IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.11.2022

Coram:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

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W.P.Nos.26440, 26807, 26809, 26814, 26817, 26822, 26808, 26812, 26816, 26820, 26811, 26815, 26819, 26821, 26830, 26834, 26835, 26839, 26842, 26833, 26837, 26844, 26840, 26836, 26841, 26845, 26847, 26851, 26838, 26843, 26846, 26849, 26852, 26857, 26860, 26862, 26858, 26864, 26866, 26869, 26872, 26873, 26870, 26874, 26871, 26875, 26878, 26882, 26884, 26886, 26887, 26889, 26888, 26890, 27078, 27085, 27088, 27093, 27095, 27232, 27234, 27239, 27237 and 27235 of 2022

and

W.M.P.Nos.25516, 25517, 25860, 25861, 25865, 25866, 25871, 25872, 25877, 25878, 25883, 25886, 25863, 25864, 25867, 25870, 25873, 25874, 25879, 25880, 25868, 25869, 25875, 25876, 25881, 25882, 25884, 25885, 25892, 25893, 25894, 25897, 25901, 25903, 25916, 25917, 25908, 25910, 25900, 25902, 25909, 25911, 25918, 25921, 25922, 25923, 25926, 25930, 25905, 25907, 25914, 25915, 25919, 25920, 25924, 25925, 25927, 25928, 25936, 25937, 25943, 25944, 25945, 25946, 25939, 25941, 25949, 25950, 25953, 25954, 25957, 25958, 25960, 25963, 25965, 25967, 25959, 25961, 25966, 25968, 25962, 25964, 25969, 25970, 25971, 25972, 25974, 25975, 25976, 25977, 25982, 25983, 25980, 25981, 25988, 25989, 25985, 25986, 25990, 25991, 26291, 26292, 26294, 26295, 26302, 26304, 26308, 26310, 26312, 26314, 26428, 26431, 26438, 26439, 26435, 26436, 26425, 26426, 26429 and 26430 of 2022

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The Management,
Rep. by Secretary,
Madras Race Club,

Race Course Road,
Near Railway Station,
Guindy, Chennai,
Tamil Nadu - 600 032. .. Petitioner in W.P.No.26440 of 2022

Vs.

1. The Controlling Authority,
Payment of Gratuity Act,
The Deputy Commissioner of Labour,
Office of the Joint Commissioner of Labour-I,
Chennai-6.

2. Mrs.G.Charumathy .. Respondents in W.P.No.26440 of 2022

Writ Petition No.26440 of 2022 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in respect of the Award dated 22.02.2022 in P.G.No.81/2021 passed by the first respondent and quash the same and consequently direct the first respondent to conduct fresh enquiry in respect of P.G.No.81/2021.

For petitioner in W.P.No.26440 of 2022:
Mr.A.L.Somayaji, Senior Counsel for M/s.D.Harini Yadav

For respondents in W.P.No.26440 of 2022: Mr.G.Nanmaran, Spl.G.P. for R-1
Mr.M.Ramalingam for R-2

COMMON ORDER

Since the issue involved in all these batch of Writ Petitions, is one and the same, they are disposed of by this common order.

2. The issue that arises for consideration in these batch of Writ Petitions is

that under what circumstances the limitation period of 30 days prescribed under the Payment of Gratuity Act for filing an application by the employer to set aside the ex-parte order passed under Section 7 of the Payment of Gratuity Act, under which the amount of gratuity payable to an employee has been determined, can be extended by the High Court, exercising power under Article 226 of the Constitution of India.

3. It is now settled law as laid down in various decisions of the Constitutional Courts including the decisions of this Court that the Payment of Gratuity Act, 1972, being a labour welfare Legislation is a special law, and as such, the limitation period of 30 days prescribed for an employer to file application before the Controlling Authority to set aside the ex-parte order passed under Section 7 of the Payment of Gratuity Act, 1972, under which the amount of gratuity has been determined, cannot be extended and the delay cannot be condoned.

4. Rule 11(5) of the Tamil Nadu Payment of Gratuity Rules, 1973 makes it clear that even for condoning the delay for the maximum period of 30 days for filing an application to set aside the ex-parte order passed under Section 7 of the Payment of Gratuity Act, 1972, sufficient cause will have to be shown by an employer for the said delay. Rule 11(5) of the Tamil Nadu Payment of Gratuity Rules, 1972, reads as follow:

<u>Rule 11: Procedure for dealing with application for</u>

direction:- ......

