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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.15871 and 15872 of 2020

W.P.No.15871 of 2020:

The Management of
Jaigopal Garodia Vivekananda Vidyalaya,
Vivekananda Nagar,
Avadi, Chennai 600 054,
rep. by its Authorized Representative,
P.Sudhakar

...Petitioner

vs.

1. R.Poornachandran

2. The Deputy Commissioner of Labour-2,
DMS Compound, Teynampet,
Chennai 600 006.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records relating to the impugned order in I.A.No.116 of 2019 in P.G.No.23/2020, dated 30.01.2020 passed by the 2nd Respondent, on the file of the Deputy Commissioner of Labour-II, Chennai, and quash the same.

For Petitioner : Mr.Amikataria
for Mr.P.J.Rishikesh

For 1st Respondent : Mr.Balan Haridas

W.P.No.15872 of 2020:

The Management of
Jaigopal Garodia Vivekananda Vidyalaya,
Vivekananda Nagar,
Avadi, Chennai 600 054,
rep. by its Authorized Representative,
P.Sudhakar

...Petitioner

vs.

1. C.Ravi Shankar

2. The Deputy Commissioner of Labour
DMS Compound, Teynampet,
Chennai 600 006.

...Respondents



Writ Petition filed under Article 226 of the Constitution of India, prayed to issue a Writ of Certiorari, calling for the records relating to the impugned order in I.A.No.117 of 2019 in P.G.No.22/2020 dated 30.01.2020 passed by the 2nd Respondent, on the file of the Deputy Commissioner of Labour-II, Chennai and quash the same.

For Petitioner : Mr.Amikataria
for Mr.P.J.Rishikesh

For 1st Respondent : Mr.Balan Haridas

C O M M O N O R D E R

Petitioner/School has come up with the above Writ Petitions challenging the impugned order dated 30.01.2020 passed by the 2nd Respondent/Authority in I.A.No.116 of 2019 in P.G.No.23 of 2020 and I.A.No.117 of 2019 in P.G.No.22 of 2020, respectively, whereby, enormous delay in filing the Applications claiming Gratuity by the 1st Respondent herein, was condoned.

2. As the issue involved in both Writ Petitions is one and the same, cases are taken up for disposal by a common order.

3. Learned counsel for the Petitioner/School contended that, no proper reason has been assigned by the 1st Respondent/Teachers about the enormous delay of ten years in making an Application before the competent Authority under the Payment of Gratuity Act, 1972, and in the absence of valid reasons, the Authority ought not to have entertained the Applications for condoning the delay. According to the learned counsel, the 1st Respondent in both cases are not illiterates and that, they are Teachers and they are bound to know the law of the land and rights, which they have not exercised within the reasonable time.

4. On the other hand, learned counsel appearing for the 1st Respondent/Teachers in both cases, submitted that, payment of Gratuity is a right conferred on an employee under the Payment of Gratuity Act, 1972; Gratuity is not a gratis or bounty and it is a monetary benefit, which is a property within the meaning of Article 300-A of the Constitution of India and it cannot be deprived to anyone, except in accordance with law. He pointed out that, originally, Teachers were not included in the Payment of Gratuity Act, 1972 and subsequently, Section 2(e) of the Act was amended in the year 2009 to include Teachers, by giving retrospective effect from 30.04.1997.

5. It is further stated by the learned counsel appearing for the 1st Respondent/Teachers that, all the Teachers who were



on the rolls on 30.04.1997 and subsequent to that, are entitled to Gratuity. It is for the employer to deposit the amount within the time prescribed under the Act, in which event, the employer need not pay any interest and the employees can collect the Gratuity amount together with interest accrued, from the Authority concerned. When the employer has not deposited the amount, trying to shift the blame on the employees that, there is a delay, may not be correct and justified. Hence, according to the learned counsel appearing for the 1st Respondent, the Authority was right in condoning the delay in filing the Applications claiming Gratuity.

6. In reply, learned counsel for the Petitioner/School contended that, Gratuity has been deprived to the 1st Respondent/Teachers and when the employer has not paid or deposited the Gratuity, there is a provision under Section 7 of the Payment of Gratuity Act, 1972 for the employee to approach the Authority concerned, claiming computation and payment of Gratuity. Having slept over the matter for more than a decade, the 1st Respondent/Teachers have knocked at the doors of the Authority that too, without assigning valid reasons and the Authority has condoned the delay, which certainly requires interference.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. Before proceeding with the issue involved herein, for better appreciation, Sections 7 and 8 of the Payment of Gratuity Act, 1972 are extracted hereunder:

7. Determination of the amount of gratuity:

(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined.



