

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2020

CORAM

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

W.P. No. 2654 of 2018
and
W.M.P. No. 3281 of 2018

The Regional Manager
Tamilnadu Civil Supplies Corporation
District Collectorate
Namakkal Region
Namakkal. Petitioner

-vs-

1. The Appellate Authority
Under the Payment of Gratuity Act, 1972
The Joint Commissioner of Labour
DMS Compound
Coimbatore - 18.
2. The Controlling Authority
(Under the Payment of Gratuity Act, 1972)
The Assistant Commissioner of Labour
Salem.
3. Thiru. N.Pandiyan
1/29, Chellakovil Street
6, Kizheyur Post
Thagaranpadi Taluk
Nagapattinam District. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the order passed by the First Respondent, Joint Labour Commissioner, Chennai in P.G.A. undated in office Reference No.A.T.M.No. Aa/2940/2017 dated 11.07.2017 and the order passed by the Second Respondent Assistant Labour Commissioner, Controlling Authority, Salem as under the Payment of the Gratuity Act, 1972 in P.G.A. NO. 48/2015 dated 05.07.2016 and to quash the same as illegal.

For Petitioner : Mr. P.Paramasiva Doss

For Respondents: Ms. P.Rajalakshmi (For R1 & R2)
Ms. V.J.Latha (For R3)

O R D E R

(through video conference)

Heard Mr. P.Paramasiva Doss, Learned Counsel for the Petitioner, Ms. P.Rajalakshmi, Learned Additional Government Pleader for the First and Second Respondents, Ms. V.J.Latha, 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 05.07.2016 in P.G.A. No. 48 of 2015 dated 05.07.2016 had 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 15.07.2016. 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 07.07.2017, 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 in A.Thi.Mu.No.B/2940/017 dated 11.07.2017 refused to entertain that time barred appeal. Aggrieved thereby, the Petitioner has filed 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. As a corollary, it would follow that it would also not be possible to entertain this Writ Petition challenging the order of the First Respondent, who has rightly refused to take the time barred appeal to file.

4. Having regard to the aforesaid legal position, there is no justification to interfere with the impugned order of the First Respondent. However, inasmuch as no view has been expressed either 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 made clear 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.

5. The Writ Petition is dismissed with the aforesaid observations. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

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