(5) 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."

5. The learned Senior Counsel appearing for the petitioner/Management fairly conceded that it is now settled law that, the delay of more than 30 days in filing an application to set aside an ex-parte Award passed under Section 7 of the Payment of Gratuity Act, cannot be condoned by the Controlling Authority. However, the learned Senior Counsel however would submit that this Court, while exercising power under Article 226 of the Constitution of India, is vested with the power to interfere with the order of the Controlling Authority if there is flagrant disregard to the law or the rules or procedure by the Controlling Authority while determining the gratuity amount payable to the employees, which has resulted in gross injustice to the employer. The learned Senior Counsel appearing for the petitioner-Management also contended that the procedure

contemplated under Rules 7, 8, 10 and 11 of the Tamil Nadu Payment of Gratuity Rules, 1973, were not followed by the Controlling Authority (first respondent herein), and therefore, on account of the flagrant violation of the said procedure, this Court is having power under Article 226 of the Constitution of India to quash the impugned order and remand the matter back to the first respondent-Controlling Authority for fresh consideration on merits and in accordance with law, after affording an opportunity of fair hearing to the petitioner/Management as well as the respective second respondents in these Writ Petitions.

6. Under the impugned common Award, dated 22.02.2022, the first respondent/Controlling Authority has determined the total amount payable to the employees (second respondent in these Writ Petitions) at Rs.1,22,19,863/-. The impugned common Award is an ex-parte Award and subsequently, the petitioner-Management had filed application seeking to condone the delay of 120 days in filing applications dated 18.06.2022 to set aside the ex-parte Award, which was returned by the first respondent/Controlling Authority on 02.08.2022 for the reason that the same has been filed beyond the prescribed period of 30 days stipulated under Rule 11(5) of the Tamil Nadu Payment of Gratuity Rules, 1973.

7. In view of the settled law that the delay beyond the period of 30 days cannot be condoned, the first respondent-Controlling Authority was right in

returning the applications filed by the petitioner-Management seeking to condone the delay of 120 days in filing applications to set aside the ex-parte Award.

8. However, the learned Senior Counsel appearing for the petitioner-Management drew the attention of this Court to the order dated 08.03.2019 passed by this Court in W.P.(MD).No.5460 of 2019 (The Trustee, Sri Bairaji Math, Madurai Vs. The Joint Commissioner of Labour/Controlling Authority under the Payment of Gratuity Act, 1972, Madurai and another). In the aforesaid decision, this Court had followed the decision of the Full Bench of the Gujarat High Court in the case of *Panoli Intermediate (India) Pvt. Ltd. Vs. Union of India and others*, reported in AIR 2015 Gujarat 97, which was also followed by the Gujarat High Court in the case of *State of Gujarat and another Vs. Appellate Authority under Payment of Gratuity Act, reported in 2015 SCC Online Gujarat* 6320. In the aforesaid decision, the learned Senior Counsel appearing for the petitioner, in particular, referred to the extracted portions made wherein this Court had held that, while exercising powers under Article 226 of the Constitution of India, this Court can interfere with an order, even though the Payment of Gratuity Act prescribes a particular limitation period, when the authorities have exercised the power in excess of their jurisdiction and by over-stepping or crossing the limits of jurisdiction or has acted in flagrant disregard to law/Rules/procedure or acted in violation of the principles of natural justice, where no procedure is prescribed which results in failure of justice or it has resulted in gross injustice. However, it

has been made clear in the said judgment of the Full Bench that the Court, even in the aforementioned circumstances, the discretionary power exercised by this Court will have to be governed solely by the dictates of the judicial conscience enriched by judicial experience and practical wisdom of the Judge.

