

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 2544 of 2020
and
W.M.P. No. 2958 of 2020

The Management,
Misrimal Navajee Munoth Jain Engineering College,
Jothi Nagar, Thoraipakkam,
Chennai - 600 097.

... Petitioner

-vs-

1. The Additional Commissioner of Labour,
Appellate Authority under the Payment of Gratuity Act,
DMS Compound, 6th Floor,
Teynampet,
Chennai - 600 006.

2. The Joint Commissioner of Labour - II (Additional Charge),
Controlling Authority under the Payment of Gratuity Act,
DMS Compound,
Teynampet,
Chennai - 600 006.

3. A.P. Nandhini

... Respondents

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records of the Second Respondent order passed in
P.G. No. 182/2017 dated 07.01.2019 and to quash the same.

For Petitioner : Mr. T. Kumaravijayan

For Respondents: Mr. D. Sathyaraj,
Special Government Pleader
(for R1 & R2)

Mr. A. Thirumaran (for R3)

O R D E R
(through video conference)

Heard Mr. T. Kumaravijayan, Learned Counsel for the Petitioner, Mr. D. Sathyaraj, Learned Additional Government Pleader appearing for the First and Second Respondents and Mr. A. Thirumaran, Learned Counsel for the Third Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent by an order dated 07.01.2019 in P.G. No. 182 of 2017 granted the claim for gratuity under Section 7(4) of the Payment of Gratuity Act, 1972, made by the Third Respondent against the Petitioner, who had received a copy of that order on 20.04.2019. The Petitioner was entitled to prefer appeal against that order within a period of 60 days from the date of its receipt under Section 7(7) of the Payment of Gratuity Act, 1972, before the First Respondent, who has been empowered to condone delay in filing such appeal for an extended period of 60 days, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioner had presented the appeal before the First Respondent on 21.10.2019, which is beyond the maximum limitation period of 120 days from the date of receipt of the copy of the order passed by the Second Respondent. The First Respondent by an order No. O. Mu. E/3839/2019 dated 31.10.2019 refused to entertain that time barred appeal. Aggrieved thereby, the Petitioner has assailed the order dated 07.01.2019 in P.G. No. 182 of 2017 passed by the Second Respondent in this Writ Petition.

3. The Hon'ble Supreme Court of India in Assistant Commissioner (CT) LTU, Kakinada -vs- Glaxo Smith Kline Consumer Health Care Limited (Order dated 06.05.2020 in Civil Appeal No. 2413 of 2020) has emphatically laid down that the High Court in the exercise of powers under Article 226 of the Constitution of India, ought not to entertain Writ Petition assailing the order passed by a Statutory Authority which was not appealed against within the maximum period of limitation before the concerned Appellate Authority. In view of that legal position, it is not possible to entertain this Writ Petition challenging the order of the First Respondent. However, inasmuch as no view has been expressed by the First Respondent or this Court on the correctness or otherwise on the merits of the claim made by the Third Respondent in the order of the Second Respondent, it is clarified that if any person similarly placed to the Third Respondent in this Writ Petition makes a claim for identical relief in any subsequent proceeding, the same would have to be decided on the basis of pleadings and evidence adduced on its own merits in accordance with law, uninfluenced and uninhibited

by the conclusion arrived in that order of the Second Respondent.

4. The Writ Petition is dismissed with the aforesaid observations. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

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2. The Joint Commissioner of Labour - II (Additional Charge),
Controlling Authority under the Payment of Gratuity Act,
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W.P. No. 2544 of 2020

LN(CO)
SP(29/07/2020)

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