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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

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

W.P.No. 4626 of 2017
and
W.M.P.No. 4873 of 2017

M/s. P.K.P. Tex Unit - II,
Rep. by Partner K.Hari Prakash,
No: 8/223, B2, A.V.P. Road,
Angeripalayam Road,
Tiruppur - 3.

...Petitioner

-vs-

1. The Joint Commissioner of Labour cum
The Appellate Authority,
Dr. Balasundram Road,
Coimbatore - 18.
2. The Asst. Commissioner/The Controlling Authority,
Office of the Deputy Commissioner of Labour,
Dr. Balasundram Road,
Coimbatore - 18.
3. C.Ramamoorthy

...Respondents

Prayer:-Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the order dated 16.09.2016 in AGA. No. 138/2016 on the file of the First Respondent and to quash the same as per se illegal and consequently to direct the Second Respondent to adjudicate the claim on merits.

For Petitioner : Mr. Ma.P.Thangavel

For Respondents: Mr. P.Gurunathan,
Additional Government Pleader
(for R1 & R2)

Mr. R.S.Raveendhren (for R3)



O R D E R

Heard Mr.Ma.P.Thangavel, Learned Counsel for the Petitioner, Mr. P.Gurunathan, Learned Additional Government Pleader appearing for the First and Second Respondents and Mr. R.S.Raveendhren, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2.The Third Respondent, who had worked in the establishment of the Petitioner, had resigned from service on 12.11.2013 and had made an application in G.A. No. 28 of 2014 under Section 7 (4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act' for short) before the Second Respondent claiming gratuity from the Petitioner, who had failed to appear despite service of notice in that proceeding. The Second Respondent in the order dated 28.11.2014 held that the Petitioner was required to pay the sum of Rs. 80,769/- towards gratuity due to the Third Respondent. The Petitioner on 11.09.2015 had made an application in I.A. No. 376 of 2015 under Rule 11(5) of the Tamil Nadu Payment of Gratuity Rules, 1973, before the Second Respondent to set aside the exparte order dated 28.11.2014 passed in G.A. No. 28 of 2014 along with an application to condone the delay of 258 days in filing the same. The Second Respondent by order dated 22.01.2016 in I.A. No. 376 of 2015 allowed the application to condone delay on payment of costs of Rs. 1,000/- as condition for the same. The Third Respondent preferred appeal in A.G.A. No. 138 of 2016 against that order before the First Respondent, which was allowed by order dated 16.09.2017 by setting aside the order dated 22.01.2016 in I.A. No. 376 of 2015 passed by the Second Respondent and dismissing that application as barred by limitation, 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 thirty days. Admittedly, there has been a delay of 258 days in filing such application in this case and the Petitioner has not shown any provision conferring power on the Second 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 in view of Section 29(2) of the Limitation Act, 1963, the provisions of Section 5 of the Limitation Act, 1963, could be invoked to receive the application for review after the period of thirty days stipulated for the same. It requires to be noticed here that the Hon'ble Supreme Court of India in the decision in Ganesan -vs- Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board [(2019) 7 SCC 108] has clarified that the applicability of Section 29(2) of the Limitation Act, 1963, is restricted to any suit, appeal or application filed in a 'Court' and cannot be pressed in service with regard to filing of application before the Statutory Authorities and Tribunals provided in a special or local law, as in this case. In view of that legal position, there does not appear any infirmity in the impugned order passed by the First Respondent refusing to take on file the application made by the Petitioner before the Second Respondent to review an exparte order after thirty days in the absence of any enabling statutory provision in that regard.

5.Learned Counsel for the Petitioner brings to notice that the delay has occurred on account of fact that the Manager of the Petitioner missed the case particulars and was not able to trace them out in time, while the Petitioner went for business tour to many places out of the State. It is pleaded that in these circumstances, 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 in this case. The Third Respondent is not precluded from recovering the gratuity amount due from the Petitioner in the manner recognized by law.

In fine, the Writ Petition is dismissed with the aforesaid



observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Commissioner of Labour cum
The Appellate Authority,
Dr. Balasundram Road, Coimbatore - 18.
2. The Asst. Commissioner/The Controlling Authority,
Office of the Deputy Commissioner of Labour,
Dr. Balasundram Road, Coimbatore - 18.

+1cc to Mr.Ma.P.Thangavel, Petitioner Advocate, S.R.No.9936

+1cc to the Government Pleader, S.R.No.9517

W.P. No. 4626 of 2017

NR(CO)
RGA(21/06/2022)