9. In order to substantiate his submission that the Controlling Authority has acted in flagrant disregard to law/Rules/procedure and has acted in violation of the principles of natural justice, the learned Senior Counsel appearing for the petitioner/Management relied upon the following Rules under the Tamil Nadu Payment of Gratuity Rules, 1973 for the purpose of pointing out to this Court that the procedure contemplated in those Rules was not followed and the principles of natural justice were violated. The relevant Rules are Rules 7, 8, 10 and 11 of the Tamil Nadu Payment of Gratuity Rules, 1973, which are extracted hereunder:

> "Rule 7: Application for gratuity:- (1) An employee who is eligible for payment of gratuity under the Act, or any person authorised, in writing, to act on his behalf, shall apply, ordinarily within thirty days from the date the gratuity became payable, in Form I to the employer:
>
> Provided that where the date of superannuation or retirement or resignation of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement or resignation as the case may be.
>
> (2) A nominee of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, ordinarily within thirty days from the date the gratuity became payable to him in Form 'J' to the employer.

Provided that an application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of Section 4 shall apply, ordinarily within one year from the date the gratuity became payable to him, in Form 'K' to the employer.

(4) Where gratuity becomes payable under the Act before the commencement of these rules, the periods of limitation specified in sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such commencement.

(5) An application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.

(6) An application under this rule shall be presented to the employer either by personal service or by registered post acknowledgement due.

Rule 8: Notice for payment of gratuity: (1) Within fifteen days of the receipt of an application under rule 7 for payment of gratuity, the employer shall,

(i) if the claim is found admissible on verification, issue a notice in Form 'L' to the applicant employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date, not being later than the thirtieth day after the date of receipt of the application, for payment thereof, or

(ii) if the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible.

In either case copy of the notice shall be endorsed to the controlling authority.

(2) In case payment of gratuity is due to be made in the employer's office, the date fixed for the purpose in the notice in Form 'L' under clause (i) of sub-rule (1) shall be refixed by the employer, if a written application in this behalf is made by the payee explaining why it is not possible for him to be present in person on the date specified.

(3) If the claimant for gratuity is a nominee or a legal heir, the employer may ask for such witness or evidence as may be deemed relevant for establishing his identity or maintainability of his claim, as the case may be. In that case the time-limit specified for issuance of notices under sub-rule (1) shall be operative with effect from the date such witness or evidence, as the case may be, called for by the employer is furnished to the employer.

(4) A notice in Form 'L' or Form 'M' shall be served on the applicant either by personal service after taking receipt or by registered post with acknowledgement due.

(5) A notice under sub-section (2) of section 7 shall be in Form 'L'.

Rule 10: Application to controlling authority for direction: (1) If an employer--

(i) refuses to accept a nomination or to entertain an application sought to be filed under rule 7, or

(ii) issues a notice under sub-rule (1) of rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or

(iii) having received an application under rule 7 fails to issue any notice as required under rule 8 within the time specified therein,

the claimant employee, nominee or legal heir, as the case may be, may, within ninety days of the occurrence of the cause for the application, apply in Form 'N' to the controlling authority for issuing a direction under sub-section (4) of section 7 with as many extra copies as there are opposite parties:

Provided that the controlling authority may accept any application under this sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period.

(2) Application under sub-rule (1) and other documents relevant to such an application shall be presented in person to the controlling authority or shall be sent by registered post acknowledgement due.

Rule 11: Procedure for dealing with application for direction: (1) On receipt of an application under rule 10 the controlling authority shall, by issuing a notice in Form 'O', call upon the applicant as well as the employer to appear before him on a specified date, time and place, either by himself or through his authorised representative together with all relevant documents and witnesses, if any.

(2) Any person desiring to act on behalf of an employer or employee, nominee or legal heir, as the case may be, shall present to the controlling authority a letter of authority from the employer or the person concerned, as the case may be, on whose behalf he seeks to act together with a written statement, explaining his interest in the matter and praying for permission so to act. The controlling authority shall record thereon an order either according his approval or specifying, in the case of refusal to grant the permission prayed for, the reasons for the refusal.

(3) A party appearing by an authorised representative shall be bound by the acts of the representative.

(4) After completion of hearing on the date fixed under sub-rule (1), or after such further evidence, examination of documents, witnesses, hearing and enquiry, as may be deemed necessary, the controlling authority shall record his finding as to whether any amount is payable to the applicant under the Act. A copy of the finding shall be given to each of the parties.

(5) 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."

