



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2019

CORAM:

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**THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

W.P.[MD]Nos.4143 & 4144 of 2019

and

W.M.P.[MD]Nos.3239 & 3240 of 2019

The Superintending Engineer,  
Tirunelveli Electricity Distribution Circle,  
Tamil Nadu Generation and Distribution Corporation,  
Maharaja Nagar,  
Tirunelveli - 627 011.  
Petitions

: Petitioner in both Writ

Vs.

1.Parvathi  
2.M.Subha  
3.M.Seethalakshmi

4.The Additional Commissioner of Labour,  
Office of the Additional Commissioner of Labour,  
Madurai - 625 016.

5.The Assistant Commissioner of Labour,  
Controlling Authority under Payment of Gratuity Act,  
Tirunelveli.

: Respondents in both Writ Petitions

PRAYER in W.P.[MD]No.4143 of 2019: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the fifth respondent in P.G. Case No.59 of 2016 and quash its order dated 28.08.2017.

PRAYER in W.P.[MD]No.4144 of 2019: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the fourth respondent in AA.THI.MU/E/1310/2018 and quash its order dated 01.10.2018.

For Petitioner : Ms.P.Malini  
for Mr.T.S.Gopalan & Co.

For Respondents 4&5 : Mr.N.Shanmugaselvam  
Additional Government Pleader  
[In both Writ Petitions]

**COMMON ORDER**

These Writ Petitions have been filed challenging the orders passed by the appellate authority under the Payment of Gratuity Act, 1972, wherein the appellate authority has dismissed the appeals filed by the petitioner by separate orders on the ground that the respective appeals were filed beyond the prescribed period under Section 7(7) of the Payment of Gratuity Act, 1972.

2. Heard Ms.P.Malini, learned Counsel for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader for the fourth and fifth respondents.

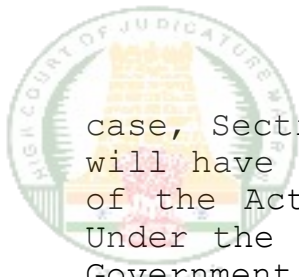
3. Section 7(7) of the Payment of Gratuity Act, 1972, reads as follows:

"7(7). Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

[Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.]"

4. The payment of Gratuity Act, 1972, is a beneficial legislation to protect the interest of employees engaged in factories, mines, oil-fields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. It is a special enactment and a social welfare legislation to prevent unfair labour practice. Always the Courts while interpreting social welfare legislation, a beneficent construction is given on the relevant provisions which furthers the purpose for which such legislation was enacted. It is settled law that the special law overrides the general law when a specific provision is available under the special law and this principle finds its origin in the latin maxim "Generalia Specialibus Non Derogant", which means general law yields to special law, should they operate in the same field on the same subject. In the instant



case, Section 7(7) of the Act specifically stipulates that an appeal will have to be filed as against an order passed under Section 7(4) of the Act within 60 days from the date of receipt of the order. Under the first proviso to Section 7(7) of the Act, the appropriate Government or the appellate authority, as the case may be, may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of 60 days. Therefore, the maximum period available to challenge an order passed by the Assistant Commissioner of Labour (Gratuity), under Section 7(4) of the Act is 120 days from the date of receipt of the order.

5. As per Section 14 of the Act, it overrides other enactments. Section 14 of the Act reads as follows:

"14. Act to override other enactments, etc.-  
The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

6. The applicability of the Limitation Act, 1963, including Section 5 of the Limitation Act, is nowhere mentioned in any of the provisions under the Payment of Gratuity Act, 1972. As seen from Section 14 of the Act, the Payment of Gratuity Act is a self-contained code by itself. Therefore, the intention of the legislature to prescribe a maximum period for filing an appeal is only to protect the interest of the employees as the Act itself is a beneficent legislation protecting the interest of employees and to prevent unfair labour practice.

7. The Andhra Pradesh High Court in a similar matter, while dealing with Section 7(7) of the Payment of Gratuity Act, 1972, in its judgment reported in 2018 (5) ALT 631 [Deepak Transport Agency Private Limited Vs. Appellate Authority], has also held that the delay beyond 120 days for filing an appeal under Section 7(7) of the Act is an incurable defect. The relevant paragraph of the said judgment, is reproduced hereunder:

"10. .... In this case the petitioner / appellant did not comply with twin conditions to prefer appeal under Section 7(7) of the Act and unless those conditions are fulfilled appeal is not maintainable. As noted above, the appellate authority has not decided the appeal on merits but only highlighted the requirements to prefer appeal and held that appellant has not fulfilled those requirements. This is an incurable defect. Thus, no useful purpose would be served by such remittance. It is a futile exercise. A breach of procedure cannot give rise to remedy unless there is something of substance which is lost by such



failure. In the facts of this case, it cannot be said that prejudice is caused to petitioner as his appeal suffers from incurable defect."

