

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 08.03.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**W.P. (MD) .No.5460 of 2019****and****W.M.P (MD) No.4339 of 2019**

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The Trustee,
Sri Bairagi Math,
21, South Chithrai Street,
Madurai 625 001

... Petitioner

-vs-

1) The Joint Commissioner of Labour / Controlling
Authority under Payment of Gratuity,
Act 1972, Madurai.

2) The Assistant Commissioner
of Labour / Controlling
Authority under Payment of Gratuity
Act 1972, Madurai

3) M.Mani

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 1st respondent to take on file the Appeal filed by the petitioner against the orders passed in P.G.No.24 of 2017 dated 28/09/2017 by the 2nd respondent and dispose the same on merits and in accordance with law.

For Petitioner : Mr.S.Manohar

For Respondents : Mr.D.Muruganandham,
Additional Government Pleader**O R D E R**

The instant writ petition has been filed by the petitioner aggrieved by the order dated 28.09.2017 passed by the second respondent returning the Appeal filed by them under section 7(7) of the Payment of Gratuity Act, 1972, on the ground that the petitioner has produced a certificate of the Controlling Authority confirming the receipt of the pre-deposit amount, beyond the prescribed period of 120 days as stipulated under section 7(7) of the Act read with the first proviso.

2. It is the case of the petitioner that being a small temple they did not have funds to make the pre-deposit as stipulated under the proviso to section 7(7) of the Act of 1992. It is also their case that the third respondent is not entitled for gratuity. Since



they have to get sanction from the higher Authorities and also arrange for funds there was a delay in making the pre deposit. Aggrieved by the impugned order passed by the second respondent, the instant writ petition has been filed.

3. Heard Mr.S.Manohar, learned counsel for the petitioner and Mr.D.Muruganandham, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 2.

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.

4. The issue raised in these writ petitions are covered by several judicial pronouncements of this Court including the judgments reported in **2001 (2) LNN 445** in the case of **Special Officer, Kanyakumari District, Co-operative Printing Works, Limited, Kanya kumari District vs., Appellate Authority under Payment of Gratuity Act, (Deputy Commissioner for Labour), Tirunelveli and others** and in the judgment reported in **2003 (3) LLN 1096** in the case of **Christian Medical College and Hospital, Vellore and Deputy Commissioner of Labour (Appeals) Chennai and others** and others. In both the above referred judgments, the learned Single Judges of this Court have held that the requirement of pre-deposit of Gratuity Amount under proviso to section 7(7) of the Payment of Gratuity Act, 1972 is mandatory for filing an Appeal.

5. A learned Single Judge of this Court, while dealing with a similar issue in the judgment referred to supra reported in **2001 (2) LNN 445** has held the following:-

"2. After hearing learned counsel for the both sides, I am of the view that the writ petition deserves to be dismissed for the reasons stated hereunder. Second

under:



'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.....'

A reading of the second proviso makes it clear that in order to entertain an appeal by an employer under the said provision, the deposit of the amount ordered by the controlling authority is mandatory. Sub-Section (7) stipulates that any person aggrieved by an order made under S. 4 can prefer the appeal within the 60 days and the first proviso to Sub-sec (7) provides for further period of 60 days within which if the appeal had been filed with sufficient explanation for not preferring the appeal within the first period of 60 days, the appeal could be entertained. But in either case, if the deposit of the amount ordered by the controlling authority is not made as provided under the second proviso to Sub-sec (7) or the first proviso to the sub-section there would be no scope for the first respondent to entertain the appeal. Admittedly, the petitioner has not deposited the amount ordered by the controlling authority within the said period of 120 days as provided under Sub Sec (7). On the other hand, it is established beyond doubt that the deposit was made nearly one year and seven months after the date of receipt of the order of the controlling authority. The first respondent therefore rightly rejected the appeal on that sole ground that the appeal had been filed beyond the period prescribed under the provisions of the Act. When the appeal was not filed in the manner in which it ought to have been filed, it cannot be held that even if the memorandum of appeal grounds had been filed within the stipulated time without necessary deposit to be made under the second proviso to S7(7), the appeal was filed within time. When statute has prescribed a specific period and also made it mandatory for the party intending to prefer an appeal against the order of the controlling authority that along with the appeal the proof for deposit of the amount ordered by the controlling authority should be enclosed, it is incumbent on the party concerned to comply with the said provision in letter and spirit in order to make him eligible to be heard by the appellate authority. When the petitioner failed to comply with the mandatory provision, he cannot be heard to complain against the action of the statutory authority functioning under the Act. In such circumstances, the order of the first respondent in rejecting the appeal which was admittedly not filed in the manner prescribed under the relevant provision, there



is no scope for interfering with the said order of the first respondent. Therefore, the writ petition fails and the same is dismissed".

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.

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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. For the aforesaid reasons, this Court is of the considered view that the first respondent has rightly returned the appeal filed by the petitioner as it was filed beyond the prescribed period as stipulated under Section 7(7) of the Payment of Gratuity Act, even if the pre-deposit amount was made. In the result, there is no merit in this Writ Petition.

10. Accordingly, the **writ petition is dismissed**. No costs. Consequently, W.M.P(MD) No.4339 of 2019 is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1) The Joint Commissioner of Labour / Controlling
Authority under Payment of Gratuity,

<https://hcservices.ecourts.gov.in/hcservices/>
Act 1972, Madurai.



2) The Assistant Commissioner
of Labour / Controlling
Authority under Payment of Gratuity
Act 1972, Madurai

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+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 52938

Order made in
W.P. (MD) .No.5460 of 2019
08.03.2019

TR (24.04.2019) 8P 4C