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W.A.Nos.1924,1926 & 1945 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 17-03-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.Nos.1924,1926 & 1945 of 2019

The Management,
Jai Shanthi Theatre.

...

Appellant in all Appeals

-VS-

1.N.Rayappan

2.S.V.Ramasamy

3.The Authority under the Payment of Gratuity Act,
Assistant Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore – 611 018.

4.The Authority under the Payment of Gratuity Act,
Joint Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore – 611 018.

...

Respondents in W.A.No.1924/2019

1.S.V.Nagarajan

2.S.V.Ramasamy



3.The Authority under the Payment of Gratuity Act,
Assistant Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore – 611 018.

4.The Authority under the Payment of Gratuity Act,
Joint Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore – 611 018.

Respondents in W.A.No.1926/2019

1.C.Saraswathi

2.S.V.Ramasamy

3.The Authority under the Payment of Gratuity ct,
Assistant Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore – 611 018.

4.The Authority under the Payment of Gratuity ct,
Joint Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore – 611 018.

Respondents in W.A.No.1945/2019

W.A.No.1924 of 2019 is filed under Clause 15 of the Letters Patent against the order, dated 09.10.2018, passed in W.P.No.32351 of 2015, on the file of this Court.

W.A.No.1926 of 2019 is filed under Clause 15 of the Letters Patent against the order, dated 09.10.2018, passed in W.P.No.32350 of 2015, on the file of this Court.

W.A.No.1945 of 2019 is filed under Clause 15 of the Letters Patent against the order, dated 09.10.2018, passed in W.P.No.32349 of 2015, on the file of this Court.



For Appellant in all Appeals : Mr.A.Deivasigamani,
for M/s.S.Saravanan.

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For Respondents : No appearance

JUDGMENT

(By *S.Vaidyanathan,J.*)

These appeals have been preferred by the appellant management challenging the common order passed by the learned single Judge, dated 09.10.2018, in W.P.Nos.32351 of 2015, 32350 of 2015 and 32349 of 2015 respectively, confirming the order of the fourth respondent Appellate Authority, returning the appeal papers vide communication, dated 21.09.2015. The authority has returned the appeal papers with the endorsement as follows :

"A.G.A.No.4537/2015 D.C.L.Office,
Coimbatore -18, date .9.15.

Returned :

This Authority has no power to hear the case which is filed after the limitation period (within a period of 120 days) as per Section 7 (7) Payment of Gratuity Act.

ACL
CBE-18

Date : 21.09.2015

To,
Mr.A.Subramanian,
Advocate,
Coimbatore -9."



The above same endorsement was effected in all three appeals with different reference numbers.

2. For the sake of convenience, Section 7 (7) of the Payment of Gratuity Act, 1972, in short, "the Act", is extracted below :

"7. Determination of the amount of Gratuity.-

xxxxxx

(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. Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection (4), or deposits with the appellate authority such amount."

3. In terms of Section 7 (7) of the Act, the employer will have to deposit the entire amount before the Controlling Authority before filing appeal at the Appellate Authority. Besides, the appeal ought to be filed within 60 days from the date of receipt of a copy of the order of the Controlling Authority. However, another period of 60 days



is prescribed under the special provision to enable the authority to condone the delay and entertain the appeal.

4. In the case on hand, the appeals have not been filed within the period of 120 days, as stated above. Though deposit was made by the management before filing the appeals, as the authority had become *functus officio* on account of the fact that the appeals were filed beyond 120 days, the return made by the Appellate Authority, in our considered opinion, was perfectly in order and the order of the learned single Judge, affirming the order of the Appellate Authority, does not warrant any interference by this Court.

5. Writ Appeals are, therefore, dismissed. No costs. Consequently, the connected C.M.P.Nos.13130, 13132 and 13175 of 2019 are closed.

6. In case any amount is lying with the Controlling Authority, the same shall be returned to the workmen within a period of 30 days from the date of receipt of a copy of this order. The balance amount of gratuity shall be paid by the employer together with interest at 10% per annum from the date it became due. The balance amount of gratuity, if any, is not paid within 30 days, it will fetch interest at 15% per annum as per Section 8 of the Payment of Gratuity Act,1972.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
dixit

(S.V.N.,J.) (R.K.M.,J.)
17-03-2023



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