IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

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

W.P.NO.12937 OF 2018
AND
W.M.P.NO.15190 OF 2018

1. The Chairman
National Projects Construction Corporation Ltd.,
No.30-31, Raja House,
Nehru Place,
New Delhi.

2. The Zonal Manager,
National Projects Construction Corporation Ltd.,
1316, II Cross,
KHB Colony,
Magadi Road,
Bangalore - 560 079.

3. The Project Manager,
National Projects Construction Corporation Ltd.,
Kancheepuram Unit,
MTP Railways Compound,
Government Estate,
Chennai - 600 002. ... Petitioners

-vs-

1. The Appellate Authority under the
Payment of Gratuity Act, 1972
(Regional Labour Commissioner, Chennai),
Shastri Bhavan,
5th Floor, Haddows Road,
Chennai - 600 006.

2. B.V.V.Satyanarayana

3. Union of India
Represented by the Secretary to Government,
Labour and Employment Department,
Shram Shakti Bhawan.
Rafi Marg,
New Delhi - 110 001.

4. Union of India
Represented by the Secretary to Government,
Law and Justice Department,
4th Floor, A-Wing, Shastri Bhawan,
New Delhi - 110 001. ... Respondents

(R3 & R4 suo motu impleaded by order dated 14.08.2020 and amended as per order dated 01.10.2020)

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the order in PG Appeal No.1 of 2018 and dated 19.03.2018 on the file of the First Respondent and quash the same allowing the PG Appeal, by issuance of a Writ of Certiorari.

For Petitioners: Mr.K.S.V.Prasad

For Respondents: Mr.G.Karthikeyan,
Assistant Solicitor General of India
(for R1, R3 & R4)

Mr.L.Chandrakumar (for R2)

O R D E R
(through video conference)

Heard Mr.K.S.V.Prasad, Learned Counsel for the Petitioners, Mr.G.Karthikeyan, Learned Assistant Solicitor General of India appearing for the First, Third and Fourth Respondents and Mr. L.Chandrakumar, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, viz., National Projects Construction Corporation Ltd., is an enterprise of the Government of India established for carrying out the construction activities of public projects in the country. According to the Petitioner, since it has framed separate rules, viz., NPCC Employees Payment of Gratuity Rules, 1975, for payment of gratuity for the employees in its establishment, the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as the 'Act' for short), would not apply to its employees. The Second Respondent,

who was an employee in the establishment of the Petitioner, was paid gratuity of Rs. 3,68,220/- in terms of the said Rules. However, as the amount in terms of the said Rules was lesser than the amount of gratuity under the Act, the Second Respondent made representations by letters dated 17.02.2017, 20.03.2017, 17.04.2017 and 15.06.2017, but when the Petitioner refused to accede to the same, the Second Respondent filed an application bearing G.A.No.41 of 2017 before the Controlling Authority/ Assistant Labour Commissioner (Central), Chennai (hereinafter referred to as the 'Controlling Authority' for short) under Section 7(4) of the Act for the payment of the differential amount of gratuity claimed by him. The Petitioner contended that inasmuch as the Second Respondent had been paid gratuity computed in terms of said Rules, which had been accepted without any demur, the Second Respondent was estopped from claiming higher amount of gratuity under the Act. Another plea was raised by the Petitioner that there was a delay of 180 days in filing the application for gratuity by the Second Respondent in terms of Rule 10 of the Payment of Gratuity (Central) Rules, 1972. The Controlling Authority, who did not accept any of the said contentions, by order dated 08.12.2017 condoned the delay in filing the application for gratuity and held that the Second Respondent is entitled for payment of gratuity of Rs. 4,37,745/- under the Act. After deducting the sum of Rs. 3,68,220/-, which was already paid, the Petitioner was required to pay the balance sum of Rs. 69,525/- with simple interest at the rate of 10% from the date it had fallen due till payment. The appeal bearing G.A. No. 1 of 2018 preferred by the Petitioner against that order under Section 7(7) of the Act was rejected by order dated 19.03.2018 passed by the First Respondent. Aggrieved thereby, the Petitioner has challenged the said order of the First Respondent confirming the order of the Controlling Authority in this Writ Petition.

