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WP.No.10910 of 2018

In the High Court of Judicature at Madras

Dated : 04.9.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.10910 of 2018
& WMP.No.12838 of 2018

M/s.Cauvery Enterprises, rep.
by its Partner V.Balusamy

...Petitioner

Vs

1.The Additional Commissioner of
Labour/Appellate Authority,
Coimbatore-18.

2.The Assistant Commissioner of
Labour/Controlling Authority,
Salem.

3.T.Malliga

4.The District Collector, Erode
District, Erode-11.

...Respondents

Prayer: This petition is filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 21.2.2018 made in A.Thi. Mu.Aa/0649/2018 passed by the first respondent, quash the same



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and consequently direct the first respondent to entertain the petition dated 09.1.2018 to condone the delay in filing the appeal filed under Section 7(7) of the Payment of Gratuity Act, 1972 against the order dated 30.1.2017 made in P.G.A.No.76 of 2015 passed by the second respondent.

For Petitioner : Ms.R.Adithya Shri for
Mr.N.Manokaran

For R1, R2 & R4 : Mr.M.S.Premkumar, GA

For R3 : Mr.C.E.Pratap

ORDER

This is a petition filed by the petitioner seeking to quash the order dated 21.2.2018 passed by the first respondent and to direct the first respondent to entertain the petition dated 09.1.2018 to condone the delay in filing the appeal filed under Section 7(7) of the Payment of Gratuity Act, 1972 against the order dated 30.1.2017 made in P.G.A. No.76 of 2015 passed by the second respondent.

2. The facts leading to filing of this case are as follows :

(i) The third respondent joined in the petitioner company in 1988. Her services were orally terminated on 20.11.2013. Hence, she filed a petition in



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P.G.A.No.76 of 2015 before the second respondent under Section 7(4)(b) of the Payment of Gratuity Act, 1972 (for short, the Act) read with Rule 18 of the Payment of Gratuity Rules, 1972 claiming a sum of Rs.1,44,230/- towards gratuity.

(ii) In that, the petitioner filed a counter contending that the petitioner employed only less than 10 persons at a time, that the third respondent was not a permanent employee, that the third respondent was also working as an agent of the Life Insurance Corporation of India and that she would not be entitled to get gratuity. However, by order dated 30.1.2017, the second respondent directed the petitioner to pay a sum of Rs.1,44,230/- to the third respondent together with interest at the rate of 10% per annum.

(iii) Aggrieved by that, the petitioner filed an appeal before the first respondent under Section 7(7) of the Act along with a petition to condone the delay of 284 days in filing the appeal. However, by the impugned order, the papers were returned by the first respondent on the ground that the first respondent had no jurisdiction to condone the delay beyond a period of 120 days. Challenging the same, the petitioner is before this Court.



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3. Though very many grounds have been raised in the above writ petition, the learned counsel for the petitioner submits that due to unforeseen situation, the petitioner was not able to file the Appeal within the prescribed limitation period i.e., 120 days. Hence the impugned order passed by the first respondent rejecting the appeal filed by the management which is *per se* unsustainable.

4. Heard the learned counsel appearing on behalf of the petitioner, the learned Government Advocate appearing for respondents 1, 2 and 4 and the learned counsel appearing for the third respondent.

5. Admittedly, the original authority / second respondent passed the Award dated 30.01.2017 in P.G.A.No.76 of 2015 directing the petitioner to pay a sum of Rs.1,44,230/- as gratuity along with 10% interest per annum within 30 days, against which, the petitioner preferred an appeal before the appellate authority / first respondent, who in turn rejected the appeal vide Award dated 09.01.2018, on the ground that the management has filed the



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appeal beyond the prescribed time limit of 120 days as per Section 7(7) of the Act. For better appreciation, the relevant provisions u/s.7(7) of Act is extracted hereunder:

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.

6. A perusal of 7(7) of the Act reveals that any appeal aggrieved by an order under sub-section (4) of the Act has to be filed within the period of sixty days from the date of receipt of the said order, in case if any sufficient cause is shown to the appellate authority, the Government has power under the proviso to Section 7 of the Act to extend the period of limitation further



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for a period of 60 days.

7. Though the facts stands as such, however, in the present case on hand, the original authority has passed the order on 30.01.2017, however, the petitioner has not chosen to file an appeal before the appellate authority within the prescribed limitation period of 120 days as per Section 7(7) of the Act. Therefore, the delay caused by the petitioner cannot said to be a sufficient ground for consideration. Hence, the impugned order passed by the first respondent dated 21.02.2018 cannot be interfered with, since he has no power to extend the prescribed time frame as per the statutes.

8. With the above observation and reasons, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No



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