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W.P.No.39572 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.01.2023

Coram:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.39572 of 2004
and WMP.No.47184 of 2004

M.Sundararajan

..Petitioner

Vs

1.The Controlling Authority

Under the Payment of Gratuity Act, 1972

Assistant Commissioner of Labour, Dr.Balasundaram Road

Coimbatore-18

2.The Appellate Authority

Under the payment of Gratuity Act, 1972,/Joint Commissioner

of Labour, Dr.Balasundaram Road

Coimbatore-18

3.4.Bob Corporation

749, Avinashi Road

Near Anna Statue, Coimbatore-18.

..Respondents



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Prayer : Petition filed under Article 226 of Constitution of India, praying to issue a writ of certiorari calling for the records of the order in AGA.No.125 of 2004 dated 13.05.2004 of the 2nd respondent against the order in I.A.No.608 of 2002 dated 08.05.2003 of the 1st respondent and quash the same.

For petitioner : Mr.S.Saravanan

For respondents : No appearance

ORDER

The petitioner/employee has filed this writ petition seeking to quash the order in AGA.No.125 of 2004 dated 13.05.2004 of the 2nd respondent whereby, the appellate authority has set aside the order passed in I.A.No.608 of 2002 dated 08.05.2003 passed by the 1st respondent/Controlling Authority.

2.The petitioner was working with the 3rd respondent employer from 10.08.1980. He resigned the job on 10.05.1999. His resignation was accepted and he was relieved from duty.



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3. The petitioner approached the employer for settling his gratuity and other benefits. But the employer alleging certain irregularities, issued show cause notice. The petitioner made numerous correspondences and issued lawyer's notice. Thereafter, the petitioner filed I.A.No.608 of 2002 before the Controlling Authority/1st respondent.

4. The Controlling Authority, held that the employer has not disbursed the gratuity due to the worker within 30 days from the date on which it became due and since the employer has failed to execute the duty cast upon it, condoned the delay in filing the claim petition and decided to take up the main issue in the claim petition.

5. The employer filed A.G.A.No.125 of 2004 as against the order passed by the Controlling Authority. The employer contended that no reason was adduced for the delay, hence the delay petition ought to have been dismissed.

6. The Appellate Authority on going through the entire pleadings, found that as per sub section (3A) of Section 7 of the Payment of Gratuity



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Act, only for the purpose of imposing interest in the event of non payment of gratuity due to the worker, within 30 days from the date on which it became due, delay is condoned and not for condoning the delay in filing the claim petition. The appellate authority further held that only on sufficient cause being shown by the applicant, after the expiry of the specified period, delay will be condoned. The appellate authority held that on 23.07.2001, the employer replied to the lawyer's notice by refusing to pay the gratuity and thereafter I.A.No.608 of 2002 filed with delay 1286 days and therefore, dismissed the claim petition as barred by limitation.

7. The petitioner, who is before this court is aggrieved against the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972/Joint Commissioner of Labour, Coimbatore, whereby, the appeal filed by the employer was entertained and the claim petition filed by the employee/petitioner got dismissed on the ground of limitation.

8. Heard the submissions made by the learned counsel for the petitioner. There is no appearance for the respondents.



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9. A perusal of records would go to show that this court while admitting the writ petition, granted interim stay of the order of the appellate authority on 3.1.2005. The writ petition is of the year 2004. Even though counsel entered appearance for the 3rd respondent viz., contesting respondent, none appeared today when the matter is taken up for disposal.

10. Having heard the submissions made by the learned counsel for the petitioner/employee, it is seen that the employer raised no dispute on the fact regarding period of employment of the petitioner and his resignation under its corporation. The facts are also not disputed by the employer before the statutory authorities that payment was not made to the petitioner as per his entitlement under the Gratuity Act., within one month from the date of resignation, as provided under the Gratuity Act.

11. Admittedly, the claim was raised before the Controlling Authority with delay. As per Section 7 (2) of the Payment of Gratuity Act, an employer is under obligation to settle the gratuity dues within 30 days of the end of service, whether or not an employee files an application. The Act also



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provides that interest should be paid if there be any delay in the payment.

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12. In the case on hand, the Controlling Authority while considering the averments raised by the petitioner, condoned the delay holding that since the Act is a welfare legislation and that the employer failed to cast its duty. The authority allowed the I.A., and decided to take up the main case. However, the employer filed appeal as against the delay condonation. In my considered view, when delay is condoned, the highest that can happen is that a case would be decided on merits after hearing the parties. The provisions for limitation in respect of payment of gratuity is concerned, it is procedural in nature and do not intend to extinguish right of the employee. The employee's claim for payment of gratuity cannot be treated as invalid merely because the said claim is not made within the period of 30 days from the date of gratuity becomes payable.

13. The payment of Gratuity Act has been held to be an enactment for the welfare of the workman/employees and is a welfare legislation. The interpretation to such a statute cannot be against the interest of the workmen.



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Procedural delays in moving the claim application before the Controlling Authority within the specified time, shall not be a valid ground to throw-away and reject the claim of the workman. Otherwise, the very purpose of such a welfare legislation shall frustrate.

14. In view of the above reasonings, the writ petition is allowed. The impugned order passed in A.G.A.No.125 of 2004 dated 13.05.2004 is set aside. The order passed in I.A.No.608 of 2002 dated 08.05.2003 is restored. The authority shall decide the main issue and pass necessary orders within a period of 6 months from the date of receipt of a copy of this order. No costs. Connected MP is closed.

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Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
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J.NISHA BANU, J.

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To

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