3. The pivotal attack by the Learned Counsel for the Petitioner on the impugned order is that when the Second Respondent has received gratuity calculated in accordance with the NPCC Employees Payment of Gratuity Rules, 1975, without any demur, he could not pursue any claim for higher amount of gratuity under the Act. In this context, it requires to be pointed out that Section 4(5) of the Act entitles an employee to receive better terms of gratuity under any award or agreement or contract with the employer, but in this case, the amount offered by the Petitioner to the Second Respondent under those Rules, which do not have any statutory force, is lesser than the amount of gratuity payable under the Act. Moreover, Section 14 of the Act in no uncertain terms states that the provisions of that Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other

than that Act or in any instrument or contract, having effect by virtue of any enactment other than that Act. This would obviously mean that merely because the establishment of the Petitioner has framed separate Rules and payment has been made thereunder to the Second Respondent, it would not absolve the liability of the establishment of the Petitioner to pay gratuity in accordance with the provisions of the Act, unless the establishment of the Petitioner has been exempted under Section 5 of the Act, on being satisfied that the employees are in receipt of gratuity and pensionary benefits, which are not less favourable than the benefits conferred under that Act. It is not in dispute that the establishment of the Petitioner has not obtained any such exemption. Hence, the amount of gratuity that the Second Respondent is entitled would have to be determined only in accordance with the provisions of the Act. This view is fortified by the binding decisions of the Hon'ble Supreme Court of India in Municipal Corporation of Delhi -vs- Dharam Prakash Sharma [(1998) 7 SCC 221] and Allahabad Bank -vs- All India Allahabad Bank Retired Employees Association [(2010) 2 SCC 44]. It would necessarily follow that the Petitioner is liable to pay the differential amount of gratuity due to the Second Respondent, after deducting the amount already paid under the Rules, as rightly held in the impugned order.

4. Coming to the next submission by the Learned Counsel for the Petitioner that the Controlling Authority ought not to have taken up the question relating to delay in filing the application for payment of gratuity, along with other contentions while passing final order, but should have decided the same as preliminary objection before going into the merits of the claim, it must be noticed here that when the Act came into force on 16.09.1972, an employee could make an application for payment of gratuity under the Explanation to Section 7(4)(a) of the Act only after requiring the employer to deposit the gratuity amount and the employer had failed to do so. In that backdrop, Rule 10 of the Payment of Gratuity (Central) Rules, 1972 (hereinafter referred to as the 'Rules' for short), which were made in the exercise of powers under Section 15(1) of the Act, provides as follows:-

"10. Application to controlling authority for direction:-

(1) If an employer:-

(i) refuses to accept a nomination or to entertain an application sought to be filed under rule 7, or

(ii) issues a notice under sub-rule (1) of rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or

(iii) having received an application under rule 7 fails to issue any notice as required under rule

8 within the time specified therein,
the claimant employee, nominee or legal heir, as the case may be, may, within ninety days of the occurrence of the cause for the application, apply in Form 'N' to the controlling authority for issuing a direction under sub-section (4) of section 7 with as many extra copies as are the opposite parties:

Provided that the controlling authority may accept any application under this sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period.

(2) Application under sub-rule (1) and other documents relevant to such an application shall be presented in person to the controlling authority or shall be sent by registered post acknowledgement due."

However, amendments have been made by Act 25 of 1984 with effect from 01.07.1984 and Act 22 of 1987 with effect from 01.10.1987 by which the Act provides in Section 7(4)(b) that an employee may straight away make an application for payment of gratuity to the Controlling Authority for deciding any dispute arising out of the matter specified in clause (a) thereto, which includes non-payment of gratuity by the employer within the time limit after it had fallen due. In order to have a better understanding of the effect of those statutory amendments, a comparative study may be made to the relevant provisions of Section 7 of the Act as it stood at the time of commencement of the Act and the subsequent amendments made in the self-explanatory tabular statement below:-

