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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	13.08.2019
DELIVERED ON	20.08.2019

CORAM:

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

and

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A. (MD)No.883 of 2018

and

C.M.P. (MD) No.8120 & 5579 of 2018

against

WP (MD) .No.21589 of 2017

The Management,
RK 10, Virudhunagar District,
Central Co-operative Bank Ltd.,
Rep. by the Managing Director,
Madurai Road, Virudhunagar.

... Appellant/ Petitioner

Vs.

1) The Appellate Authority under
the Payment of Gratuity Act,
(Joint Commissioner of Labour),
Tamil Nadu Housing Board Office Complex,
Ellis Nagar Main Road, Madurai.

2) The Authority under the Payment of
Gratuity Act, (Assistant
Commissioner of Labour),
Office of the Deputy Commissioner of Labour,
Bharathi Ula Salai, Race Course Colony,
Madurai 625 002

3) P.Narayanasamy

... Respondents/ Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act
against the order made in W.P.(MD) No.21589 of 2017 dated
08.02.2018.

Prayer in WP(MD). 21589 of 2017 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a writ of
Certiorari calling for the records of the 1st Respondent in P.G.A
(I.A) No.: 9/17, Quash the order passed therein on 10.08.2017,
consequently the order of the 2nd Respondent passed in P.G.No.1/16,
such other relief(s) as expedient to the facts and
circumstances of the matter and thus render justice.



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For Appellant/
Petitioner

: Mr.S.Seenivasagam

For RR 1 & 2

: Mr.N.Shanmugaselvam,
Additional Government Pleader

For R3

: Mr.P.Narayanasamy
Party in person

J U D G M E N T

(Judgment of the Court was made by SENTHILKUMAR RAMAMOORTHY, J.)

1. This Writ Appeal is filed against the order in W.P.(MD) No.21589 of 2017 dated 08.02.2018. The Appellant is the Writ Petitioner. The said Writ Petition was filed to quash the order of the first Respondent in P.G.A.(I.A) No.9/17 dated 10.08.2017 and to consequently quash the order of the second Respondent in P.G.No.1/16 dated 03.03.2016. The Writ Court dismissed the said Writ Petition and directed the Petitioner to pay a sum of Rs.1,88,225/- within a period of two months from the date of receipt of a copy of the said order.

2. The third Respondent herein was dismissed from service by the Appellant by order dated 11.09.2003 with effect from 12.09.2003. The said order of dismissal was challenged by the said third Respondent in W.P.(MD) No.26497 of 2003 wherein, by order dated 13.03.2008, the said Writ Petition was dismissed on the ground that it is not maintainable. The third Respondent, thereafter, filed a petition on 15.12.2011 before the second Respondent herein for payment of gratuity. The said petition was filed along with an application to condone the delay of 3367 days in filing the said petition. In the affidavit filed in support of the application for condonation of delay, it was stated that legal proceedings were initiated in order to challenge the order of termination and that the said proceedings did not reach a finality. Therefore, the third respondent had requested for payment of gratuity and other retirement benefits by communications dated 21.01.2011, 15.12.2011 and 20.07.2012 before filing a petition for payment of gratuity before the second Respondent along with an application, namely, P.G. (I.A.)No.87/2012 to condone the delay of 3367 days for the reasons mentioned above.

3. In response to the said application to condone delay (P.G. (I.A.) No.87/2012), the Appellant herein filed a counter affidavit stating that the applications of the third Respondent to the Appellant for payment of gratuity and earned leave were rejected by the Appellant on the basis that he was dismissed from service and that, therefore, he is not entitled to gratuity. It was further stated therein that the third Respondent had not adequately explained or justified the inordinate delay by citing reasonable cause. At this juncture, it is pertinent to point out that the



Appellant does not appear to have filed a counter in the main petition. In this factual context, by order dated 03.03.2016, the second Respondent passed orders in the main petition for payment of gratuity, i.e. P.G. No.1/2016, and not in the application for condonation of delay P.G.(I.A.)No.87/2012. For this purpose, the second Respondent framed three issues. The first of these issues relates to the condonation of delay, whereas the second and third issues deal with the entitlement to gratuity and quantum thereof, respectively.

4. The first paragraph of the said order records that the application for condonation of delay was listed for enquiry and heard on several days and that during the last such hearing on 19.01.2016, it was decided to take up the main petition along with the interim application. Significantly, the order does not record that the Appellant consented to this course of action. On that basis, the second Respondent proceeded to consider and answer all three issues in favour of the third Respondent herein. The said order was challenged by the Appellant by filing an appeal before the first Respondent under Section 7(7) of the Payment of Gratuity Act, 1972. In view of the fact that the appeal was not filed within the stipulated time limit under Section 7(7), it was filed along with an application to condone the delay of 165 days in filing the appeal. As required by law, while filing the appeal, the amount that was ordered to be paid to the third respondent was deposited to the credit of the Assistant Commissioner of Labour Court, Madurai.

