

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

CORAM

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 7817 & 7818 of 2015

The Management of Piramal Enterprises Ltd.,
Rep.by its Vice President,
(Formerly known as Piramal Health Care Ltd),
Ennore Express Highway,
Ennore, Chennai - 600 057. ...Petitioner in both W.Ps.

Vs.

1. Assistant Commissioner of Labour,
(Controlling Authority for the Payment of Gratuity Act),
Deputy Commissioner of Labour Office,
Chennai - 600 006.

2. S. Sebastian ...Respondent in W.P.No.7817 of 2015

1. Assistant Commissioner of Labour,
(Controlling Authority for the Payment of Gratuity Act),
Deputy Commissioner of Labour Office,
Chennai - 600 006.

2. A. Lucas ...Respondent in W.P.No.7818 of 2015

Common Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified, calling for the records of the 1st respondent in P.G.I.A.Nos.49 & 50 of 2012 respectively dated 17.07.2014, quash the same and forbearing the 1st respondent from proceeding further in P.G.Nos.279 & 280 of 2014 respectively.

For Petitioner : Mr. R.Parthiban
[in both W.Ps.]

For Respondent : Mr.J.Ramesh,
[in both W.Ps.] Additional Government Pleader for R1

Mr.T.R.Ravi for R2

COMMON ORDER

The order dated 17.07.2014 passed by the first respondent in P.G.I.A.Nos.49 & 50 of 2012 are sought to be quashed in the present writ petition.

2. The writ petitioner is the Management of Piramal Enterprises Limited, which is a Public Limited Company registered under the Companies Act. The learned counsel appearing on behalf of the writ petitioner states that the gratuity application, under the Payment of Gratuity Act, 1972, was filed by the second respondent/workman belatedly along with a condone delay application to condone the delay of 525 days. The said application was allowed by the first respondent on irrelevant grounds which made the writ petitioner to file the present writ petition.

3. The learned counsel for the writ petitioner simultaneously contends that such a long delay in filing the application before the competent authority cannot be entertained and the delay is enormous numbering about 525 days and the second respondent workman has not explained any reasons and therefore the order impugned is unfair and liable to be scrapped.

4. In support of the said contentions, the learned counsel for the writ petitioner relied upon the judgment of this Court in the case of Tamil Nadu Mercantile Bank Ltd (represented by its Chairman), Tuticorin Vs. Appellate Authority under the Tamil Nadu Shops and Establishments Act, Madurai [reported in (1990 I LNN 457)] and the relevant paragraphs is extracted hereunder:

"8.....If a party wants to get over the rules, he must have sufficient explanation therefor and unless such explanation is tendered, it is not open to any Court to say that interests of justice would require the Court to ignore rules of limitation.

14.....In our view, each case has to be decided on the facts and circumstances of the case. Length of the delay is a relevant matter to be taken into account while considering whether the delay should be condoned or not. It is not open to any litigant to fix his own period of limitation for instructing proceedings for which law has prescribed periods of limitation.

17..... We are of the view that the question of limitation is not merely a technical

consideration. Rules of limitation are based on principles of sound public policy and principles of equity. Is a litigant liable to have a Damocles' sword hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent?

22.....If as in the case we come to the conclusion that the condonation of delay was wholly unjustified, then there would be no need for any further proceedings before the first respondent. If, on the other hand, this Court comes to the conclusion that the delay had been properly condoned, then only the question of further proceedings before the first respondent would arise. To apply the dictum of the Supreme Court in the aforesaid two cases to this case, would mean that the management would have to wait for years for the conclusion of the proceedings before the Labour Court to get the decision on the question of limitation canvassed before us. That would be really putting the cart before the horse.

25.....When there is "no cause" for the delay it cannot be treated as "sufficient cause."

