



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2021

CORAM

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

W.P. No. 6232 of 2012

and

M.P. No.1 of 2012

The Management,
Industrial Diesel Engineers,
No.53, Vada Agaram 1st Street,
Nelson Manickam Road,
Choolaimedu, Chennai - 600 094.

...Petitioner

-vs-

1. The Controlling Authority,
Under Payment and Gratuity Act,
Assistant Commissioner of Labour,
O/o. Deputy Commissioner of Labour-I,
Chennai - 6.

2. M.Suresh

...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 of the First Respondent dated 14.02.2012 and made in Na.Ka.No.T1/802/2012 and quash the same and further direct the First Respondent to decide the P.G.No.44/2010 on merit after receiving Counter and documents of the Petitioner.

For Petitioner : Mr. M.Selvam
For First Respondent : Mr. Harsha Raj
Counsel appearing
for the Government

For Second Respondent : No appearance

O R D E R
(through video conference)

Heard Mr. M.Selvam, Learned Counsel for the Petitioner, Mr. Harsha Raj, Learned Counsel representing the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.



2. There is no representation for the Second Respondent when the matter is called today.

3. The Second Respondent made an application under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act' for brevity) claiming gratuity from the Petitioner along with an application in P.G.I.A. No. 39 of 2009 under Rule 10 of the Tamil Nadu Payment of Gratuity Rules, 1973 (hereinafter referred to as 'the Rules' for brevity) to condone the delay of 330 days in filing the same before the First Respondent who is the Controlling Authority under the Act. According to the Petitioner, notice had been initially received only in P.G.I.A. No. 39 of 2009 and the Petitioner entered appearance before the First Respondent and filed its Counter-Affidavit objecting to the condonation of delay in filing the application claiming gratuity. During the hearing on 06.04.2010, the Counsel appearing for the Petitioner had informed that it was not intended to cross-examine the Second Respondent and arguments had been advanced in the application to condone the delay in filing the application claiming gratuity. It appears that the First Respondent condoned that delay and took the application claiming gratuity on file as P.G. No. 44 of 2010 and issued notice for the appearance of the Petitioner for the hearings on 19.04.2011 and 12.09.2011. However, it is stated that the Petitioner could not attend those hearings and the First Respondent proceeded to pass exparte order on 02.11.2011 mentioning the case number as P.G. No. 61 of 2010 and the copy of that order was received by the Petitioner on 05.01.2012. The Petitioner then made an application under the proviso to Rule 11 (5) of the Rules on 03.02.2012 to review that exparte order. The First Respondent by an order Na.Ka.No. T1/802/2012 dated 14.02.2012 informed the Petitioner that the order dated 02.11.2011 in P.G. No.61 of 2010 had been passed on merits and it was not an exparte order, and refused to entertain that application. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the same.

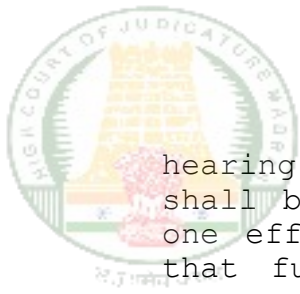
4. Before proceeding further, it must be pointed out here that there is no limitation prescribed for making an application claiming gratuity under the Act, particularly after amendments have been made to the Act by Act 25 of 1984 with effect from 01.07.1984 and Act 22 of 1987 with effect from 01.10.1987, and the necessity to file application under Rule 10 of the Rules to condone delay in filing application claiming gratuity has become superfluous, as explained by this Court in the decision in Sri Muthukumaran Institute of Technology -vs- J.Rajalakshmi (Order dated 01.10.2020 in W.P. No. 3222 of 2019).



5. The primordial contention of the Petitioner in this Writ Petition is that the Counter filed by the Petitioner in P.G.I.A. No. 39 of 2009 was confined to condonation of delay and does not pertain to anything relating to the merits of the controversy in the main claim for gratuity made by the Second Respondent. In the backdrop, it is asserted that when the Petitioner was not heard before passing the order dated 02.11.2011 in P.G. No. 61 of 2011, it has to be necessarily treated as an exparte one and the refusal of the First Respondent do so vitiates it as an error of law apparent on the face of record.

6. There appears to be substantial force in the aforesaid contentions raised by Learned Counsel for the Petitioner. It is borne out of the materials placed on record that after the application for gratuity had been taken on file, the First Respondent had issued notices to the Petitioner mentioning the case number as P.G. No. 44 of 2010 for appearance on the hearings on 19.04.2011 and 12.09.2011 and it is not in dispute that the Petitioner did not attend those hearings and had not filed any Counter on the merits of the controversy in the main claim for gratuity made by the Second Respondent. It is beyond cavil that in a case where the opposite party does not appear despite service of notice, the authority granting any relief to the applicant is legally bound to give reasons in support thereof, and such order would not be denuded of its exparte status on account of the fact that reasons have been assigned. In such circumstances, the order passed on 02.11.2011, is undoubtedly an exparte one and the First Respondent has failed to exercise the jurisdiction vested in it by law to entertain the application made by the Petitioner on 03.02.2012 to review that exparte order in terms of the proviso to Rule 11(5) of the Rules. Moreover, it is not clear from the proceedings of the First Respondent as to how the case number has been changed to P.G. No. 61 of 2010 in the order passed on 02.11.2011 while disposing the matter.

7. The result of the forgoing discussion is that the impugned order Na.Ka.No. T1/802/2012 dated 14.02.2012 passed by the First Respondent, which cannot be sustained, is set aside and the application to set aside the exparte order filed by the Petitioner under the proviso to Rule 11(5) of the Rules shall be taken on file and the matter listed for next hearing on 27.09.2021 before the First Respondent. The Petitioner shall peremptorily file its Counter-Affidavit in the main application for gratuity made by the Second Respondent on that date, and the Petitioner and the Second Respondent shall appear in person or through their authorized representative. If the First Respondent is not in a position to take up the matter for hearing on the said date, it shall inform all parties concerned of the date of



hearing to which it is adjourned in the prescribed manner. It shall be ensured by the First Respondent that there is atleast one effective hearing every week showing progress of the case, that full opportunity of hearing is afforded to all parties concerned following the prescribed procedure in consonance with the principles of natural justice, that reasoned orders are passed dealing with each of the contentions raised by them on merits and in accordance with law, that the decision taken is communicated to the parties under written acknowledgment and that proof of such compliance is filed by 31.12.2021 before the Registrar (Judicial) of this Court.

In fine, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kv/skr

To

The Controlling Authority,
Under Payment and Gratuity Act,
Assistant Commissioner of Labour,
O/o. Deputy Commissioner of Labour-I,
Chennai - 6.

Copy to:

1. The Management,
Industrial Diesel Engineers,
No.53, Vada Agaram 1st Street,
Nelson Manickam Road,
Choolaimedu, Chennai - 600 094.
2. M. Suresh,
29, Hussain Maistry Street,
Royapuram,
Chennai - 13.



3. The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

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W.P. No. 6232 of 2012

GMR (CO)
LS (06/09/2021)