner made an appeal to the first respondent against the order passed by the original authority. As the appeal was made beyond the statutory period, the same was rejected by the impugned order and hence the present writ petition.

3.Learned counsel appearing for the petitioner submits that the legislation itself is a social and welfare one and therefore, the interpretation which benefits the employee will have to be given. In any case, the power under Article 226 of The Constitution of India is rather wide and therefore, the petitioner will have to be given an opportunity. Reliance has been made on the judgment of the Gujarat High Court in Backbone Projects Limited Vs. Yogesh Bhavchandbhai Gadhiya and Another (2009 (4) LLJ 783).

4.Learned Additional Government Pleader appearing for respondents 1 and 2 submits that in the statute, mandatory period has been prescribed and the same cannot be modified or varied and hence no interference is required.

5.The power under Article 226 of The Constitution of India is rather wide. What the petitioner wants is an opportunity to contest the case on merits. There is no material to contradict the averments made in the application filed seeking condonation of delay. Though Section 5 of the Limitation Act does not have an application per se the principle governing therein can be applied to a proceeding emanating under the statute.

6.In such view of the matter, the order impugned is set aside and the writ petition is allowed. The petitioner is given four weeks from the date of receipt of a copy of the order to represent the papers. On such representation of the papers, the first respondent is directed to dispose of the appeal on merits and in accordance with law, within a period of four months thereafter. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mmi

To

1.The Joint Commissioner of Labour,
DMS Campus, Teynampet,
Chennai - 6.

2.The Assistant Commissioner of Labour,
Office of Deputy Commissioner of
Labour II, Teynampet,
Chennai - 6.

+1cc to M/s P.G.Thiyagu, Advocate, S.R.No.14674

+1cc to the Government Pleader, S.R.No.14852

NR(CO)

EU 23.03.17

W.P.No.4144 of 2017



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