

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

CORAM

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

W.P. No. 15808 of 2018  
and  
W.M.P. No. 18788 of 2018

The Zonal Officer,  
Zone - III, Madhavaram,  
Greater Chennai Corporation,  
Formerly:-  
The Commissioner,  
Madhavaram Municipality,  
Madhavaram,  
Chennai - 600 060.

....Petitioner

-vs-

1. The Controlling Authority under Payment of Gratuity Act, 1972,  
The Assistant Commissioner of Labour,  
Office of the Joint Commissioner II - Labour,  
Chennai - 600 006.
2. K. Sivalingam

....Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the First Respondent herein in P.G. No. 23 of 2014 and quash the impugned order dated 01.08.2017 and despatched on 01.03.2018 passed by the First Respondent herein as highly illegal and arbitrary.

For Petitioner : Mrs. Karthikaa Ashok, Standing Counsel  
For Respondents : R1 - Labour Court  
Mr. R.Karthikeyan (for R2)

WEB COPY

O R D E R  
(through video conference)

Heard Mrs. Karthikaa Ashok, Learned Standing Counsel appearing for the Petitioner and Mr. R.Karthikeyan, Learned Counsel 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 01.08.2017 in P.G. No. 23 of 2014 had granted the claim for differential amount of gratuity under Section 7(4) of the Payment of Gratuity Act, 1942 (hereinafter referred to as 'the Act' for short) made by the Second Respondent against the Petitioner, who had received a copy of that order on 02.03.2018. 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 21.06.2018 challenging the order passed by the First Respondent.

3. When it is pointed out that it is not possible to entertain this Writ Petition in the absence of any acceptable explanation from the Petitioner for not having availed the aforesaid alternative remedy provided under the statute, Learned Counsel for the Petitioner seeks permission of this Court to withdraw the Writ Petition with liberty to file appeal before the Appellate Authority. She has filed a memo dated 14.08.2020 to that effect through e-mail, which is placed on record.

4. Accordingly, the Writ Petition is dismissed as withdrawn granting such liberty. It is made clear for the purpose of reckoning limitation for availing aforesaid remedy, the period from the date of filing of the Writ Petition, viz., 21.06.2018, till today, viz., 14.08.2020, shall be excluded. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Assistant Commissioner of Labour,  
Controlling Authority under Payment of Gratuity Act, 1972,  
Office of the Joint Commissioner II - Labour,  
Chennai - 600 006.

+lcc to Mrs.Karthika Ashok, S.R.No.26688

W.P. No. 15808 of 2018

PVS (CO)  
KKV/19/08/2020