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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2022

CORAM

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

W.P. No. 2235 of 2016
and
W.M.P. No. 1922 of 2016

The Superintending Engineer,
Coimbatore Electricity Distribution Circle,
Coimbatore – 641 012. … Petitioner

-vs-

1. The Joint Commissioner of Labour,
   Labour Commissioner Office,
   Coimbatore – 641 018.

2. The Assistant Labour Commissioner,
   Labour Commisioner Office,
   Coimbatore – 641 018.

3. S.Natarajan ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the First Respondent in A.G.A. No. Not Numbered of 2012 in G.A. No. 118 of 2010 dated 02.05.2013 and quash the same and consequently direct the First Respondent to consider the Appeal on merits and dispose of the same.

For Petitioner : Mr. P.Subramaniam

For Respondents: Mr. P.Balathandayutham,
Special Government Pleader (for R1 & R2)

Mr. R.Mohammed Nazrullah (for R3)

O R D E R

Heard Mr. P.Subramaniam, Learned Counsel for the Petitioner, Mr. P.Balathandayutham, Learned Special Government Pleader appearing for the First and Second Respondent and Mr. R.Mohammed

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Nazrullah, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent by an order dated 30.04.2012 in G.A. No. 118 of 2010 granted the claim for gratuity under Section 7 (4) of the Payment of Gratuity Act, 1972, made by the Third Respondent against the Petitioner, who accepts to have on 19.05.2012 received its copy. The Petitioner was entitled to prefer appeal against that order within a period of 60 days from that date under Section 7(7) of the Payment of Gratuity Act, 1972, before the Appellate Authority, who 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. It is not in dispute that the Petitioner had on 23.04.2013 preferred an appeal against it before the First Respondent, which is the Appellate Authority under the Act, beyond the maximum period of 120 days prescribed for the same. The Petitioner has challenged the order dated 02.05.2013 passed by the First Respondent refusing to entertain the said appeal as time barred, in this Writ Petition.

3. 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 assailing the order passed by a Statutory Authority, which was not appealed against within the maximum period of limitation before the Appellate Authority, or if the Appellate Authority has refused to entertain the appeal preferred after that time limit. As such, when there is no infirmity in the order of the First Respondent refusing to entertain the appeal preferred by the Petitioner against the order passed by the Second Respondent as time barred in accordance with the relevant statutory provisions, it is not permissible to circumvent the legislative intent manifested in that bar created by resorting to invoke the discretionary powers of this Court thereafter. However, inasmuch as no view has been expressed by this Court on the correctness or otherwise on the merits of the claim made by the Third Respondent in the order of the First Respondent, it is clarified that if any person similarly placed to the Third 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 First Respondent.

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4. In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

skr

To

1. The Superintending Engineer,
   Coimbatore Electricity Distribution Circle,
   Coimbatore - 641 012.

2. The Joint Commissioner of Labour,
   Labour Commissioner Office,
   Coimbatore - 641 018.

3. The Assistant Labour Commissioner,
   Labour Commisioner Office,
   Coimbatore - 641 018.

W.P. No. 2235 of 2016

MG(CO)
UMA(24/06/2022)

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