



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2021

CORAM

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

W.P. No.4521 of 2013

and

M.P. (MD) .No.1 of 2013

T. 1683, Karuppur Primary Agricultural
Co-Operative Bank Ltd.,
rep. by its Administrative Officer,
Agraharam, Karuppur,
Konerirajapuram Post,
Thiruvaiyaru Taluk,
Tanjavur District.

... Petitioner

Vs.

1. The Assistant Commissioner of Labour,
O/o. Deputy Commissioner of Labour,
Tiruchirappalli.

2. V.Ilangovan

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for issue of Writ of Mandamus, calling for the records of the 1st Respondent in AA2/1002/2013 dated 18.02.2013 by which the Respondent has rejected the Petitioner's petition to condone delay in setting aside exparte award and quash the same and for a consequential direction to the Respondent to take the petition to condone delay is setting aside exparte award on file and consider the same on merits and to pass such further or other reliefs as this Court deems fit in the nature and circumstances of this case.

For Petitioner	:	Mr. V.Perumal
For Respondents	:	Mr. R.Murugan (For R1) Additional Government Pleader Mr. R.Murugappan (For R2)

O R D E R

(through video conference)

Heard Mr. V.Perumal, Learned Counsel for the Petitioner,
Mr. R.Murugan, Learned Additional Government Pleader for the First
Respondent and Mr. R.Murugappan, Learned Counsel for the Second



Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

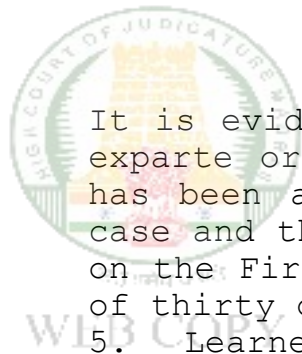
2. The Second Respondent, who had worked as a secretary in the establishment of the Petitioner, had resigned from service on 28.02.2003. He had made an application in P.G. Case No. 80 of 2004 under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act' for short) before the First Respondent claiming gratuity from the Petitioner, who had failed to appear despite service of notice in that proceedings. The First Respondent in the order dated 30.06.2008 held that the Petitioner was required to pay the sum of Rs.1,98,577.50/- with interest at the rate of 10% from 01.03.2003 towards gratuity due to the Third Respondent. According to the Petitioner, a sum of Rs.1,33,739/- was thereafter paid to the Second Respondent towards gratuity on 03.12.2011 which he has accepted under protest. Thereafter, the District Collector, Thanjavur, by order dated 03.10.2012, initiated proceedings under the Tamil Nadu Revenue Recovery Act, 1864, against the Petitioner for the gratuity amount due to the Second Respondent. At that stage, the Petitioner on 01.02.2013 made an application under Rule 11(5) of the Tamil Nadu Payment of Gratuity Rules, 1973, before the First Respondent to set aside the exparte order dated 30.06.2008 passed in P.G.Case No.80 of 2004 along with an application to condone the delay of 1649 days in filing the same. The First Respondent by an Order No. AA2/1002/2013 dated 18.02.2013 refused to entertain those applications, which is assailed in this Writ Petition.

3. Learned Counsel for the Petitioner submits that the First Respondent could not have rejected the application to condone delay without numbering the same and hearing the parties and that the First Respondent may be directed to complete such exercise after quashing the impugned order.

4. Before proceeding further, it would be necessary to examine Rule 11(5) of the Tamil Nadu Payment of Gratuity Rules, 1973, which reads as follows:-

"If the employer concerned fails to appear on the specified date of hearing after due service of notice without sufficient cause, the controlling authority may proceed to hear and determine the application ex parte. If the applicant fails to appear on the specified date of hearing without sufficient cause, the controlling authority may dismiss the application:

Provided that an order under this sub-rule may, on good cause being shown within thirty days of the said order, be reviewed and the application re-heard after giving not less than fourteen days' notice to the opposite party of the date fixed for rehearing of the application."



It is evident from the said rule that the application to review an *ex parte* order has to be made within thirty days. Admittedly, there has been a delay of 1649 days in filing such application in this case and the Petitioner has not shown any provision conferring power on the First Respondent to condone the delay beyond the said period of thirty days stipulated for filing that application.

5. Learned Counsel for the Petitioner contends that in view of Section 29(2) of the Limitation Act, 1963, the provisions of section 5 of the Limitation Act, 1963, could be invoked to receive the application for review after the period of thirty days stipulated for the same. It requires to be noticed here that the Hon'ble Supreme Court of India in the decision in **Ganesan -vs- Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board** [(2019) 7 SCC 108] has clarified that the applicability of Section 29(2) of the Limitation Act, 1963, is restricted to any suit, appeal or application filed in a 'Court' and cannot be pressed in service with regard to filing of application before the Statutory Authorities and Tribunals provided in a special or local law, as in this case. In view of that legal position, there does not appear any infirmity in the impugned order passed by the First Respondent refusing to take on file the application made by the Petitioner to review an *ex parte* order after thirty days in the absence of any enabling statutory provision in that regard.

6. Learned Counsel for the Petitioner brings to notice that the delay has occurred on account of fact that after dissolution of the Board of Directors of the Co-operative Society of the Petitioner in the year 2001, the Petitioner did not have any full time Special Officer and those Special Officers who had been given additional charge with other Co-operative Societies had served for periods which were less than six months, as a consequence of which the decision-making in the Co-operative Society of the Petitioner had been badly hampered. It is pleaded that in these circumstances, a lenient view may be taken to consider the application for review of *ex parte* order despite the lapse of prescribed period of limitation of thirty days for the same. 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 in respect of matters for which the statutory remedy has become barred by limitation and as such, it is not possible to extend any equitable relief contrary to law in this case. It is for the concerned higher authorities to take cognizance of such deplorable state of affairs prevailing in the Co-operative Society of the Petitioner and ensure immediate corrective measures including disciplinary action against the concerned persons responsible for the same, if it is found necessary.



7. In the upshot, the Writ Petition is dismissed with the aforesaid observations. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Assistant Commissioner of Labour,
O/o. Deputy Commissioner of Labour,
Tiruchirappalli.

+1 CC to M/s.SPL GP (SR-16761[F] dated 20/04/2021)

+1 CC to M/s.V.PERUMAL, Advocate (SR-16902[F] dated 21/04/2021)

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