



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM

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

W.P. No. 34852 of 2016
and
W.M.P. No. 30010 of 2016

The Management
The Tiruvateeswarar Hindu
Janopakara Nidhi Limited
Rep. by Administrative Director
Old No. 36, New No.50
Kuppumuthu Street
Triplicane, Chennai - 600 005.

... Petitioner

-vs-

1. The Authority under
Payment of Gratuity Act /
The Assistant Commissioner of Labour
Office of the Deputy
Commissioner of Labour - I
Chennai - 6.

2. S.Ravichandran

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the order of the First Respondent in P.G. No. 148 of 2014 dated 04.02.2015 and consequential order in P.G. IA. No. 146 of 2016 dated 30.06.2016 quash the same.

For Petitioner : Mr. M.S.Palaniswamy

For Respondents : Mr. V.Jeevagiridharan (For R1)
Additional Government Pleader
Mr. K.Rangesh (For R2)

O R D E R

Heard Mr. M.S.Palaniswamy, Learned Counsel for the Petitioner and Mr. V.Jeevagiridharan, Learned Additional Government Pleader appearing for the First Respondent and Mr. K.Rangesh, Learned Counsel appearing 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 in the establishment of the Petitioner, had made an application in P.G. Case No. 148 of 2014 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 and an order dated 04.02.2015 was passed requiring the Petitioner to pay the sum of Rs.1,26,695/- towards gratuity due to the Second Respondent and it is accepted by the Petitioner that on 25.02.2015, he had received the same. Thereafter, the Petitioner on 07.07.2015 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 04.02.2015 passed in P.G. Case No. 148 of 2014 along with an application to condone the delay of 72 days in filing the same. The First Respondent by order dated 30.06.2016 in P.G.I.A. No. 146 of 2016 refused to entertain those applications, which is assailed in this Writ Petition.

3. 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 exparte order has to be made within a period of thirty days. Admittedly, there has been a delay of 72 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.

4. Learned Counsel for the Petitioner contends that the Second Respondent had been dismissed from service in furtherance to his



conviction in a criminal case for commission of offences involving moral turpitude and was not entitled to any gratuity in terms of Section 4(6) (b) of the Act and a lenient view may be taken to consider the application for review of exparte 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 and claim of the Petitioner cannot be countenanced.

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

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Maya

To

The Authority under
Payment of Gratuity Act /
The Assistant Commissioner of Labour
Office of the Deputy Commissioner of Labour - I
Chennai - 6.

+1cc to Mr. M.S.Palaniswamy, Advocate, S.R.No.35427
+1cc to the Government Pleader, S.R.No.36187

W.P. No. 34852 of 2016

AK-II(CO)
CT/22/06/2022