

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2020

CORAM

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

W.P. No. 23051 of 2018
and
W.M.P. No. 26937 of 2018

B. Durairaj

... Petitioner

-vs-

1. Assistant Commissioner of Labour,
O/o. The Deputy Commissioner of Labour,
Old Municipal Complex, Anna Salai,
Near Raja Theatre, Vellore - 632 001.

2. The Management,
Vellore District Central Co-operative bank Ltd.,
No.1, Officer's Lane,
Vellore - 632 001.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Assistant Commissioner of Labour, the First Respondent herein and made in P.G. No. 17 of 2016 dated 24.08.2016 and quash the same and consequently direct the Second Respondent herein to pay the interest towards the late payment of gratuity amount of Rs.4,20,906/- for the period between 01.09.2009 till 17.04.2012 at the rate of 18% per annum totally amounting to Rs.1,99,267/- and subsequently interest at the rate of 18% per annum on the gratuity amount of Rs.4,20,906/- from 18.04.2012 till the date of realization of payment and also penal interest on the said amount from 18.04.2012 till the date of realization of payment.

For Petitioner : Mr. N. Damodaran

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

Mr. L.P. Shanmugasundaram,
Special Government Pleader (for R2)

O R D E R
(through video conference)

Heard Mr. N.Damodaran, Learned Counsel for the Petitioner, Mr. D.Sathyaraj, Learned Additional Government Pleader for the First Respondent and Mr. L.P.Shanmugasundaram, Learned Special Government Pleader appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent by an order dated 24.08.2016 in P.G. No. 17 of 2016 had rejected the claim for interest on gratuity made under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act' for short) by the Petitioner against the Second Respondent. 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 Act before the Appellate Authority, 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 did not prefer any such appeal before the Appellate Authority, but has instead filed this Writ Petition on 20.08.2018 challenging the order passed by the First Respondent beyond the maximum limitation period of 120 days prescribed in that regard.

3. There is no acceptable explanation from the Petitioner for not having resorted to that alternative remedy provided under the statute within the maximum period of limitation that has been prescribed for the same. In this context, it may be recapitulated here that the Hon'ble Supreme Court of India in Assistant Collector of Central Excise -vs- Dunlop India Limited [(1985) 1 SCC 260] has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction as follows:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of

obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

That apart, 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. Looked for any angle, it is not possible to entertain this Writ Petition challenging the order of the First Respondent.

4. In fine, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vjt/kv

To

1. The Assistant Commissioner of Labour,
O/o. the Deputy Commissioner of Labour,
Old Municipal Complex, Anna Salai,
Near Raja Theatre, Vellore - 632 001.

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.26190

W.P. No. 23051 of 2018

MG (CO)
CB (01/09/2020)

सत्यमेव जयते

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