Provisions of Section 7 as it stood at the time of commencement of the Act on 16.09.1972	Provisions of Section 7 after the amendment made by Act 22 of 1987 with effect from 01.10.1987
7. Determination of the amount of Gratuity:-	7. Determination of the amount of Gratuity:-
(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.	(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.
(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount gratuity so determined.	(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount gratuity so determined.
(3) The employer shall arrange to pay the amount of gratuity, within such time as may be prescribed, to the person to whom the gratuity is payable.	(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

Provisions of Section 7 as it stood at the time of commencement of the Act on 16.09.1972	Provisions of Section 7 after the amendment made by Act 22 of 1987 with effect from 01.10.1987
	(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3) the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by notification specify: Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the Controlling Authority for the delayed payment on this ground.
(4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity. Explanation:- Where there is a dispute with regard to any matter or matters specified in this clause the employee may	(4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity. (b) Where there is a dispute with regard to any matter or matters specified in Clause(a),

Provisions of Section 7 as it stood at the time of commencement of the Act on 16.09.1972	Provisions of Section 7 after the amendment made by Act 22 of 1987 with effect from 01.10.1987
make an application to the Controlling Authority for taking such action as is specified in clause (b). (b) The Controlling Authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the amount of gratuity payable to an employee, and if as a result of such inquiry any amount in excess of the amount deposited by the employer is found to be payable, the Controlling Authority shall direct the employer to pay such amount as is in excess of the amount deposited by him. (c) The Controlling Authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto. (d) As soon as may be after a deposit is made under Clause (a), the Controlling Authority shall pay the amount of the deposit- (i) to the applicant where he is the employee; or (ii) where the applicant is not the employee, to the nominee or heir of the employee if the Controlling Authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.	the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute. (c) The Controlling Authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and, if, as a result of such inquiry any amount is found to be payable to the employee, the Controlling Authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer. (d) The Controlling Authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto. (e) As soon as may be after a deposit is made under Clause (a), the Controlling Authority shall pay the amount of the deposit- (i) to the applicant where he is the employee; or (ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the Controlling Authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

It could be noticed from reading together of clauses (2) and (3) of Section 7 of the Act, after amendment, that the employer has to make payment of the admitted amount of gratuity to the employee within a period of thirty days from the date on which it falls due, irrespective of whether the employee has made such claim to him. Further Section 7(3-A) of the Act fastens liability on the employer to pay simple interest thereon at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify. When the employer fails to make or there is shortfall in payment of gratuity, the employee is entitled to make an application for payment of gratuity to the Controlling Authority under Section 7(4)(b) of the Act. The scheme of the Act as per the amended provisions clearly reveal that there is no period of limitation restricting the right of the employee to make such application to the Controlling Authority.

5. The legal position is well settled that a provision for limitation cannot be made by way of subordinate legislation when the parent enactment does not contemplate the same as held by the Hon'ble Supreme Court of India in Bharat Barrel and Drum Mfg. Co. Ltd., v. ESI Corpn., [(1971) 2 SCC 860]. Further, it is trite law that subordinate legislation which is inconsistent with the parent enactment would be ultra vires and cannot have any effect.

6. It could be seen from the amendments made to the Act with effect from 01.10.1987 that the period of limitation prescribed in Rule 10 of the Rules has become in derogation of clauses (2), (3), (3-A) and (4) of Section 7 of the Act. As a consequence thereof, it would necessarily follow that though the Controlling Authority has condoned the delay in filing the application for payment of gratuity in terms of Rule 10 of the Rules while passing the final order, such requirement was not actually warranted. This view is fortified by the decision of this Court in M.Vairamuthu -vs- Regional Labour Commissioner (Order dated 21.10.2010 in W.P. (MD) No. 10377 of 2007 etc., batch), where it has been held as follows:-

> "7. Though initially the IRE Limited wanted to contend delay and laches on the part of the workmen in moving the authority under the Payment of Gratuity Act, however, no serious submissions were made on that score. Hence it is unnecessary to deal with the issue elaborately except when dealing with W.P.(MD)No.10377 of 2007. Even otherwise, this court has already held that if there is unpaid gratuity, the workmen can move the authority and the prescription of limitation by rules is beyond the power conferred on the rule making authority."