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(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify: Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]

8. Recovery of gratuity:

If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify,] from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.



9. It is not in dispute that the Applicants before the Authority concerned are Teachers and they are governed by the provisions of the Payment of Gratuity Act, 1972, pursuant to the amendment in the year 2009, which was given retrospective effect from 30.04.1997. A reading of Section 7 of the Payment of Gratuity Act, 1972 makes it clear that, it is the duty cast on the part of the employer to deposit the entire Gratuity amount and thereafter proceed to resist the claim of the employees, if they make a claim before the Authority. If the employer fails to discharge the mandatory provisions of the Act, the Statute prescribes remedy for the employees to approach the Authority, claiming Gratuity. However, they cannot sleep over the matter for years together.

10. In the case on hand, the 1st Respondent/Teachers have approached the Authority belatedly. In any event, there is an enormous delay. In terms of Rule 10 of the Tamilnadu Payment of Gratuity Rules, 1973 (hereinafter referred to as the 'Rules' for short) the employee has to file an Application seeking condonation of delay within a period of 30 days. If it is not filed within the time stipulated, the reason for the delay has to be explained to enable the Authority to condone the same. A Rule cannot supersede the provisions of the Payment of Gratuity Act, 1972. Suppose there is a provision under the Act, saying that, the Application has to be filed within the time stipulated, as prescribed under the Rule, then certainly, the employee will have to file an Application within the time stipulated. A Rule is only a procedural one and is not a substantive one, which can take away the rights conferred under the Act.

11. When an Application has not been filed within the time stipulated, as contemplated under the Payment of Gratuity Act, 1972, read with the Rules made thereunder, satisfactory reasons have to be given for condonation of delay. In the case on hand, the Authority has rendered the finding based on the plea made by the employees concerned, but, the reasons as such, are not acceptable in entirety and strictly speaking, the delay ought not to have been condoned, as there are no sufficient reasons.

12. Learned counsel for the Petitioner/School has relied upon a Division Bench decision of this Court in the case of M.Jayaseelan vs. The Management, Jaigopal Garodia Vivekananda Vidyalaya, Chennai (W.A.No.570 of 2020, dated 29.07.2020), wherein, it is held that, if the delay is enormous and if the Applicant has not approached the Authority within some explainable spell of time, delay cannot be condoned. It was further held therein, that even if the Limitation Law has to be liberally construed as per the language used in Rule 7(5), the period should not be extended unreasonably. The said Division



Bench judgment may not be applicable to the facts of this case, as, in that case, Teachers were asked to come and collect Gratuity from the Management, however, the amount has not been paid to them.

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13. In a similar circumstance, in the case of M/s.A & F Overseas Trade Ltd., Puducherry vs. The Appellate Authority under the Payment of Gratuity Act, 1972, Puducherry (W.P.No.18129 of 2018, dated 01.10.2020), learned Single Judge of this Court, with reference to the decision rendered by this Court in Madura Coats Ltd. vs. Assistant Commissioner of Labour, (1993) 3 LLJ 923 Mad., has held that, an Application to condone delay would have to be first decided before the main Application for Gratuity is taken up for hearing. For better understanding, relevant portion of the said decision is extracted hereunder:

"7. At the same time, it also requires to be mentioned here that in an earlier decision in Madura Coats Ltd., -vs- Assistant Commissioner of Labour [(1993) 3 LLJ 923 Mad], it had been held that an application to condone delay would have to be first decided before the main application for gratuity is taken up for hearing and the said view taken has been approved in M.Devarajulu -vs- Assistant Commissioner of Labour [(1995) 1 LLJ 348 Mad] by the Division Bench of this Court. However, on a perusal of the said decisions, it is evident that the apparent inconsistency of Rule 10 of the Rules with Section 7 of the Act after the amendments made to the Act with effect from 01.10.1987 had neither been raised nor brought to the notice of the Court while deciding those cases. It is needless to recapitulate in this context that a precedent can be an authority only for what has been actually decided and not what may logically flow from it, as explained by the Constitution Bench of the Hon'ble Supreme Court of India in State of Orissa -vs- Sudhansu Sekhar Misra (AIR 1968 SC 647)."

