

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.1388 of 2021
and WMP.No.1563 of 2021

The Management
PeriyaKarumalai Tea Producing and Company Limited
Rep.by its Power Agent
Mr.Selvan, Legal Officer
Nadumalai Estate,
Valparai - 642 127 ... Petitioner

-vs-

1. Venmathi
2. The Additional Commissioner of Labour
Appellate Authority
Payment of Gratuity Act
Office of the Additional Commissioner of Labour
Coimbatore 641 018. ... Respondents

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records in connection with the order passed by the Additional Commissioner of Labour, Coimbatore bearing Ref.No.A.The.Mo.No.Aa/2843/2020 dated 02.11.2020 and quash the same and allow the interlocutory application No... of 2020 in A.G.A.No. of 2020 filed on 28.10.2020 and further direct the Additional Commissioner of Labour, Coimbatore the 2nd respondent herein to hear the appeal on merits.

For Petitioner : Mr.K.Sudalai Kannu

O R D E R

This writ petition has been filed, seeking to call for the records in connection with the order passed by the Additional Commissioner of Labour, Coimbatore bearing Ref.No.A.The.Mo.No.Aa/2843/2020 dated 02.11.2020 and quash the same and allow the interlocutory application No..of 2020 in A.G.A.No. of 2020 filed on 28.10.2020 and further direct the Additional Commissioner of Labour, Coimbatore the 2nd respondent

herein to hear the appeal on merits.

2. The petitioner Management has come forward with the present writ petition, challenging the Order passed by the Appellate Authority on the ground that the Appeal has not been filed within the time stipulated under the Payment of Gratuity Act, 1972 and therefore, the same could not be entertained. It is pertinent to mention here that the Payment of Gratuity Act, 1972 is a self contained Code, which contemplates time frame for filing an application before the Controlling authority and the Controlling Authority is empowered to condone any number of days. But an Appellate Authority can consider the appeal only if the Appeal is filed within time as prescribed under section 7 of the Act, namely, 60 days and within further period of 60 days, if filed with a petition to condone the delay in not filing an application within the statutory time limit of 60 days. Thus, it is clear that the total extended period including original period of 60 days is 120 days.

3. In the present case on hand, the Controlling Authority has passed an order on 20.08.2019 and the Management has received it on 09.09.2019. The Management has deposited the amount on 27.10.2020 and preferred an appeal on 28.10.2020. In the said process, the appeal has been filed only on 28.10.2020 and the time period of 120 days expired as early as in January, 2020 itself, which is before Covid lock down. The lock down was declared in March 2020. Though the Apex Court has held that the period of lock down needs to be excluded for the purpose of computing the limitation, in this case the delay of 120 days had expired even before lock down, viz., in the month of January, 2020 and that the appeal has not been filed within 120 days as contemplated under Section 7(7) of Payment of Gratuity Act, 1972. Hence, in the considered opinion of this Court, the Order dated 02.11.2020 passed by the 2nd Respondent is perfectly justified and if the petitioner / Management is allowed to approach this Court after the expiry of 120 days, all the Managements will approach the Court, by allowing the statutory period to expire and thereafter, try to get an order from this Court so as to rewrite the legislation, which is not permissible.

4. In view of what is stated herein-above, the Writ Petition, being devoid of merits, is dismissed. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

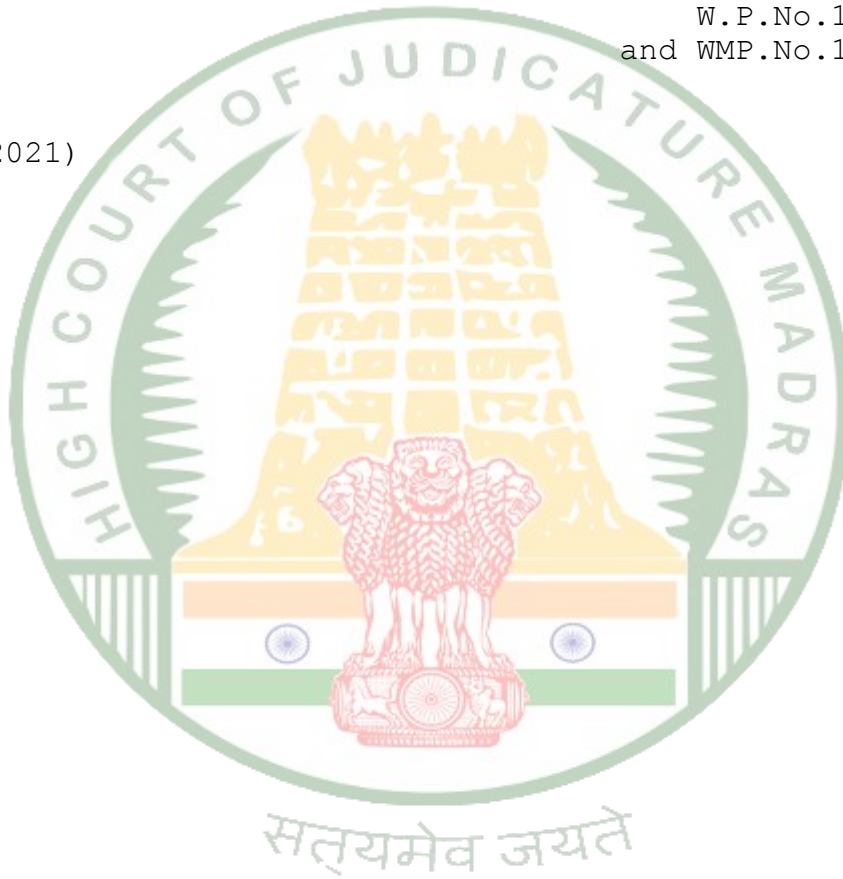
dpq

To

The Additional Commissioner of Labour
Appellate Authority
Payment of Gratuity Act
Office of the Additional Commissioner of Labour
Coimbatore 641 018.

W.P.No.1388 of 2021
and WMP.No.1563 of 2021

RK(CO)
CB(13/07/2021)



WEB COPY