7. The Bombay High Court in H.Jayarama Shetty -vs- Sangli Bank Ltd., [(2005) 3 LLJ 637 (Bom)] has elaborately discussed this aspect of the matter as follows:-

> "5. The second reason which weighed with the Appellate Authority was that the claim of the Petitioner for payment of gratuity was barred by limitation. The Petitioner submitted in his application that the breach on the part of the employer was of a continuous and recurring nature. The Petitioner, however, submitted that if the authority came to the conclusion that there was a delay, he would crave leave to file a separate application for the condonation. Counsel for the Petitioner has made a statement before the Court on instructions that there was no separate application for condonation.
>
> 6. Section 4 of the Payment of Gratuity Act, 1972 provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, on superannuation or, as the case may be, on retirement, resignation, death or disablement. Sub-section (1) of Section 7 provides that a person who is eligible for the payment of gratuity shall send a written application to the employer, within such time and in such form, as may be prescribed, for the payment of gratuity. Sub-section (2), however, lays down that irrespective of whether an application as provided in sub-section (1) has been made or not, the employer shall as soon as gratuity becomes payable, determine the amount of gratuity and give a notice in writing to the person to whom the gratuity is payable and to the Controlling Authority specifying the amount of gratuity so determined. Subsections (3) and (3A) of Section 7 were substituted by Amending Act 22 of 1987 with effect from 1st October 1987. Sub-section (3) provides that the employer shall arrange to pay the amount of gratuity within thirty days from the date on which it becomes payable to the person to whom gratuity is payable. Sub-section (3A) stipulates that if the amount of gratuity that is payable is not paid by the employer as specified in sub-section (3), the employer shall pay simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits. No interest is, however, payable if the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the Controlling Authority

for delayed payment on that ground. Payment of interest on delayed payment of gratuity is the statutory norm and even if delay is due to the employee, the employer has to obtain permission of the Controlling Authority in writing on this ground without which gratuity must carry statutory interest. Sub-section (4)(a) then provides that if there is any dispute as to the amount of gratuity payable to an employee under the Act, or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity or as to the person entitled to receive the gratuity, the employer must deposit with the Controlling Authority such amount as he admits to be payable. Sub-section (4)(b) provides that upon there being a dispute with regard to any matter specified in clause (4)(a), the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute. The Controlling Authority has thereupon been empowered to adjudicate upon the dispute.

7. These provisions of the Payment of Gratuity Act, 1972 provide a statutory elucidation of the nature of gratuity as a terminal benefit. Under Section 4 of the Act, payment of gratuity to an employee is a mandate of the statute, on the termination of employment after continuous service for not less than five years. This mandate is subject to the limited exception which is carved out in sub-section (6) of Section 4 to which a reference would be made shortly hereafter. The employer is under a mandate and an obligation to determine the amount of gratuity that is payable as soon as gratuity becomes payable. The employer is under an obligation to arrange for the payment of the amount of gratuity within 30 days from the date on which it becomes payable to the person to whom is payable. After the amendment of 1987, a statutory provision has been made for the payment of interest. The employer can avoid that obligation to pay interest only if the delay in payment is due to a fault of the employee and if employer is granted permission in writing by the Controlling Authority for the delayed payment on that ground. These provisions emphasise that the determination of the amount and the payment of gratuity is the obligation of the employer. The employer has to make a determination of the gratuity which is payable whether or not an application has been made by the employee. The employer has to arrange payment.

8. These provisions have been interpreted by the Supreme Court in H. Gangahanume Gowda -vs- Karnataka Agro Industries Corpn Ltd., [2003 I CLR 705], where the Court held as follows:

> "From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. ... Payment of gratuity with or without interest as the case may be does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied."

The Supreme Court held that in view of the clear mandate of Section 7, no residual discretion vested in the High Court to relieve the obligation imposed on the employer of paying interest on account of the delayed payment of gratuity.