10. Learned Senior Counsel appearing for the petitioner-Management drew the attention of this Court to the impugned Award dated 22.02.2022 passed in P.G.No.81/2021 by the Controlling Authority. He submitted that as seen from the common Award, only one of the employees, namely M.L.Lakshmi was examined as a witness, though there are 64 employees who have made their respective claims.

11. Learned Senior Counsel also invited the attention of this Court to the additional typed set of papers filed before this Court today to substantiate his argument that even though the documents pertaining to M.L.Lakshmi alone (employee) were marked as Exhibits by the Controlling Authority, the Controlling Authority, without any evidence being placed on record for the other employees, has passed the common Award for all the employees who are 64 in number.

12. As seen from the impugned common Award, dated 22.02.2022, the Controlling Authority has determined the gratuity amount payable to the petitioner-Management to the claimants/employees at Rs.1,22,19,863/-, though, except for the employee M.L.Lakshmi, no other employee has filed any documentary evidence to substantiate their respective claims. The only documents filed before the Controlling Authority are as follows:

(i) Proof affidavit of M.L.Lakshmi (PG 137/2021), dated 24.12.2021.

(ii) EPF Statement issued by the petitioners (Ex.1), dated 31.08.2021.

(iii) Intimation letter to ESCI on retirement (Ex.2), dated 21.01.2021.

(iv) ESI Card (Ex.3) and

(v) Aadhar Card (Ex.4).

13. Rule 7 of the Tamil Nadu Payment of Gratuity Rules, 1973, extracted supra, makes it clear that an employee who is eligible for payment of gratuity under the Payment of Gratuity Act, shall apply for the same ordinarily within 30 days from the date the gratuity became payable in Form-I to the employer.

14. In the case on hand, the petitioner-Management categorically denies that they have received Form-I from the respective employees. No contra evidence has also been produced by the respective employees to prove that Form-I was received by the petitioner-Management.

15. Rule 7(5) of the Tamil Nadu Payment of Gratuity Rules, 1973, also makes it clear that the condone-delay-applications will have to be filed by the employee in case the application seeking for payment of gratuity is filed beyond the prescribed period and the employee must adduce sufficient cause for the delay in preferring his or her claim.

16. From the impugned common Award dated 22.02.2022, it is not clear as to whether any condone-delay-application was filed by the respective employees (second respondent herein) for preferring the claim, as admittedly there was a delay in making the claim.

17. Rule 8 of the Tamil Nadu Payment of Gratuity Rules, 1973 (extracted supra) also makes it clear that within 15 days of receipt of the application filed by the employee under Rule 7 therein, the employer will have to decide on the said application within a period of 30 days as to whether the gratuity amount is payable to the employee or not. If the gratuity amount is payable, Form-L notice will have to be issued by the employee specifying the amount of gratuity payable to the employee. In case the gratuity amount is not payable, Form-M notice shall be sent to the employee by the employer.

18. From the impugned common Award, it is not known as to whether the procedure contemplated under Rule 18 of the Tamil Nadu Payment of Gratuity Rules, had been followed or not.

19. Similarly, under Rule 10 of the Tamil Nadu Payment of Gratuity Rules, in case an employer refuses to accept the nomination to entertain the application sought to be filed under Rule 7 or issues a notice under sub-rule (1) of Rule 8 either specifying an amount of gratuity which is claimed by the applicant less than what is payable or rejects eligibility to payment of gratuity, or having received an application under Rule 7 fails to issue any notice as required under Rule 8 within the time specified therein, the employee may, within 90 days of the occurrence of the cause for the application, apply in Form-N to the Controlling Authority for issuing a direction under sub-section (4) of Section 7 of the Payment of Gratuity Act, 1972, with as many extra copies as there are opposite parties.

20. From the impugned Award as well as the submissions made by the learned counsel for the respondents, it is not clear as to whether the procedure contemplated under Rule 10 of the Tamil Nadu Payment of Gratuity Rules, 1973, was followed by the Controlling Authority or not.

21. Under Rule 11(4) of the Tamil Nadu Payment of Gratuity Rules, 1973, it is clear that the Controlling Authority, after completion of hearing on the date fixed under sub-rule (1) or after such further evidence, examination of documents, witnesses, hearing and enquiry, as may be deemed necessary, shall record its finding as to whether any amount is payable to the applicant as

gratuity under the Payment of Gratuity Act or not, and a copy of the finding shall be given to each of the parties.

