

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2018

CORAM
THE HON'BLE DR.JUSTICE S.VIMALA

W.P.NO.31578 of 2004

K.Mathiaharan
Ex-Managing Director, Southern Brick Works Ltd
No.12, K.K.R.Avenue, No.131, Madhavaram High Road
Perambur, Chennai - 600 011.

..Petitioner

Vs.

1.The Assistant Commissioner of Labour
O/o Deputy Commissioner of Labour-II
Chennai - 600 006.

2.The Tahsildar
Purasawalkam - Perambur Division
Chennai - 600 011.

3.P.S.Sampathkumar
4.C.Jayapandian
5.S.Chithiraipazam
6.K.Shanmugham
7.R.Durairaj
8.K.Venu
9.S.Muthupandi
10.S.Fathima
11.M.Manoranjitham
12.C.Velayudham
13.P.Sakthivel
14.M.Selvaraj
15.K.Selvam
16.G.Masi
17.S.V.Thanikachalam
18.P.Ruknarayanan
19.S.Anthonystevan
20.C.Kirubakaran
21.Valliammai
22.Rajammal
23.C.Sivalingam
24.C.Sahadevan
25.D.Jayaraman
26.R.Krishnamoorthy
27.S.Mayan

28.D.Munibooshanam
29.A.Mayan
30.P.Mahendran
31.M.Chandran
32.P.Radhakrishnan
33.C.Sivalingam
34.K.Venkatesan
35.M.Elumalai
36.M.Panchatcharam
37.M.Nagooran
38.Yagathammal

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent in G.P.No.119 of 2002 to 154 of 2002 dated 21.7.2003 and consequential notice issued by the second respondent in No.E2/24510/2004 dated 05.07.2004 and quash the same.

For Petitioner :Mr.S.Parthasarathy
For Respondents :Mr.N.Srinivasan, Government Advocate-
For RR1&2
Mr.R.Rajesh Vivehananthan - for R3 to
R9, R12 to R16, R18 to R24, R27, R29
to R31, R33 to R38
No appearance - for
R10,R11,R17,R25,R26,R28 and R32.

O R D E R

This writ petition has been filed by the management, challenging the order passed by the first respondent in G.P.No.119 of 2002 to 154 of 2002 dated 21.7.2003, ordering payment of gratuity to 36 employees totalling Rs.6,48,020/-. This writ petition also challenges the consequential notice issued by the second respondent dated 05.07.2004, whereunder direction has been issued to the second respondent to implement the order of payment of gratuity, as otherwise, proceedings would be initiated under Revenue Recovery Act. Both orders are sought to be quashed.

2. The petitioner herein is the Managing Director of Southern Brick Works Limited, Chennai, having registered office at Chennai. Respondents 3 to 38 are the employees of the petitioner herein and they have filed petitions in G.P.Nos.119 to 154 of 2002, claiming gratuity. It is the case of the workmen that they resigned from the company on 03.04.1999. The first respondent has passed an order, granting a sum of Rs.6,48,020/- towards gratuity totally to the respondents 3 to 38. As the amount was not paid, subsequently the second

respondent has issued the impugned proceedings, calling upon the petitioner / management to pay the amount within a period of 14 days from the date of receipt of the notice, failing which contemplation of recovery proceedings by invoking the provisions of Revenue Recovery Act. These proceedings are under challenge by the management.

3. It is the case of the learned counsel for the management is that the order passed by the authority under Payment of Gratuity Act was an ex parte order and no sufficient opportunity was given to the management. The contention of the learned counsel for the petitioner is that authority has mentioned in the impugned order that the respondent therein / management did not appear and did not file counter, but nowhere in the impugned order, it was stated that notice was served upon the petitioner herein and the petitioner failed to appear before the authority.

4. The perusal of the impugned order would go to show that the enquiry had been conducted on several days. The authority has mentioned that nobody entered appearance on behalf of the management and did not file counter. The implication is that despite service of summons, the respondent did not appear. If it is a case of non service of summons, the authority would have mentioned that notice has been returned as unserved. Therefore, even though it is not expressly stated that no notice was served, still the implication is that notice has been served and thereafter the management did not appear. Therefore, as the petitioner did not chose to appear before the authority and contest the matter, it is not open now to the petitioner to say that it was an ex parte order and hence it is not sustainable.

5. The next contention raised is that it is open to the petitioner to file an appeal under Section 7 of the Act and as there would be a bar for filing the appeal, liberty shall be given to the petitioner to approach the appellate authority. Needless to point out that the time limit for presentation of appeal is 60 days and further time of 60 days is permitted, provided there is sufficient cause for the delay in filing. The petitioner has not preferred the appeal within the time limit prescribed above. When the statute prescribes the period of limitation, this court has no authority to prescribe a special time limit. Therefore, the request of the petitioner cannot be legally accepted by this Court.

6. Under the circumstances, the writ petition itself is not maintainable and it is liable to be dismissed and it is accordingly dismissed. No costs. Consequently, connected W.M.P. is closed. It is open to the second respondent to proceed

with the recovery proceedings and to pay the gratuity to each of the respondents 3 to 38.
kst

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner of Labour
O/o Deputy Commissioner of Labour-II
Chennai - 600 006.

2.The Tahsildar
Purasawalkam -Perambur Division
Chennai - 600 011.

+lcc to Mr.S.Parthasarathy, Advocate S.R.No.67300

+lcc to the Government Pleader, S.R.No.68179

KR/19/11/18

W.P.No.31578 of 2004



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