26....Learned counsel for the second respondent vehemently contended that the second respondent is a poor dismissed employee and his case should be viewed with compassion. In our opinion, rules of limitation are not different for poor man and rich man. The law has to be applied equally whether the concerned litigant is rich or poor. Hence, this contention cannot be accepted."

5. In the case of P.K.Ramachandran Vs. State of Kerala and Anr. [reported in (1997) 7 SCC 556], the Supreme Court held as follows:

"6....Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside."

6. In the case of Postmaster General and Ors. Vs. Living Media India Limited and Anr. [reported in (2012) 3 SCC 563], the Supreme Court held as follows:

21....Before considering whether the reasons for justifying such a huge delay are acceptable or not, it is also useful to refer the decisions relied on by Mr.Soli J. Sorabjee, learned Senior Counsel for the respondents.

24.....

'29...It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do no resort to dilatory tactics but avail their legal remedies promptly. Salmond in his jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.'

29. Condonation of delay is an exception and should not be used as an anticipated benefit for the Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

7. In the case of Kamala Vs. The Presiding Officer-cum-Chairperson, DRAT [reported in (2012) 6 CTC 481], the Division Bench of this Court observed as follows:

"12....We have perused the Affidavit filed in support of the petition filed before the Debts Recovery Tribunal seeking to condone the delay. That application is silent about the number of days delay in filing the application. When the number of days delay to be condoned itself is silent, consequently there cannot be any explanation for that."

8. Relying on the above judgments, the learned counsel for writ petitioner submits that such a huge unexplained delay of 525 days cannot be condoned by the first respondent. Thus, the writ petition is to be allowed.

9. The petition filed by the second respondent/workman along with the gratuity application states that he was not aware of the claim for gratuity and he was not having any knowledge about the application to be filed before the competent authority. The second respondent/workman has further stated in

the condone delay application that the Management has also not informed the claim of gratuity to him and being a workman he is unaware of these proceedings and therefore the delay occurred at the instance of the Management and he could not be denied the benefit of gratuity under the provisions of Payment of Gratuity Act, 1972. In normal circumstances, the Management is bound to inform such welfare legislation to the said workman. When the workman has specifically stated that he was not aware of the legal proceedings to be initiated for the purpose of claiming gratuity. This Court is of the considered opinion that the delay condoned by the first respondent is in consonance with the principles and there is no infirmity.

10. Payment of Gratuity Act is a welfare legislation. Thus the rights occurred in this regard cannot be denied for the workman. In the normal circumstances, the payment of gratuity, being a right of an employee, to be complied with in all circumstances and only the workman is entitled to claim gratuity by way of an application and not otherwise. Merely, the gratuity application should not deprive the employee from falling under the welfare legislation. This apart, the technical reasons of delay should not defeat the purpose and breach of the Act. Such a delay occurred on account of the unawareness of the workman for filing an application for claiming gratuity and therefore, the order of the first respondent is candid and there is no infirmity.

11. The writ petitioner, being a Management, should also adopt a liberal approach on such technical issues and they are entitled to agitate the merits of the case rather than objecting the condone delay application. Undoubtedly, the petitioner's case is to be decided on merits, when the application is taken up for adjudication. Contrarily the petitioner cannot protract the issue by adjudicating the condone delay application, which was allowed by the first respondent.

12. This being the view of this Court, the order impugned dated 17.07.2014 passed in P.G.Nos. 49 & 50 of 2014 are in consonance with the established principles of law and there is infirmity.

13. With the above observations, the writ petitions are dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner of Labour,
(Controlling Authority for the Payment of Gratuity Act),
Deputy Commissioner of Labour Office,
Chennai - 600 006.

+1 cc to M/s.R.Parthiban, Advocate Sr.No. 83325
+1 cc to M/s.T.R.Ravi, Advocate Sr.No.83956
+1 cc to The Government Pleader, Sr.No. 83965
+1 cc to M/s.T.R.Ravi, Advocate Sr.No. 83957 (07/01/2020)

AKM/08.11.19/6P-6C /

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