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W.A.No.1278 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-06-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.1278 of 2023

The Tamil Nadu Co-operative Marketing
Federation Limited,
represented by its Secretary,
No.91, St.Mary's Road,
Chennai-600 018.

...

Appellant

-VS-

1.The Joint Commissioner of Labour,
(Appellate Authority under Payment of Gratuity Act,1972)
Labour Welfare Building, VI Floor,
D.M.S. Compound,
Chennai-600 006.

2.The Assistant Commissioner of Labour,
(Controlling Authority under Payment of Gratuity Act,1972)
Office of the Deputy Commissioner of Labour,
Labour Welfare Building,
Teynampet,
Chennai-600 006.

3.V.Seenivasagam

...

Respondents



Appeal is filed under Clause 15 of the Letters Patent against the order, dated 09.12.2019, passed in W.P.No.1617 of 2016, on the file of this Court.

For Appellant : Mr.J.Milton Arul Rajendran

For Respondents 1 & 2 : Mr.P.Ganesan,
Govt.Advocate.

For Respondent 3 : Mr.S.Rajkumar

JUDGMENT

(By *S.Vaidyanathan,J.*)

This appeal is preferred against the order, dated 09.12.2019, passed in W.P.No.1617 of 2016, by the learned single Judge.

2. The learned single Judge has passed the following order :

"3. It is the case of the petitioner that the first respondent has returned the appeal papers without considering the reasons stated in the affidavit filed by the petitioner seeking to condone the delay of 110 days in filing such appeal. It is seen that the said appeal was filed against the order dated 06.03.2015 passed by the second respondent directing the petitioner to pay a sum of Rs.7,89,828/- with 10% interest to the 3rd respondent herein, being the gratuity payable to the 3rd respondent.

4. Perusal of the impugned order dated 04.11.2015 would show that the first respondent has not adverted to any of the reasons stated by the petitioner in the affidavit filed in support of the application filed for condoning the delay. Needless to say that it is for the petitioner to



represent the appeal papers once again before the first respondent, who in turn, shall consider the reasons stated by the petitioner for condoning the delay and pass appropriate orders. It is also made clear that the petitioner should comply with the other requirement, namely, depositing the amount ordered by the second respondent and produce such certificate before the first respondent along with the appeal papers when the same is represented. Since the impugned order is only returning the appeal papers, the petitioner is granted liberty to represent the same before the first respondent by complying with the above requirements. Accordingly, the Writ Petition is disposed of with a direction to the petitioner to represent the appeal by complying with the above condition of depositing the amount within a period of eight weeks from the date of receipt of a copy of this order. On such representation, the first respondent will consider the delay petition and pass orders on the same on merits and in accordance with law within a period of four weeks thereafter. No costs."

3. The Appellate Authority has passed an order on 04.11.2015 returning the appeal papers, on the ground that appeal has not been filed within 120 days. On reading of the order in Para 4, it is very clear that there are no adverse orders against the appellant herein. For the reasons best known to the appellant, the appeal has been preferred.

4. Since the third respondent herein has not preferred any appeal, we are of the view that that the Appellate Authority has rightly held that it has become *functus*



officio and the learned single Judge cannot bypass an order, permitting the Management to prefer an appeal after 120 days. Even though no adverse orders are passed against the appellant, the order of the learned single Judge runs counter to the provisions of the Payment of Gratuity Act, 1972, namely, Section 7 (7), as per which, no appeal shall be filed beyond 120 days. Further, in the light of the decision of this Court in *Onward Trading Company, Madras v. Deputy Commissioner of Labour, Madras*, 1989 (2) LLN 672 and 673 (Mds HC), as against the order of the Original Authority, an appeal has got to be filed before the Appellate Authority under the Payment of Gratuity Act, 1972, for which, the entire amount has to be deposited, as a condition precedent.

5. Writ Appeal is, therefore, dismissed. No costs.

Index : Yes/No

Internet : Yes/No

Speaking / Non-speaking Order
dixit

(S.V.N.,J.)

(K.R.S.,J.)

21-06-2023

To

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