

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2020

CORAM

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

W.P. No. 11788 of 2020
and
W.M.P. No. 14501 of 2020

The Management,
S.276, Chandrapillai Valasai Primary Agricultural Co-operative
Society,
Represented by its Secretary,
C.P. Valasai Post, Vazhapadi Taluk,
Salem District - 636 104.

... Petitioner

-vs-

1. The Joint Commissioner of Labour,
Collectorate Campus,
Salem - 636 001.
2. The Assistant Commissioner of Labour,
Collectorate Campus,
Salem - 636 001.
3. A. Murugesan

... Respondents

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorarified
Mandamus, calling for the entire records in relation to the
order in A.P.S.A.I.A. No. 1 of 2019 dated 17.03.2020 from the
file of the First Respondent, quash the same and further direct
the First Respondent to take the appeal on file, filed by the
Petitioner against the order dated 01.08.2017 in P.S.A. No. 5 of
2016 on the file of the Second Respondent.

For Petitioner : Mr. D.Sivakumaran

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

Service awaited (for R3)

O R D E R
(through video conference)

Heard Mr. D.Sivakumaran, Learned Counsel for the Petitioner and Mr. D.Sathyaraj, Learned Special Government Pleader appearing for the First and Second Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent, who was working as salesman in the establishment of the Petitioner, had been suspended from service from 27.01.2015. He had made a claim against the Petitioner for subsistence allowance in P.S.A. No. 5 of 2016 before the Second Respondent under Rule 5 of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981 (hereinafter referred to as the 'Rules' for short), which was determined in the order dated 01.08.2017 as Rs. 74,032/- for the period from 01.12.2015 to 22.08.2016. Thereafter, the Petitioner filed an appeal under Rule 5-A of the Rules before the First Respondent against that order raising the contention that the wages of the Third Respondent had been erroneously taken as Rs. 8,500/- instead of Rs. 8,359/- and the consequential differential amount would not be payable. As there was delay of 677 days in filing that appeal, an application had been filed along with that appeal, which came to be rejected by order dated 17.03.2020 holding that there was no provision to condone the delay in filing such appeal. Aggrieved thereby, the Petitioner has filed this Writ Petition.

3. Learned Counsel for the Petitioner placing reliance on the decision of this Court in A.Aruljothi -vs- Deputy Commissioner of Labour, Salem (Order dated 28.06.2002 in W.P. No. 15575 of 1995), contends that in view of Section 29(2) of the Limitation Act, 1963, the provisions of Section 5 of the Limitation Act, 1963, would be applicable and the First Respondent has erred in rejecting the application for condonation of delay on the ground that it had not been conferred with any power in that regard.

4. It requires to be noticed here that the Hon'ble Supreme Court of India by a subsequent decision in Ganesan -vs- Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board [(2019) 7 SCC 108] has held that the applicability of Section 29(2) of the Limitation Act, 1963, is restricted to any suit, appeal or application filed in a 'Court' and cannot be pressed in service with regard to filing of appeal before the Statutory Authorities and Tribunals provided in a special or local law, as in this case. In view of that authoritative pronouncement made by the highest court of the land, the decision cited by the Learned Counsel for the

Petitioner has been denuded of its status as binding precedent. As such, there is no infirmity in the impugned order requiring interference by this Court in the exercise of discretionary powers under Article 226 of the Constitution of India.

5. Though obvious, it is needless to add here that no view has been expressed by this Court on the correctness or otherwise on the factual contention of the Petitioner that the salary of the Third Respondent at the time of suspension on 27.01.2015 was Rs. 8,359/- instead of Rs. 8,500/-, and that if such question arises in any legal proceedings subsequently, the Petitioner shall not be precluded by the conclusion arrived on the amount of wages in the order dated 01.08.2017 in P.S.A. No. 5 of 2016 passed by the Second Respondent.

Accordingly, the Writ Petition is dismissed with the aforesaid clarification. Consequently, the connected Miscellaneous Petition is closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vjt/dm

To

1. The Joint Commissioner of Labour,
Collectorate Campus,
Salem - 636 001.
2. The Assistant Commissioner of Labour,
Collectorate Campus,
Salem - 636 001.

+1 CC to Mr.D. Shivakumaran, Advocate sr 30819.

W.P. No. 11788 of 2020

VSNII (CO)
SP(30/09/2020)