8. The Gujarat High Court in the case of State of Gujarat and another Vs. Appellate Authority under Payment of Gratuity Act, reported in 2015 SCC Online Guj 6320, following the Full Bench judgment of the Gujarat High Court reported in AIR 2015 Guj. 97, has held that the appellate authority is not empowered to condone the delay, if the appeal is filed after a period of 120 days and the High Court cannot also condone the delay in filing the appeal exercising powers under Article 226 of the Constitution of India. The relevant paragraphs of the said Gujarat High Court judgment are reproduced hereunder:

"19. The Division Bench of this Court referred certain questions to the Full Bench. The Full Bench of this Court considered the said questions and appropriate answers were given to the said questions. The said decision is reported in AIR 2015 Gujarat 97. In paragraph No.1, of the said decision, three questions were formulated. Paragraph No.1 of the said decision reads as under:

"1. The Division Bench of this Court has formulated the following questions and has referred the matter to the Larger Bench:

"(1) Whether the period of limitation provided of 60 days, for filing an appeal under Section 35 of the Central Excise Act, 1944, could be extended only upto 30 days as provided by the proviso or the delay beyond the period of 90 days could also be condoned in filing an appeal?

(2) Where a statutory remedy or appeal is provided under Section 35 of the Central Excise Act, 1944 and the delay cannot be condoned under Section 35 beyond the period of 90 days, then whether Writ Petition under Article 226 of the Constitution of India would lie for the purpose of condoning the delay in filing the appeal?

(3) When if the statutory remedy or appeal under Section 35 is barred by the law of limitation whether in a Writ Petition under Article 226 of the Constitution of India, the order passed by the original adjudicating authority could be challenged on merits?"

The Honourable Full Bench of this Court after considering various provisions of different Acts and various decisions of the Honourable Supreme Court as well as different High Courts answered the said questions in paragraph No.31, which reads as under:



"31. We may now proceed to answer the question.

(1) Question No.1 is answered in negative by observing that the limitation provided under Section 35 of the Act cannot be condoned in filing the appeal beyond the period of 30 days as provided by the proviso nor the appeal can be filed beyond the period of 90 days.

(2) The second question is answered in negative to the extent that the petition under Article 226 of the Constitution would not lie for the purpose of condonation of delay in filing the appeal.

(3) On the third question, the answer is in affirmative, but with the clarification that

(A) The petition under Article 226 of the Constitution can be preferred for challenging the order passed by the original adjudicating authority in following circumstances that

(A1) The authority has passed the order without jurisdiction and by assuming jurisdiction which there exist none, or

(A2) Has exercised the power in excess of the jurisdiction and by overstepping or crossing the limits of jurisdiction, or

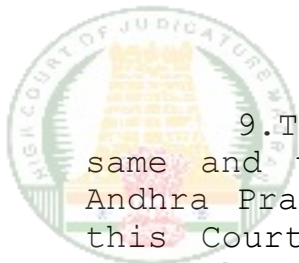
(A3) Has acted in flagrant disregard to law or rules or procedure or acted in violation of principles of natural justice where no procedure is specified.

(B) Resultantly, there is a failure of justice or it has resulted into gross injustice.

We may also sum up by saying that the power is there even in aforesaid circumstances, but the exercise is discretionary which will be governed solely by the dictates of the judicial conscience enriched by judicial experience and practical wisdom of the judge."

20. Therefore, it becomes clear that the provisions of Section 35 of the Central Excise Act are in pari materia with the provisions contained in sub-section (7) of Section 7 of the Gratuity Act.

21. Thus, from the latest decision rendered by this Court in the aforesaid case, it is clear that the appellate authority is not empowered to condone the delay if the appeal is filed after a period of 120 days in the present case. Even this Court cannot condone the delay in filing the appeal while exercising powers under Article 226 of the Constitution of India."



9. The issue involved in these Writ Petitions are one and the same and this Court is in agreement with the view taken by the Andhra Pradesh and Gujarat High Courts. For the aforesaid reasons, this Court is of the considered view that the fourth and fifth respondents have rightly dismissed the appeals filed by the appellant under Section 7(7) of the Act, on the ground that the appeals were not filed within a period of 120 days from the date of receipt of the order passed under Section 7(4) of the Act. In the result, there is no merit in these Writ Petitions.

10. Accordingly, the Writ Petitions are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Commissioner of Labour,  
Office of the Additional Commissioner of Labour,  
Madurai - 625 016.

2. The Assistant Commissioner of Labour,  
Controlling Authority under Payment of Gratuity Act,  
Tirunelveli.

+1CC TO M/S.P.MALINI, Advocate, Sr No.49040

COMMON ORDER MADE IN  
W.P.[MD]Nos.4143 & 4144 of 2019  
22.02.2019

MR

KK/05.04.2019/6P.4C