14. This Court is in entire agreement with the said decision rendered by this Court that, the Authority has got powers to condone the delay, but demand of interest is not a matter of right, if a person sleeps over the issue.

15. In terms of Section 7 of the Payment of Gratuity Act, the employer has the right of Appeal and even against an Interim Application, Appeal can be preferred and it is not necessary that, only the employer will have to file an Appeal. Any person, who is aggrieved by an order, is entitled to prefer an Appeal. A reading of Section 7(4) of the Act would make it



clear that, the admissibility of any claim, if rejected, is appealable. In this case, the Controlling Authority has condoned the delay and decided to entertain the Application and against that order, an Appeal under the Act is maintainable.

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16. In case, the Application seeking condonation of delay is rejected, Appeal can be filed against the final order, as it amounts to rejecting the Gratuity claim. An Appeal has to be preferred within 60 days from the date of receipt of a copy of the order and yet another 60 days is prescribed under the Act, fixing the outer limit of 120 days.

17. In the case on hand, the Controlling Authority has rejected I.A.No.116 of 2019 in P.G.No.23 of 2020 and I.A.No.117 of 2019 in P.G.No.22 of 2020 on 30.01.2020 and the outer time limit to file an Appeal ends in May 2020, during which period, COVID-19 was at its peak, and in the meantime, the Apex Court has extended the limitation period to enable the parties to knock at the doors of this Court. During that period, the employer has approached this Court on 05.10.2020. Hence, any Appeal can be entertained by the Appellate Authority, if it is filed well within 120 days. In the case on hand, there is an Appeal remedy and the period during which the Writ Petition is pending, needs to be excluded for the purpose of computing the period of limitation.

18. The reason for quoting the Appeal provision is that, there is no provision fixing the outer time limit to approach the Controlling Authority to make the Controlling Authority to become functus officio. The provision under Section 7 of the Act read with Rule 8 of the Rules would make it clear that, even if the delay is enormous, and the reasons are justifiable, the Controlling Authority is empowered to condone the delay. In this case, the Authority has taken a particular view to condone the delay and no prejudice is claimed to be caused to the School, if the matter is adjudicated on merits.

19. A reading of Section 7(3)(A) of the Act, which is extracted supra would make it clear that, the employer will have to pay interest, in case, the amount is not paid within the time stipulated. Even assuming for the sake of argument that, the delay in filing the Application is justified and the Controlling Authority has entertained the Appeal, the employee will not be entitled to a single pie as interest for the delay period in question. In any event, interest cannot be more than the principal amount demanded as per the proviso to Section 8 of the Act, which is extracted below:

8. Recovery of gratuity:

....



Provided further that the amount of interest payable under this section, shall, in no case, exceed the amount of gratuity payable under this Act.

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20. Since the employees have got a right of Appeal and the Appellate Authority is empowered to entertain the Appeal, and now that, they have knocked at the doors of this Court, this Court directs the Controlling Authority to take up the matter on merits and in accordance with law and pass orders within a period of six months from the date of receipt of a copy of this order. It is needless to mention that, in the meantime, the employer can deposit the admitted principal amount in terms of the provisions of the Act, and the same can be withdrawn by the employees without prejudice to their rights in terms of Section 7 of the Act.

21. It is made clear that, if the employer defaults payment of interest and if the employee fails to avail the remedy, no interest shall be payable to the employee. The employee cannot take the place of Justice as a gambling place.

22. This Court reiterates that, the employees will not be entitled to any interest for the delay period in question and for the remaining period, they must be entitled to interest either in terms of Section 7(3)(A) of the Act or in terms of Section 8 of the Act, depending upon the facts and circumstances of the case.

In fine, Writ Petitions are dismissed with the above direction and observation. No costs. Consequently, connected W.M.P.Nos.19726 and 19727 of 2020 and W.M.P.Nos.25193 and 25194 of 2020 are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

(aeb)

To:
The Deputy Commissioner of Labour-II
DMS Compound, Teynampet, Chennai 600 006.

+2cc to M/s.P.J.Rishikesh, Advocate, S.R.No.36439
W.P.Nos.15871 and 15872 of 2020

PMK(CO)
RGA(15/11/2021)