



WEB COPY



W.P.No.24173 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|              |            |
|--------------|------------|
| Reserved on  | 11/12/2023 |
| Delivered on | 20/12/2023 |

C O R A M

**THE HONOURABLE Dr.JUSTICE D.NAGARJUN**

Writ Petition No.24173 of 2015

a n d

M.P.No.1 of 2015

The Management  
Nanjiah Lingammal Polytechnic College  
rep. By its Secretary  
Sirumugai Road  
Mettupalayam  
Coimbatore 641 301. ... Petitioner

Vs

1. The Controlling Authority  
under the Payment of Gratuity Act, 1972  
-cum-Assistant Commissioner of Labour  
Office of Deputy Commissioner of Labour  
Coimbatore 18.
2. A. Bharatharathinam ... Respondents

**Prayer:** Petition filed under Article 226 of the Constitution of India  
for the issuance of a writ of certiorari to call for the records of the first  
respondent in I.A.No.449 of 2014 dated 25/3/2015 and quash the same.



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For petitioner

...

Mr.S.Janani  
for A.Shivaji

For respondents

...

Mr.C.Sangamithirai  
Special Government Pleader  
for R.1

Mr.C.K.Chandrasekar  
for R.2.

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**ORDER**

This writ petition is filed seeking to issue a writ of certiorari to call for the records pertaining to I.A.No.449 of 2014 dated 25/3/2015 and to quash the same.

2. The facts in brief are that the petitioner College was established in the year 1985 and approved by AICTE and Government of Tamil Nadu. It is managed by a registered Trust having its office in Chennai. The second respondent joined the petitioner College on 12/6/1996. As per the terms of the appointment, the Secretary of the College is the final authority in accepting the resignation and relieving him from the post on giving notice of one month.

3. The second respondent was assigned to do the work of examiner of valuing answer sheets of Board of Examination. During the month of



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October 2013, he has attended his duties carelessly by not following the scheme of evaluation of Board of Examination. On account of this, future of many bright students was spoiled.

4. After thorough scrutiny of the material, the Chairman of Examination has sent a communication dated 16/4/2014 to the petitioner College to take strict action against the petitioner. On receipt of the said communication, follow up action was initiated. The petitioner has admitted his mistake on 5/5/2014, thereby, an enquiry was initiated against him. A show cause notice was issued on 23/6/2014 for which the second respondent has given reply, on 30/6/2014 stating that he has already resigned from service with effect from 31/5/2014 and sought for treating his resignation as termination of service. A reply was sent to the petitioner College on 4/7/2014 denying the receipt of resignation letter of the second respondent.

5. The second respondent has received his salary for the month of May on 31/5/2014 and has not attended the College from 1/6/2014 to 17/6/2014. However, on 18/6/2014, he has attended the College and signed the attendance register. The second respondent was subsequently



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absent continuously without any leave or permission. A notice was sent to him but he has failed to give explanation in spite of taking sufficient opportunity. An Enquiry Officer was appointed and the appointment of Enquiry Officer was also communicated to the second respondent on 12/2/2015. The date, time and place of enquiry was communicated to him in the notice dated 12/2/2015. The second respondent has sent a reply dated 18/2/2015 stating that the action of the petitioner is mala fide. Basing on the materials available, the Enquiry Officer has conducted the enquiry. He has given four opportunities for the second respondent to appear for the enquiry. Since the second respondent has failed to appear, the Enquiry Officer has concluded the enquiry and submitted a report on 11/5/2015, basing on the materials available on record.

6. A show cause notice was issued to the second respondent dated 15/6/2015. He has failed to give an explanation, however, on 30/6/2015, he sought for copy of two documents. Finally, the petitioner College has removed the second respondent from service with effect from 19/6/2014 and withheld the gratuity on account of moral turpitude by invoking Section 4 (6) (b) (ii) of Payment of Gratuity Act. This communication was also sent to the second respondent.



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7. The second respondent has invoked the jurisdiction of first respondent Controlling Authority under Payment of Gratuity Act, seeking gratuity by filing a petition for gratuity. Along with said application, he has also filed I.A.No.449 of 2014, seeking to condone the delay of 135 days in filing the petition seeking gratuity. A detailed counter affidavit was filed by the petitioner opposing the condonation of delay of 135 days. The first respondent, by way of order dated 25/3/2015, allowed I.A.No.449 of 2014 and condoned the delay of 135 days. Aggrieved by the same, this writ petition is filed.

8. The counsel for the petitioner has submitted that first respondent has failed to see that the main application itself is not maintainable in law on account of the fact that gratuity was withheld, as per Section 4 (6) (B) (ii) of the Payment of Gratuity Act, 1972 and that the second respondent has not challenged the order of withholding the gratuity and without challenging the same, he has filed an application before the authority as if the petitioner has denied the gratuity and therefore, sought for setting aside the order passed by the Controlling Authority in I.A.No.449 of 2014 dated 25/3/2015.



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9. It is submitted by the learned Special Government Pleader appearing for the first respondent that in order to withhold the gratuity, the petitioner College has to file a request before the first respondent authority and only after taking the clearance, from the first respondent, the petitioner College can withhold the gratuity, thereby, the petitioner has violated the procedure. It is further submitted that the second respondent has though admitted his guilt he has attended the office, thereby, it cannot said that he has resigned from service. It is further submitted that the petitioner was expected to prefer a statutory appeal under the Payment of Gratuity Act, instead the petitioner College has directly approached this Court.

10. Heard Mr.S.Janani, learned counsel for the petitioner, Mr.C.Sangamithirai, learned Special Government Pleader for the first respondent and Mr.C.K.Chandrasekar, learned counsel for the second respondent. Perused the materials available on record.

11. The petitioner who has challenged the order passed in condoning the delay of 135 days, has filed this writ petition, belatedly after a lapse of four months from the date of cause of action. When the petitioner can



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file the writ petition with a delay of four months, the petitioner has to think of similar yard stick of considering the condoning the delay of 135 days by the trial Court.

12. Further, it is a settled legal position that while considering the application for condoning the delay, liberal approach has to be taken. The payment of gratuity is the right of an employee and it cannot be deprived on the basis of simple technical reason of delay in approaching, the concerned authority. Considering the above, the order passed in condoning the delay is not perverse, hence cannot be interfered with.

13. In view of the above, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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mvs.

Index: Yes/No

NCC: Yes/No



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To

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under the Payment of Gratuity Act, 1972  
-cum-Assistant Commissioner of Labour  
Office of Deputy Commissioner of Labour  
Coimbatore 18.



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in  
W.P.No.24173 of 2015

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