



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.06.2022

Coram:

THE HONOURABLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HONOURABLE MRS.JUSTICE N.MALA

W.A.No.1342 of 2022

R.Poornachandran

.. Appellant

Vs.

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

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

.. Respondents

Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 28.07.2021 passed by the learned Single Judge, in W.P.No.15871 of 2020 on the file of this Court.

Prayer in W.P.No.15871 of 2020 : 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 appellant

: Mr.Balan Haridas

JUDGMENT

(The Judgment of the Court was delivered by The Honourable Chief Justice)

By this Writ Appeal, challenge is made to the order dated 28.07.2021, whereby the Writ Petition in W.P.No.15871 of 2020 filed by the first respondent herein, was dismissed with certain observations.



WEB CODE

2. The Writ Petition was filed to challenge the order dated 30.01.2020 passed by the appellate authority, i.e. the second respondent/Deputy Commissioner of Labour-II. The appeal was against the order of the Controlling Authority under the Payment of Gratuity Act, 1972.

3. The learned counsel for the writ appellant submitted that the observations of the learned Single Judge to deny interest on delayed payment of gratuity, was not the subject matter in the Writ Petition, rather, it was only an order condoning the delay in maintaining the application by the employee before the Controlling Authority. Finding justification in the delay of 6100 days in filing the application by the employee/writ appellant, the delay was condoned by the Controlling Authority. It was precisely for the reason of an amendment made in Section 2(e) of the Act of 1972 in the year 2009. The amendment in the Act of 1972 was not in the knowledge of the employee, and therefore, finding justification in the delay in maintaining the application, it was condoned.

4. It is submitted that there is no limitation provided under the Act of 1972 to maintain the application by the employee, if the gratuity is not paid to him or if there is any dispute about the quantification of the gratuity. The Payment of Gratuity (Central) Rules, 1972 however provides limitation. A similar provision exists even in the Tamil Nadu Payment of Gratuity Rules, but no such provision exists in the Act of 1972. The subordinate Legislation cannot be applied de-hors the Act of 1972, thus, the issue of limitation should have been concluded on the aforesaid ground itself.

5. A reference to the judgment of a Single Bench on the issue has been given. It is in the case of M/s.A & F Overseas Trade Limited Vs. The Appellate Authority under the Payment of Gratuity Act, 1972, Puducherry, Deputy Commissioner of Labour, Puducherry (in W.P.No.18129 of 2018, dated 01.10.2020).

6. In the light of the aforesaid, it is submitted that the issue of limitation was not required to be gone into in the absence of any provision under the Act of 1972. The learned Single Judge should not have denied interest going beyond the scope of the Writ Petition.

7. It is however submitted that, pursuant to the order of the High Court, the writ appellant has received the amount of gratuity.

8. We have considered the submissions made by the learned counsel for the appellant and perused the records.



9. The facts on record show that the Controlling Authority under the Act of 1972, condoned the delay of 6100 days without any justifiable reasons and it could not have been condoned on the ground that the employee was an illiterate, when he was discharging duties of a Teacher, and thus, cannot be said to be an illiterate person and otherwise, justification of delay could not have been on the ground of ignorance of law.

10. The issue dealt with by the Controlling Authority favourable to the employee was assailed before the Appellate Authority by maintaining an appeal by the employer and the order passed by the Appellate Authority dismissing the appeal was assailed by maintaining Writ Petition.

11. The first issue for challenge to the order passed by the learned Single Judge is in reference to the Act of 1972 and the Payment of Gratuity (Central) Rules, 1972. It is submitted that no limitation has been provided under the Act of 1972, and therefore, it could not have been provided in the Rules. The subordinate Legislation cannot run counter to the Act and therefore, the issue of limitation was irrelevant to claim the payment of gratuity by the employee. The application was maintainable any time.

12. We have considered the submissions aforesaid and find that the writ appellant has argued the case against his own submissions before the Controlling Authority. It is the employee who submitted an application for condonation of delay of 6100 days and was adjudicated by the Controlling Authority holding the delay to be justified, thus to be condoned. If the subordinate Legislation cannot run counter to the Act to provide limitation, the question would be as to why the writ appellant maintained an application for condonation of delay. The controversy before this Court is on the order passed by the Controlling Authority, so also the Appellate Authority on the said application.

