



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A(MD)Nos.110 of 2011, 239 of 2012 and 1609 of 2016

and

M.P(MD)Nos.1 & 1 of 2011

and

C.M.P(MD)No.12194 of 2016

W.A(MD)No.110 of 2011

The Management,
A-2295, Madurai Co-operative Printing
Works Ltd., 15 T.P.K.Road,
Andalpuram, Madurai-3. :Appellant/Petitioner

.vs.

1.The Controlling Authority under the
Payment of Gratuity Act,
(The Assistant Commissioner of Labour),
Sundaram Theatre Road,
K.K.Nagar,
Madurai-625 020.

2.M.Mani
C/o.Tamilaga Kooturavu Sanga
Oozhiyar Sangam, 19, Bharathiyar Road,
Madurai-625 018. : Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent,
praying to set aside the order passed in W.P.No.13195/10; Dt;
29.10.2010, grant the relief as prayed for in the writ petition.

Prayer in WP(MD). 13195/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of
India, praying this Court To issue a WRIT OF CERTIORARI, calling for
the records of the 1st Respondent in P.G.No.47/08, Quash the
impugned order passed in P.G.No.47/08, dt. 19-04-2010 and to pass
such other orders as this Honourable Court.



For Petitioner : Mr.S.Seenivasagam
For R1 : Mr.D.Gandhiraj
Special Government Pleader
For R2 : Mr.S.Satheesh Kumar

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W.A(MD)No.239 of 2012

The Management,
A-2295, Madurai Co-operative Printing
Works Ltd., 15 T.P.K.Road,
Andalpuram, Madurai-3. :Appellant/Petitioner

.vs.

1.The Controlling Authority under the
Payment of Gratuity Act,
(The Assistant Commissioner of Labour),
Sundaram Theatre Road,
K.K.Nagar,
Madurai-625 020.

2.S.Shunmugam
C/o.Tamilnadu Kooturavu Sanga
Oozhiyargal Sangam, 233, Kamarajar Salai,
Madurai-625 009. : Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent,
praying to set aside the order passed in W.P.No.1438/09;
Dt; 20.12.2011, grant the relief as prayed for in the writ petition.

Prayer in WP(MD). 1438/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, to call for the records of the 1st respondent in P.G.No. 51/04 and quash the order dt. 06/08/07 of the 1st respondent,pass such other order(s) or directions(s) as expedient to the facts and circumstances of the matter and thus render justice.

For Petitioner : Mr.S.Seenivasagam
For R1 : Mr.D.Gandhiraj
Special Government Pleader
For R2 : Mr.T.Ravichandran



W.A(MD)No.1609 of 2016

The Management,
A-2295, Madurai Co-operative Printing
Works Ltd., 15 T.P.K.Road,
Andalpuram, Madurai-3. :Appellant/Petitioner

.vs.

1.The Appellate Authority under the
Payment of Gratuity Act,
(Joint Commissioner of Labour),
East Marret Street,
Madurai-625 001.

2.The Controlling Authority under the
Payment of Gratuity Act,
(The Assistant Commissioner of Labour)
Sundaram Theatre Road,
K.K.Nagar,
Madurai-625 020.

3.C.Christhudass : Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Pattent,
praying to set aside the order passed in W.P.No.11729/10;
Dt; 31.08.2012, grant the relief as prayed for in the writ petition.

Prayer in WP(MD). 11729/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ, order or direction and in particular, issue a Writ of Mandamus thereby forbearing the respondents and their subordinates from interfering with the peaceful and lawful practice of the petitioner in the field of Herbal system of medicine under Chandisi system and pass such further or other orders.

For Petitioner :Mr.S.Seenivasagam

For R1 & R2 :Mr.D.Gandhiraj
Special Government Pleader

For R3 :Mr.T.Ravichandran



COMMON ORDER

R. SUBRAMANIAN, J

AND

N. SATHISH KUMAR, J

These writ appeals are against the orders of the learned Single Judge dismissing the writ petitions filed by the Management challenging the orders of the Controlling Authority passed under Sub-Section 4 of Section 7 of the Payment of Gratuity Act, 1972.

2. One of the grounds, on which, the writ petitions were dismissed is that the writ petitions are not maintainable as the Management has got the remedy by way of an appeal under Sub-Section 7 of Section 7 of the Act to the Appropriate Authority. The learned Single Judge has refused the liberty to file an appeal before the Appellate Authority on the ground that the appeal would be time barred under Sub-Section 7 of Section 7 of the Act, inasmuch as the writ petitions have been filed after two years after the order of the Original Authority. Aggrieved against the said orders, these writ appeals have been filed.

3. We have heard Mr.S.Seenivasagam, learned counsel for the petitioner, Mr.D.Gandhiraj, learned Government Advocate appearing for the official respondents and Mr.T.Ravichandran and Mr.Satheeshkumar, learned counsel appearing for the private respondents.

4. The workmen sought for gratuity and moved before the Controlling Authority under the Payment of Gratuity Act. The said Authority, by order, dated 06.08.2007 directed the appellant Management to pay gratuity on the basis of the last drawn salary, which was not disputed before the said authority. The writ petitions were filed questioning the said order after two years of the order on the ground that the quantum of last drawn salary is under dispute as the settlement arrived at between the Management and the workers have been cancelled by the Management.

5. The learned Single Judge dismissed the writ petitions on the ground that in view of the availability of the alternative remedy, power under Article 226 of the Constitution of India cannot be invoked. It is seen from the order of the learned Single Judge that liberty sought for to challenge the order before the Appellate Authority, namely, the State Government under Sub Section (7) of Section 7 of the Payment of Gratuity Act was rejected on the ground that the appeal would be time barred and the appellate authority, namely, the Government has no power to condone the delay for a period beyond 60 days.



6. Mr.S.Seenivasagam, learned counsel for the appellant would invite us to go into the merits of the matter and decided as to the last drawn wages. He would also submit that since what is the last drawn wages is in dispute, the Competent Authority was not right in directing the payment of gratuity. In fact, an order passed under Section 7(4) of the Act is not disputed. Sub Section (7) of the Act, reads as follows:-

"7(7)Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf;

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days."

7. A reading of Sub Section 7 of Section 7 of the Act would show that the Appellate Authority does not have power to condone the delay of 60 days in filing the appeal. The orders impugned in the writ petitions were passed 06.09.2007 and the writ petitions were filed on 08.02.2009 almost after two years. Therefore, once the writ petitions are held to be not maintainable, the petitioners in the writ petitions could not invoke the appellate remedy also, in view of Sub-Section 7 of the Section 7 of the Act.

8. We do not see any reason to interfere with the order of the learned Single Judge. These writ appeals fail and they are dismissed on the ground of maintainability. We are not going into the merits of the matter. The appellant Management is directed to pay the gratuity as directed by the Competent Authority within a period of two months from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

am



To

1.The Appellate Authority under the
Payment of Gratuity Act,
(Joint Commissioner of Labour),
East Marret Street,
Madurai-625 001.

2.The Controlling Authority under the
Payment of Gratuity Act,
(The Assistant Commissioner of Labour),
Sundaram Theatre Road,
K.K.Nagar,
Madurai-625 020.

+1 CC to Mr.T.RAVICHANDRAN, Advocate SR.No. 8842

ORDER MADE IN
W.A(MD)Nos.110 of 2011,
239 of 2012 and 1609 of 2016
23.02.2022

RJ(CO)
TR(07.03.2022) 6P 4C