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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM

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

W.P. NO. 17617 OF 2017

AND

W.M.P. NO. 19113 OF 2017

Thiashola Plantations Private Ltd
Devashola Estate, rep. by its Manager
Finance and Public Relations
Mr. A. Soosai Arulappan
Devashola-Post,
The Nilgiris-Dt.

... Petitioner

-vs-

1. The Deputy Commissioner of Labour,
Coimbatore, Coimbatore - District.
2. Joeseph Bernard
Thiashola Plantations Private Ltd
Devashola Estate
Devashola Post, The Nilgiris.
3. The District Collector,
The Nilgiris-District.
4. The Thasildhar,
Cudalure-Tk, The Nilgiris-District.

... 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 of the First Respondent dated 13.04.2017 in his proceedings in G.A.I.A. No. 48/2017 and quash the same as null and void and consequently direct the First Respondent to permit the Petitioner to contest G.A. Case No. 59/2015 on merits.



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For Petitioner : Mr. S.Ganesh

For Respondents : Mr. P.Gurunathan
Additional Government Pleader
(for R1, R3 and R4)

No Appearance (for R2)

O R D E R

Heard Mr. S.Ganesh, Learned Counsel for the Petitioner and Mr. P.Gurunathan, Learned Additional Government Pleader appearing for the First, Third and Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent, who had worked as in the establishment of the Petitioner, had made an application in P.G. Case No. 59 of 2015 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 27.04.2015 was passed requiring the Petitioner to pay the sum of Rs.54,000/- towards gratuity due to the Second Respondent. Thereafter, the Petitioner on 03.02.2017 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 27.04.2015 passed in P.G. Case No. 59 of 2015 along with an application in G.A.I.A. No. 48 of 2017 to condone the delay of 301 days in filing the same, which was refused to be entertained by order dated 13.04.2017 and has been challenged in this Writ Petition.

3. Learned Counsel for the Petitioner contends that the First Respondent could not have rejected the application to condone delay and that the First Respondent may be directed to invoke the provisions of Section 5 of the Limitation Act, 1963, to condone the delay taking recourse to Section 29(2) of the Limitation Act, 1963, to complete such exercise.

4. 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:

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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. Further, 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 to review an exparte order after thirty days in the absence of any enabling statutory provision in that regard.

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

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Labour,
Coimbatore, Coimbatore - District.
2. The District Collector,
The Nilgiris-District.



3. The Thasildhar,
Cudalure-Tk, The Nilgiris-District.

+1cc to Mr.K.Lavan, Advocate, S.R.No.9585

+1cc to the Government Pleader, S.R.No.9516

W.P. No. 17617 of 2017

NK(CO)
PM/10/03/2022