22. As seen from the impugned Award, dated 22.02.2022, without any evidence placed on record with regard to the claims made by the other employees excepting for M.L.Lakshmi, the Controlling Authority has passed a common Award.

23. It is seen from the impugned Award that no separate finding for each of the claimants who are the respective second respondents in these batch of Writ Petitions, that they are entitled for the determined gratuity amount, has been given by the Controlling Authority. Instead of individually determining the gratuity amount payable for each of the employees, the Controlling Authority under the impugned common Award, has erroneously determined the compensation amount as aggregate, amounting to Rs.1,22,19,863/-.

24. The documents examined by the Controlling Authority as seen from the impugned common Award, pertains only to M.L.Lakshmi and not to others who are the respective second respondents in these Writ Petitions. Only M.L.Lakshmi was examined as a witness and she cannot act as a witness for all the others who have made their individual claims, that too, without a Power of Attorney. Excepting for stating in the proof affidavit that she is giving evidence on behalf of others, there is no proper authorisation placed on record before the

Controlling Authority for the purpose of legally enabling M.L.Lakshmi to depose on behalf of others as well.

25. Section 7(4)(c) of the Payment of Gratuity Act, makes it clear that the parties to the dispute will have to be given reasonable opportunity of being heard and only thereafter, the gratuity amount payable, if any to the employees shall be determined by the Controlling Authority. Section 7(4)(c) reads as follows:

> "Section 7: Determination of the amount of gratuity: ..
> .. ... ..
> (4) (a) ...
> (b) ....
> (c) The controlling authority shall, after due enquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer."

26. In view of the flagrant disregard to Section 7(4)(c) of the Payment of Gratuity Act, 1972, and Rules 7, 8, 10 and 11 of the Tamil Nadu Payment of Gratuity Rules, 1973, the Judicial Conscience of this Court directs that the impugned common Award dated 22.02.2022 has to be interfered with and the petitioner/Management must be granted an opportunity of hearing as provided

under Section 7(4)(c) of the Payment of Gratuity Act, 1972, to dispute the claim of the respective second respondents in these Writ Petitions.

27. The learned Senior Counsel appearing for the petitioner-Management, on instructions, submitted that the petitioner-Management admits that the total gratuity amount payable to the employees, who are involved in these Writ Petitions, and having been arrayed as second respondent in the respective Writ Petitions is Rs.34,19,763/- and if simple interest @ 10% is added to the principal gratuity amount, which works out to Rs.20,55,472/-, the total amount payable towards gratuity and interest is Rs.54,55,235/-. The learned Senior Counsel appearing for the petitioner further submits on instructions that the petitioner-Management undertakes to deposit the sum of Rs.54,55,235/- before the first respondent-Controlling Authority, if a direction to that effect is issued by this Court.

28. This Court is of the considered view that the interest of the respective second respondents in these Writ Petitions over their respective gratuity claim will also be protected, if the petitioner-Management is directed to deposit the said total sum of Rs.54,55,235/- before the first respondent-Controlling Authority, as stated supra.

29. For all the reasons stated above, the impugned common Award, dated 22.02.2022 passed by the first respondent-Controlling Authority, is hereby

quashed, subject to the condition that the petitioner-Management deposits Rs.54,55,235/- (Rupees fifty four lakhs fifty five thousand two hundred and thirty five only) with the first respondent-Controlling Authority in any Fixed Deposit scheme in any Nationalised Bank, which accrues interest, within a period of four weeks from the date of receipt of a copy of this order. After receipt of the said Fixed Deposit amount, the first respondent-Controlling Authority, shall decide the matter afresh and pass Award on merits and in accordance with law, after affording a fair hearing to the petitioner-Management as well as the respective second respondents in these Writ Petitions, within a period of three months thereafter.

30. With the above observations and directions, these Writ Petitions are disposed of. There shall be no order as to costs. Consequently, W.M.Ps. are closed.

18.11.2022

Index: Yes/no
Speaking Order: Yes/no
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ABDUL QUDDHOSE, J

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W.P.No.26440 of 2022 etc. batch

18.11.2022