



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2021

C O R A M

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. (MD) No. 20513 of 2014

and

M.P. (MD) No. 1 of 2014

WEB COPY

The Management,
Royal Optical,
No.58-A, Town Hall Road,
Madurai.

... Petitioner

-vs-

1.S.Muniasamy

2.The Joint Commissioner of Labour,
Ellis Nagar,
Madurai.

3.The Assistant Commissioner of Labour,
Payment of Gratuity Act,
Madurai.

... Respondents

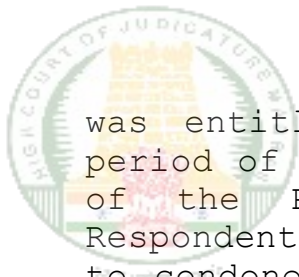
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records passed by the Second Respondent herein impugned order No. ATM/D/5080/2014 dated 19.11.2014 and quash the same and consequently direct the Second Respondent herein to hear petition on merits filed by the Petitioner against the order passed in P.G. No. 18 of 2008 dated 30.03.2009 by the Third Respondent.

For Petitioner : Ms. N.Juliet Latha
For R2 and 3 : Mr. D.Gandhiraj
Counsel for the Government of
Tamil Nadu

O R D E R
(through video conference)

Heard Ms. N.Juliet Latha, Learned Counsel for the Petitioner and Mr. D.Gandhiraj, Learned Counsel representing the Second and Third Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent by an order dated 30.03.2009 in P.G. No. 18 of 2008 had granted the claim for gratuity under Section 7(4) of the Payment of Gratuity Act, 1972, made by the First Respondent against the Petitioner who had received its copy. The Petitioner



was entitled to prefer an 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 Second Respondent, who is the Appellate Authority and 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. The Petitioner, however, preferred appeal before the Second Respondent only on 12.11.2014, along with an application to condone the delay of 1850 days in filing the same. The Second Respondent by an order No. ATM/D/5080/14 dated 19.11.2014 refused to entertain the said appeal received beyond the maximum period of 120 days stipulated for the same, which is assailed in this Writ Petition.

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

4. 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 matter for which the statutory remedy has become barred by limitation. However, inasmuch as no view has been expressed either by the Second Respondent or this Court on the correctness or otherwise on the merits of the claim made by the First Respondent in the order of the Third Respondent, it is made clear that if any person similarly placed to the First 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 Third Respondent.

In fine, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

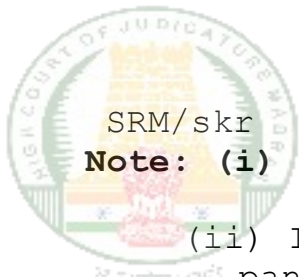
Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



SRM/skr

Note: (i) Issue order copy by 15.09.2021.

(ii) 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

1.The Joint Commissioner of Labour,
Ellis Nagar,
Madurai.

2.The Assistant Commissioner of Labour,
Payment of Gratuity Act,
Madurai.

Copy to

1. The Management,
Royal Optical,
No.58-A, Town Hall Road,
Madurai.

2. S.Muniasamy,
S/o.Sethuramanpillai,
Plot No.2543, Villapuram,
H.S. Colony,
Madurai.

**W.P. (MD) No. 20513 of 2014
24.06.2021**

NSN(CO)
SB(15.09.2021) 3P 5C