



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.439 of 2018

and

W.M.P. (MD) No.431 of 2018

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The Secretary,
Home Church,
C.S.I., Nagercoil,
Agasteeswaram Taluk,
Kanyakumari District.

.. Petitioner

Vs.

1. The Controlling Authority under the
Payment of Gratuity Act,
(Assistant Commissioner of Labour),
Tirunelveli - 627 002.

2. M.Simson Daniel

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records and proceedings of the 1st respondent in Case No.PG.48/2016 dated 23.11.2016 as well as the subsequent order dated 11.10.2017 in Case No.PG(M) No.18/2017 in P.G.48/2016 and quash the same.

For Petitioner	: Mr.M.P.Senthil
For Respondent No.1	: Mr.S.Saravanan
For Respondent No.2	: Mr.G.Ramanathan

ORDER

The petitioner is a religious body. The second respondent was employed in the petitioner's establishment. He retired from service. The petitioner applied to the first respondent seeking payment of gratuity. The second respondent admittedly lodged his application after the limitation period. In the condone delay petition, notice was ordered. The petitioner appeared before the authority and the delay was condoned. Thereafter, notice in the impugned petition was issued and the same was received by the petitioner herein, but, after the hearing date. Instead of verifying as to what happened in the office of the first respondent, the petitioner chose to send a letter requesting the authority to give another date. The authority did not respond, but proceeded to pass final orders on an exparte basis. Thereafter, the petitioner had approached the first respondent and wanted to have the said order set aside. The petitioner has made an averment in the affidavit filed in support of the writ petition that the petitioner was advised to file application for setting aside the order in camp sitting at Nagercoil. By that time, the camp sitting was already conducted. The limitation had already



expired. Therefore, the set aside application was dismissed by order dated 11.10.2017. The petitioner questions not only the exparte order but also the order dated 11.10.2017 dismissing the petitioner for condoning the delay in filing the set aside petition.

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2. Heard the learned counsel on either side.

3. In the interest of justice, the order impugned in the writ petition stands quashed. The writ petition did not receive the notice in the main hearing within time. It is this that led to their being set exparte. Therefore, this Court is inclined to quash the orders impugned in the main writ petition. However, the writ petitioners will have to be put on terms.

4. The learned counsel for the petitioner, on instructions, submits that a sum of Rs.50,000/- shall be paid forthwith without prejudice to their contentions in the main gratuity application to the second respondent herein. Such an amount shall be paid within four weeks from the date of receipt of this order copy. It is made clear that if the second respondent once again succeeds in his application, this amount will be adjusted. If the petitioner herein succeeds in the gratuity application, the said sum of Rs.50,000/- will not be recovered. The first respondent is directed to restore the gratuity application and hear the same on merits and pass orders after affording opportunity to both the parties upon proof of payment of Rs.50,000/- within the period stipulated above. Upon such restoration, the first respondent shall dispose of the gratuity application within a period of three months thereafter.

5. This writ petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

The Controlling Authority under the
Payment of Gratuity Act,
(Assistant Commissioner of Labour),
Tirunelveli - 627 002.

+1cc to Mr.M.P.Senthil, Advocate Sr.No.45708

+1cc to Mr.R.Subramania pillai, Advocate Sr.No.45669

ARUL

VB/SV/MMS/SAR4/22/05/2018/2P/4C