



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.04.2019

CORAM:

THE HONOURABLE **MR. JUSTICE N.KIRUBAKARAN**

and

THE HONOURABLE **MR. JUSTICE S.S.SUNDAR**

W.A.(MD)No.477 of 2019

Dr.Viji Thamby Solomon ... Appellant/Petitioner

Vs.

1.The Appellate Authority and Deputy Chief
Labour Commissioner (Central),
Chennai.

2.The Regional Labour Commissioner (Central),
Ministry of Labour and Employment,
Office of the Assistant Labour Commissioner,
New No.5, Lady Doak College Road,
Chinna Chokkikulam,
Madurai - 625 002,
Madurai District.

3.The President,
Ecumenical Church Loan Fund of India
(ECLOF India),
No.9, Lotus Ramasamy Street,
Royapuram, Chennai - 600 013. ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent
against the order of this Court in W.P.(MD)No.22093 of 2018, dated
31.10.2018.

Prayer in WP(MD). 22093/ 2018 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a Writ of
Certiorarified Mandamus, to call for the records pertaining to the
impugned order in G.A.No.168 of 2015 date 17.07.2017 passed by
Respondent No.2 and consequential order in G.A.No.25 of 2017 passed
by the Respondent No.1 dated 19.03.2018 and quash the same as
illegal and consequently directing the Respondent Nos.1 to 3 to
invoke the provisions of payment of gratuity act for the employees
working as the third respondent office within the time stipulated by
this Court.

For Appellant

<https://hcservices.ecourts.gov.in/hcservices/>

FOR R2

:Mr.T.Lajapathi Roy

:Mr.S.Jeyasingh

Senior Central Government Counsel

**JUDGMENT**

(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

WEB COPY This writ appeal is directed against the order of this Court in W.P.(MD)No.22093 of 2018, dated 31.10.2018, wherein, the order passed by the second respondent, dated 17.07.2017 in G.A.No.168 of 2015 and the consequential order, passed by the first respondent, dated 19.03.2018 in G.A.No.25 of 2017 are challenged.

2.From 01.08.1997 to 28.04.2005, the appellant worked as a Director in the various branches of Ecumenical Church Loan Fund India Trust, which became, Ecumenical Church Loan Fund India Company. The appellant was relieved from the Company in June'2005. It is not in dispute that the appellant was paid a sum of Rs.719,647/-, after deduction of TDS, at the time of reliving from the company. Though it is stated by the third respondent that the said amount was in full settlement, the appellant raised a claim for payment of gratuity, which according to him, is due to him.

3.When a claim was made by the appellant before the Assistant Commissioner of Labour, who is the the Controlling Authority under the Payment of Gratuity Act, 1972, he dismissed the claim of the appellant on 31.03.2015. Thereafter, the appellant preferred an appeal before the appellate authority, namely, the first respondent herein. The first respondent confirmed the order of Controlling Authority. As against the order of the first respondent confirming the order of the second respondent, the writ petition has been filed.

4.The claim of the appellant was rejected by the respondent Nos. 1 and 2 mainly on the ground that the appellant has not proved that the third respondent is an establishment employing more than 10 persons, so as to attract the provisions of Payment of Gratuity Act, 1972. The first respondent also held that the appellant is not entitled to claim gratuity on the ground of laches, as the appellant has approached the first respondent nearly 10½ years, after the appellant was relieved from service.

5.The learned Judge of this Court, having regard to the limited scope of judicial review in this matter, dismissed the writ petition, by affirming the conclusions reached by the respondent Nos. 1 and 2 regarding the number of employees engaged in the third respondent establishment. Though the appellant produced before the learned Single Judge, the Minutes of Staff Meeting held by the third respondent in Chennai on 07.04.2005, to show that there were more employees, engaged by the third respondent, the learned Single Judge refused to look into the documents, since the documents were not produced before the authorities concerned at the relevant point of time and that the genuineness of the documents cannot be gone into by the Writ Court.



6.The appellant was relieved by the third respondent in June'2005. From the records, it is seen that the appellant made his first representation only on 31.05.2014 to release his gratuity amount, pension benefit, LTA and EL Encashment. Though, there is reference to previous representations by the appellant in the communication, dated 31.05.2014, no document was produced before the first and second respondents or before the Writ Court that the appellant was prompt in making an application before the statutory authorities within a reasonable time. The original authority, namely, the second respondent, found that the petition has been filed with undue delay without even a condone delay petition and that the petition is liable to be dismissed on the ground of laches. The petition filed before the second respondent was also dismissed on merits.

7.The fact that there was no explanation for the long delay in approaching the second respondent can be gathered from the proceedings. The original authority as well as the appellate authority concurrently found that the Payment of Gratuity Act, 1972, is not applicable to the third respondent establishment, since it was established from the records that the third respondent had not engaged more than 10 employees. Having regard to the findings of facts by the respondent Nos. 1 and 2, the appellant has not sustained his claim by materials. For the first time in the writ petition, a document, namely, Minutes of Staff Meeting, held at Head Quarters of third respondent, dated 07.04.2005 was produced.

8.As rightly pointed by the learned Single Judge of this Court, the genuineness of the documents after this length of time cannot be gone into by the Writ Court in a writ petition filed under Article 226 of Constitution of India. Having regard to the fact that the appellant has approached the authorities after a delay of 10½ years, serious prejudice is likely to be caused to the third respondent, in case, the matter has to be re-argued or remitted on the basis of the additional document, the authenticity of which is not admitted.

9.In view of the limited scope of judicial review, the order impugned in the writ petition do not suffer from any irregularity or perversity and this Court do not find any merit in this appeal. Accordingly, the writ appeal is dismissed and the order of this Court in W.P.(MD)No.22093 of 2018, dated 31.10.2018 is confirmed. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //



Cmr

TO: மதுரை

1.The Appellate Authority and Deputy Chief
Labour Commissioner (Central),
Chennai.

2.The Regional Labour Commissioner (Central),
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No.9, Lotus Ramasamy Street, Royapuram, Chennai - 600 013.

+1 CC to M/s.S.JEYASINGH, Advocate (SR-61040[F] dated 15/04/2019)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-61178[F] dated
16/04/2019)

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DS/ /SAR- (02.05.2019) 4P 6C