13. In view of the above, the argument in regard to the applicability of the subordinate Legislation cannot be raised by the writ appellant, otherwise, there was no necessity for him to maintain the application for condonation of delay and once it was filed and adjudicated at his instance, the argument about the application of the Tamil Nadu Payment of Gratuity Rules, 1973 or the Central Rules of 1972, to provide limitation, cannot be questioned, when the matter before the learned Single Judge was about the justification of condonation of delay on the application moved by the writ appellant.



14. The aforesaid is only one part. Otherwise, we do not find any substance in the argument of the learned counsel for the appellant that the Rules, either State or Central, on the payment of gratuity, runs counter to the provisions of the Act of 1972. The Act of 1972 provides for the mode of payment of gratuity by the employer and in case of dispute, who would be the authority to adjudicate it. The Rules framed by the Central Government, so also the State Government, provide limitation for maintaining an application by the employee for the claim of gratuity. The provision to provide limitation for maintaining an application cannot be said to be contrary to any provisions of the Act of 1972. It is not that the Act of 1972 bars limitation to maintain the application by the employee and de-hors the aforesaid, Rules have been framed.

15. It is settled law that the subordinate Legislation can be brought to supplement the provisions of the Act, but cannot supplant it.

16. In the present case, we do not find that the provisions of the Act of 1972 are supplanted by Rule 10 of the Payment of Gratuity (Central) Rules, 1972, or even the State Rules and thus, even the second issue raised for the first time, could not have been accepted and again, the issue aforesaid could not have been gone into, when the challenge to the order of the Appellate Authority was on the application submitted by the writ appellant himself to seek condonation of delay. Accordingly, even the second argument raised by the learned counsel for the appellant cannot be accepted.

17. The issue now remains regarding the denial of interest for the intervening period. It is submitted by the learned counsel for the writ appellant that the issue before the learned Single Judge was in reference to the order passed by the Controlling Authority to condone the delay in maintaining the application. Challenge to the aforesaid order was not accepted by the Appellate Authority under the Act of 1972. Thus, the issue of interest could not have been dealt with.

18. To analyse the issue aforesaid, we have gone through the judgment and find that, to do justice, and despite the delay of 6100 days, a direction for payment of the gratuity was given, otherwise, in the absence of justification for the delay of 6100 days which is nearly 17 years, the application could have been dismissed to deny even the payment of gratuity. It could not have been condoned due to lack of knowledge of the amendment in Section 2(e) of the Act of 1972. It is settled proposition of law that ignorance of law is no excuse, and the writ appellant is not an illiterate person, but was a Teacher. The learned



Single Judge, yet issued direction for payment of gratuity. Finding delay of 6100 days in maintaining the application, payment of interest was denied. In fact, the impugned order passed by the learned Single Judge is beneficial to the writ appellant, as he has been extended the benefit of gratuity, despite enormous delay in maintaining the application and a finding has been recorded by the learned Single Judge that there was no justifiable reason for the delay. It is true that the learned Single Judge should have restrained the order at that stage, quashing the order of the Controlling Authority, so also the Appellate Authority, to condone the delay. We find some contradiction in the order under challenge, thus, to have a clarity, we do not find that the delay in filing application was justified on the ground alleged before the Controlling Authority. The outcome of the aforesaid has been spelt out earlier, which is nothing but to dismiss the application and the consequence would have been to deny even payment of gratuity. If we strictly go with the argument of the learned counsel for the appellant, even the direction for payment of gratuity is to be set aside, as it was not the issue before the learned Single Judge, but it is admitted that the amount deposited towards gratuity has already been received by the writ appellant. Thus we do not cause interference in the order.

19. For all the reasons given above, we find no reason to cause interference in the impugned order passed by the learned Single Judge to deny interest. The Writ Appeal fails and is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

cs/dsn

To

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

+1cc to Government Pleader SR.No.39814

W.A.No.1342 of 2022

SMI (CO)
GMY (04/07/2022)