5. Eventually, by order dated 10.08.2017, the application filed by the Appellant to condone the delay of 165 days in filing the appeal was rejected on the basis that the reasons cited for the delay of 165 days is not satisfactory or acceptable. Thereafter, W.P.(MD) No.21589 of 2017 was filed by the Appellant and the said Writ Petition was dismissed by order dated 08.02.2018, which is impugned herein.

6. We heard the learned counsel for the Appellant, the learned Additional Government Pleader for the first and second respondents and Mr.P.Narayanasamy, party-in-person for the third Respondent.

7. The learned counsel for the Appellant pointed out that the third Respondent was dismissed from service on 11.09.2003 by the disciplinary authority upon consideration of the enquiry report, wherein the charges against the third Respondent were proved. He further submitted that the Writ Petition filed by the third Respondent to challenge the order of dismissal was also dismissed on 13.03.2008. Much after such dismissal, he submitted that the petition for payment of gratuity was filed with a delay of 3367 days. He referred to the application for condonation of the delay of 3367 days, including the affidavit that was filed in support of the said application, and contended that the third Respondent did not provide a proper explanation for the inordinate delay and that the

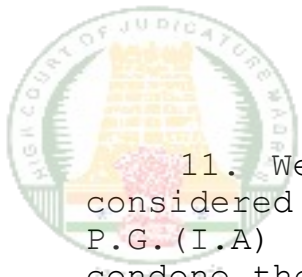


reasons stated therein do not constitute sufficient cause to condone the inordinate delay. In this regard, he also referred to the counter affidavit filed by the Appellant, wherein the Appellant had stated that the third Respondent is not entitled to gratuity because he was dismissed from service and that, in any event, the third Respondent had not provided proper and sufficient reasons to condone the delay of 3367 days. More importantly, the learned counsel submitted that the Appellant had not filed a counter in the main petition because the application for condonation of delay was still pending. Therefore, the learned counsel submitted that the second Respondent should have decided only the application for condonation of delay. Instead, the second respondent unilaterally proceeded to decide the main petition along with the application to condone the delay. In this regard, the learned counsel for the Appellant pointed out that the Appellant did not consent to the disposal of the main petition along with the application to condone the delay.

8. Consequently, the learned counsel contended that grave prejudice was caused to the Appellant as a result of taking up and disposing of the main petition without providing an opportunity to the Appellant to file a counter and contest the main petition on merits. He further submitted that the appeal that was filed by the Appellant before the first Respondent was also rejected on the ground that sufficient cause is not made out to condone the delay of 165 days whereas the delay of 3367 days was condoned in spite of the third Respondent not providing a proper explanation or making out sufficient cause for the inordinate delay. Therefore, he submitted that the Writ Court erred patently in dismissing the Writ Petition on the basis that the appeal filed by the Appellant was belated and on the ground that the third Respondent is entitled to gratuity because no separate order of forfeiture was issued by the Appellant.

9. In response, Mr.P.Narayanasamy, the party-in-person contended that he is entitled to gratuity and that gratuity cannot be denied merely because he was falsely implicated in an enquiry that resulted in his wrongful dismissal from service. He further submitted that the Limitation Act does not apply to proceedings for payment of gratuity and that, in any case, he had filed an application wherein the reasons for delay were explained. Accordingly, he submitted that the second Respondent condoned the delay and also allowed the main petition for payment of gratuity upon considering the relevant and applicable law.

10. Consequently, he submitted that the said order of the second Respondent is not liable to be interfered with and that the first Respondent and the Writ Court considered the legal position and correctly dismissed the appeal and the Writ Petition of the Appellant. In sum, he submitted that the order of the Writ Court should be affirmed by dismissing the appeal and that the Appellant should be directed to pay gratuity forthwith because the same had been unjustly denied to him for many years.



11. We examined the documents on record, impugned orders and considered the oral submissions carefully. The record discloses that P.G.(I.A) No.87/2012 was filed by the third Respondent so as to condone the delay of 3367 days in filing the petition for payment of gratuity. It is also clear that the Appellant herein filed a counter affidavit in response to the said interim application for condonation of delay. In paragraph 4 of the said counter, the Appellant has briefly dealt with the merits of the claim by stating that a dismissed employee cannot claim gratuity. However, the rest of the counter affidavit deals only with delay and why it should not be condoned.

