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W.P.Nos.19233, 20168 & 21507 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.Nos.19233, 20168 & 21507 of 2018

and

W.M.P.Nos.22625, 23632 & 25256 of 2018

1.The Deputy Director of Horticulture,
Joint Director of Agriculture Campus,
Opposite to Government E.V.R. Polytechnic,
Thorapadi, Vellore – 632 002.

2.The Horticulture Officer,
Navlock State Horticulture Farm,
Ranipet, Walaja Taluk,
Vellore District.

... Petitioners in all WPs

Vs.

1.N.Subramani

... Respondent in
W.P.No.19233 of 2018

2.V.Krishnaveni

... 1st Respondent in
W.P.No.20168 of 2018

3.S.Poongavanam

... 1st Respondent in
W.P.No.21507 of 2018

4.The Assistant Commissioner of Labour,
Vellore.

... 2nd Respondent in
W.P.Nos.20168 & 21507 of 2018

Prayer in all WPs: Writ Petitions filed under Article 226 of the
Constitution of India for issuance of a Writ of Certiorari, to call for the



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records of the Assistant Commissioner of Labour, Vellore, pertaining to the impugned orders dated 12.06.2017 passed in P.G.I.A.Nos.67, 68 of 2015 & 5 of 2016 and quash the same.

For Petitioner : Mr.S.John J.Raja Singh
(in all WPs) Additional Government Pleader
For Respondent : Not ready in notice
(Respondent & 1st Respondent in
all WPs)
Court (R2 in W.P.Nos.20168 &
21507 of 2018)

COMMON ORDER

Since the issue involved in these writ petitions are interconnected, with the consent of the learned counsel appearing for the parties, these writ petitions were heard together and disposed of by this common order.

2. The respondent in W.P.No.19233 of 2018 and the first respondent in W.P.Nos.20168 and 21507 of 2018 are hereinafter referred to as workmen.

3. The workmen filed petitions before the Assistant Commissioner of Labour, Vellore seeking gratuity to the tune of Rs.96,364/- claiming that



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they worked from 1975 in the Navlock Horticulture Farm, which is under the control of the petitioners, that their last drawn wage was Rs.80/- and 70/- per day respectively, that they were stopped from work from 21.01.2007, that during the last 12 months, they worked for more than 240 days, that they paid contribution towards CPF Scheme and that they are entitled to a sum of Rs.96,364/- towards gratuity. Before the Assistant Commissioner of Labour, the first petitioner filed counter which was adopted by the second petitioner, wherein it had been stated that the schemes implemented in the Navlock Horticulture Farm were temporary and seasonal, that regular and continuous employment never existed, that the workmen never worked for 240 days in a year, that they crossed the age of 74 and 64 years respectively, that they themselves abandoned the casual employment from 01.04.2007, that G.O.Ms.No.494, Agriculture Department dated 29.11.2007, based on which, the workmen raised claims, was not applicable to them as they did not full-fill the eligibility criteria, that the farm was established in the year 1979 and only thereafter, the schemes were gradually implemented, that the averment that the workmen worked in the Navlock Horticulture Farm from 1975 was false, that the Employees' Provident Fund Scheme would be applicable even to a contingent and casual employee, that the payment of contribution would not



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be a proof for full-filling the eligibility criteria under Section 25B of the Industrial Disputes Act, that as the workmen absented themselves for duty from April 2007, they were relieved from the services vide proceedings of the first petitioner dated 28.07.2008.

3.1. Thereafter, the first petitioner approached the Conciliation Officer for conciliation, which ended in failure. Pursuant to that, the workmen filed individual industrial disputes before the Additional Labour Court, Vellore seeking to reinstate them with full back wages, continuity of service and all other attendant benefits and it was dismissed on 05.08.2010 holding that since the workmen were aged above 60 at that point of time, they would be entitled to a compensation of Rs.40,000/- alone from the Horticulture Department. The said amount was also paid to the workmen. However, challenging the order dated 05.08.2010 passed by the Additional Labour Court, Vellore, the petitioners filed W.P.No.12155 to 12157 of 2012 before this Court and it is said to be pending. Only thereafter, the workmen filed the petitions before the Assistant Commissioner of Labour seeking gratuity with a delay of 2218 days. Further, the Assistant Commissioner of Labour, by the impugned orders, directed the petitioners to pay the said sum of Rs.96,461/- together with interest at 10%. Aggrieved



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by that, the petitioners are before this Court.

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4. The learned Additional Government Pleader appearing for the petitioners submitted that as per Rule 7 of the Tamil Nadu Payment of Gratuity General Rules, 1972 (in short 'the Gratuity Rules'), an employee who is eligible for payment of gratuity under the Act, or any person authorised, in writing, to act on his behalf, shall apply, ordinarily within thirty days from the date the gratuity became payable, in Form I to the employer; provided that where the date of superannuation or retirement or resignation of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement or resignation as the case may be. The workmen are not employees of the petitioners, however, the Labour Court awarded only compensation and the gratuity application is not filed in terms of Rule 7 of the Gratuity Rules. Hence, the award passed by the Assistant Commissioner of Labour is not sustainable. Accordingly, he prays for allowing the writ petitions.

5. Though these writ petitions have been filed in the year 2018, however, till date, the petitioners have not taken any effective steps to service notice on the workmen. Considering the pendency of these writ petitions, this Court is inclined to dispose of these writ petitions based on



the available records.

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6. Admittedly, challenging the orders passed by the Labour Court in the respective industrial disputes, the workmen filed writ petitions before this Court in W.P.Nos.12155 to 12557 of 2012 and the same was disposed of as withdrawn vide order dated 20.11.2019. When the said writ petitions were pending before this Court, the workmen filed the gratuity application before the authority under the Payment of Gratuity Act, 1972 (in short 'the Act') and after considering the oral and documentary evidence, the gratuity authority passed award in favour of the workmen. However, as against the order of the gratuity authority, though there is an effective appeal remedy available before the appellate authority under Section 7(7) of the Act, however, the petitioners have filed these writ petitions before this Court, which is not sustainable. As per Section 7(7) of the Act, the petitioners ought to have preferred appeal within sixty days from the date of receipt of the order and if there is any delay, if the appellate authority is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, the appellate authority may extend the said period by a further period of sixty days. Totally, within the limitation period of 120 days, the aggrieved person has to prefer an appeal. However, in the present case, without exhausting the appeal remedy available under



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Section 7(7) of the Act, the petitioners have filed these writ petitions, which is not sustainable. Further, beyond the limitation period of 120 days, the appellant authority have no power to entertain the appeal and this Court also cannot extend the period than what is prescribed in the statute. Therefore, this Court cannot direct the petitioners to prefer appeal before the appellate authority now, since the limitation period has already been expired prior to the filing of these writ petitions. Therefore, this Court is not inclined to interfere with the impugned orders, thereby, these writ petitions are liable to be dismissed.

7. Accordingly, these writ petitions are dismissed. No costs.
Consequently, connected miscellaneous petitions are closed.

15.09.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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