9. On behalf of the Respondent, however, reliance was sought to be placed on the rules framed under the Payment of Gratuity Act, 1972. These Rules, it must be noted at the outset, were framed prior to the Amending Acts of 1984 and 1987. The Payment of Gratuity Act, 1972, it may be noted, has made no provision for a specified period for the submission of an application to the Controlling Authority in Section 7(4)(b) of the Act. As contradistinguished from this, Section 7(7) provides for a specific period of limitation of sixty days for preferring an appeal to the appropriate Government against the decision of the Controlling Authority under Section 7(4). In Sitaram -vs- M.N.Nagrashana (AIR 1960 SC 260), the Supreme Court considered Section 10 of the Workmen's Compensation Act which provided a period of limitation to make a claim for compensation to the Commissioner but empowered the latter to condone delay for sufficient cause. This provision of the Act was held by the Supreme Court to be similar to Section 5 of the Limitation Act and the Court held that the explanation must cover the whole period of delay. In Gurunath Vithal Tamse -vs- National Textile Corporation [2002 I CLR 809] this Court held that significantly, the legislature had advisedly not specified any particular period of limitation for moving the Controlling Authority under the Payment of

Gratuity Act, 1972. But the submission before the Court now on behalf of the the Respondent, is that the limitation which has been provided for in Rules 7 and 10 of the Rules framed under the Payment of Gratuity Act, 1972 was not brought to the attention of the Court in that case. Before dealing with this submission on first principle, it would be necessary to note that at least three High Courts have had occasion to consider the question. The Delhi High Court, in M.C.D. -vs- Nand Kishore [2003 (97) FLR 158], dealt with the submission that the Controlling Authority had not taken into consideration the delay of the employee in filing an application under the Payment of Gratuity Act, 1972. The Delhi High Court held that "the grievance of the appellant is misconceived as the non-payment of gratuity due to the Respondent was a continuing wrong and there was no question of any delay in approaching the Controlling Authority. A Learned Single Judge of the Kerala High Court in Neelakandan -vs- State of Kerala [2001 II CLR 448] adverted to the provisions of Section 7 of the Act as amended and held that while Rule 7 of the Gratuity Rules provides that an application be filed within a prescribed time, these provisions under the Rules "cannot of course, be taken as over reaching the provision of Section 7(2) of the Act". The Court held that perhaps the impact of the Amending Acts of 1984 and 1987 had not been taken notice of by the rule making body. Upon the amendment of Section 7, it has now unambiguously been laid down that an employer has a duty to pay gratuity whether or not an application is filed. The Payment of Gratuity Act is a piece of beneficial legislation and a liberal interpretation would have to be adopted since an employee, it was held, may not at times be aware of his rights. The Act imposes an obligation on the employer and it would not be open to the employer to benefit from a delay in making an application for the payment of gratuity. The Karnataka High Court in General Secretary, Vokkaligara Sangha, Bangalore -vs- R. Chandramouli [2002 II CLR 1070] noted that Rule 7(5) permits the entertainment of the applications for payment of gratuity after the expiry of the period specified and claim shall not be invalid merely because the claimant failed to present the application within the specified period.

10. The Rules framed under the Payment of Gratuity Act, 1972 provide for two separate periods of time in relation to the making of an application. The first

under Rule 7 is an application to the employer within 30 days from the date on which gratuity becomes payable. Rule 7(5), however, provides that an application for payment of gratuity filed after the expiry of the period specified shall also be entertained by the employer if the applicant adduces sufficient cause for delay and no claim for gratuity shall be invalid merely because the claimant failed to present his application within the specified period. This must be in a juxtaposed with Section 7(2) which requires the employer to make a determination of gratuity payable and to furnish a notice to the employee and to the Controlling Authority as soon as gratuity becomes payable whether or not an application under Section 7(1) has been made. Clearly therefore, the employer cannot set up limitation as a defence on the ground that the application to him was not presented within thirty days. The clear answer to such a defence, if it is set up is that the employer is obliged to determine and make arrangement to pay gratuity whether or not an application is made. The second time period that is prescribed is under Rule 10. Rule 10 inter alia provides a period of 90 days for making an application before the Controlling Authority upon the employer failing to issue a notice as required under Rule 8 upon the receipt of an application from the employee under Rule 7. The delay under Rule 10 can be condoned by the Controlling Authority on sufficient cause being shown.