12. On perusal of the order dated 03.03.2016 of the second Respondent in P.G.No.1/2016, it is clear from paragraph 1 of the order that the second Respondent decided to take up the main petition for disposal along with the interim application at the hearing on 19.01.2016. But the said order does not record that the Appellant herein consented to this course of action. Moreover, the said order refers to the counter of the Appellant / Management with regard to the nature of charges that were framed against the third Respondent and proved during the domestic enquiry. However, we do not find any counter to the main petition in the record. It also refers to an additional counter dated 12.05.2015, which appears to deal only with the application to condone delay, and corresponds with the counter affidavit dated 29.04.2015 which is on record. We further find that the order records that the third Respondent exhibited 15 documents in support of his claim for gratuity whereas the Appellant herein / Respondent therein did not lead evidence through witnesses or exhibit any documents.

13. The order of the second Respondent and the documents on record indicate that the Appellant filed a counter affidavit to the application to condone delay and addressed arguments on the said application for condonation of delay, whereas the second Respondent proceeded to unilaterally take up the main petition for disposal without providing an opportunity to the Appellant to file a counter along with supporting documents in the main petition. We also do not find any evidence of the Appellant consenting to this course of action. We also find that the contentions of the Appellant in response to the application for condonation of delay were not dealt with. Accordingly, we are of the view that the order of the second Respondent is vitiated by material irregularity in the exercise of jurisdiction. Moreover, such material irregularity caused great prejudice to the Appellant in as much as a reasonable opportunity was not given to the Appellant to file a counter, submit relevant documents and effectively contest the main petition on merits.

14. The Writ Court did not take into account the fact that the counter affidavit of the Appellant was only in the application to condone delay and that the second Respondent should not have taken up the main petition for disposal along with the application to



condone delay without providing a reasonable opportunity to the Appellant and without the Appellant's consent. Therefore, we are of the view that the order of the Writ Court is liable to be interfered with on this account.

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15. For the reasons set out above, we are of the considered view that the order of the Writ Court is liable to be set aside. Consequently, the order dated 10.08.2017 of the first Respondent in P.G.A.(I.A.) No.9/2017 and the order dated 03.03.2016 of the second Respondent in P.G.No.1/2016 are also liable to be set aside. As a corollary, without expressing an opinion on the merits of the claim for gratuity, we are inclined to remit the matter to the second Respondent herein for fresh adjudication of the application for condonation of delay after providing a reasonable opportunity to the Appellant and the third Respondent. Thereafter, if the application for condonation of delay is allowed, the second Respondent shall adjudicate the main petition on merits and in accordance with law after providing a reasonable opportunity to the Appellant to file a counter and submit documents in support of its defence. It is also just and necessary that this exercise should be completed within a reasonable time limit keeping in mind the lapse of several years as on date. Notwithstanding the setting aside of the orders of the first and second Respondents, the gratuity amount that was deposited by the Appellant at the time of filing the appeal before the first Respondent shall remain in such deposit subject to the outcome of the fresh adjudication by the second Respondent.

16. In the result, this Writ Appeal is allowed by setting aside the order dated 08.02.2018 in W.P.(MD)No.21589 of 2017. Consequently, the order dated 10.08.2017 of the first Respondent in P.G.A.(I.A) No.9/2017 and the order dated 03.03.2016 of the second Respondent in P.G. No.1/2016 are also set aside and the matter is remitted to the second Respondent for fresh adjudication subject to the retention of the amount deposited towards gratuity as indicated in the preceding paragraph. The second Respondent shall first adjudicate the application for condonation of delay and, thereafter, if necessary, the main petition, on merits and in accordance with law after providing a reasonable opportunity both to the Appellant and the third Respondent herein. The second Respondent is further directed to complete the entire adjudication process, including on the main petition, within six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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To

- 1) The Appellate Authority under
the Payment of Gratuity Act,
(Joint Commissioner of Labour),
Tamil Nadu Housing Board Office Complex,
Ellis Nagar Main Road, Madurai.
- 2) The Authority under the Payment of
Gratuity Act, (Assistant
Commissioner of Labour),
Office of the Deputy Commissioner of Labour,
Bharathi Ula Salai, Race Course Colony,
Madurai 625 002

+1 CC to M/s.P.NARAYANASAMY, Party-in-Person, SR-82313

+1 CC to M/s.S.SEENIVASAGAM, Advocate (SR-82350[F] dated 20/08/2019

Judgment made in
W.A.(MD)No.883 of 2018
Dated: 20.08.2019

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