11. The rules which were framed in 1972 must be read in a manner which is consistent with the statutory provisions of Section 7 particularly after the amendments that were introduced by Amending Act 25 of 1984 (with effect from 1st April 1984) and by Amending Act 22 of 1987 (with effect from 1st October 1987). The provisions of Section 7 emphasise that the obligation is that of the employer to determine and to make arrangements for the payment of gratuity and upon his failure to do so, to pay interest at the rate which is statutorily prescribed. Even if the period that is prescribed in the Rules is taken into consideration, the Rules themselves lay down that the delay on the part of the employer, if any, can be condoned if sufficient cause is shown. A breach of the employer to comply with his obligation under section 7 provides a recurring and continuous cause of action. The Act is a piece of social welfare legislation and the employer cannot be permitted by reason of his own default in

complying with his obligation to defeat the just entitlement of the employee. Finally, it may be noted that the employer has to determine and pay gratuity whether or not an application is filed to him. The filing of an application before the employer is not a condition precedent. Rule 7 makes procedural provisions for such an application. On receipt of an application under Rule 7, the employer has to issue a notice under Rule 8 either admitting the claim or to specify the reasons why he holds the claim inadmissible. It is thereafter that time is prescribed in Rule 10 for an application to the Controlling Authority. The making of an application under Rule 7 therefore invokes a chain of events in Rules 8 and 10. Once the making of an application to the employer is not mandatory under the provisions of Section 7(2) of the substantive provisions of the act, the limitation under the Rules which is triggered upon the filing of the application under Rule 7 can obviously not defeat the claim of the employee.”

This Court is in agreement with the aforesaid views expressed.

8. At the same time, it also requires to be mentioned here that in an earlier decision in Madura Coats Ltd., -vs- Assistant Commissioner of Labour [(1993) 3 LLJ 923 Mad], it had been held that an application to condone delay would have to be first decided before the main application for gratuity is taken up for hearing and the said view taken has been approved in M.Devarajulu -vs- Assistant Commissioner of Labour [(1995) 1 LLJ 348 Mad] by the Division Bench of this Court. However, on a perusal of the said decisions, it is evident that the apparent inconsistency of Rule 10 of the Rules with Section 7 of the Act after the amendments made to the Act with effect from 01.10.1987 had neither been raised nor brought to the notice of the Court while deciding those cases. It is needless to recapitulate in this context that a precedent can be an authority only for what has been actually decided and not what may logically flow from it, as explained by the Constitution Bench of the Hon'ble Supreme Court of India in State of Orissa -vs- Sudhansu Sekhar Misra (AIR 1968 SC 647).

9. In view of the foregoing discussion, this Court does not find any infirmity requiring interference in the impugned order, which has to be upheld. The Second Respondent is at liberty to make necessary application for the withdrawal of the amount of gratuity that has been deposited by the Petitioner before the concerned authority.

10. In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Appellate Authority under the Payment of Gratuity Act, 1972
(Regional Labour Commissioner, Chennai),
Shastri Bhavan, 5th Floor,
Haddows Road, Chennai - 600 006.

2. The Secretary to Government,
Labour and Employment Department,
Shram Shakti Bhawan.
Rafi Marg,
New Delhi - 110 001.

3. The Secretary to Government,
Law and Justice Department,
4th Floor, A-Wing,
Shastri Bhawan,
New Delhi - 110 001.

Copy to

1. The Controlling Authority/
Assistant Labour Commissioner (Central),
Ministry of Labour and Employment,
Government of India,
No. 4, Haddows Road, Shastri Bhavan, Chennai - 600 006.

2. The Chairman
National Projects Construction Corporation Ltd.,
No.30-31, Raja House, Nehru Place,
New Delhi.

3. The Zonal Manager,
National Projects Construction Corporation Ltd.,
1316, II Cross, KHB Colony,
Magadi Road, Bangalore - 560 079.

4. The Project Manager,
National Projects Construction Corporation Ltd.,
Kancheepuram Unit,
MTP Railways Compound,
Government Estate,
Chennai – 600 002.

5. B.V.V.Satyanarayana,
C/o. D.Suresh Babu,
H.N. 14, Old No. 38/1 (III Floor)
Krishnappa Street, Chepauk,
Triplicane (Post), Chennai - 600 005.

MG(CO)
CS/19/01/2021