IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P No.25301 of 2023
& WMP.No.24713 of 2023

Chennai Port Authority,
rep.by Mr.A.Jayasimha
Chief Mechanical Engineer,
No.1, Rajaji Salai, Chennai-1. ...Petitioner

Vs

1.The Controlling Authority under the Payment of Gratuity Act, 1972 and the Assistant Labour Commissioner (Central), Sasthri Bhavan, Haddows Road, Chennai-5.

2.The Secretary, Madras Port Spillage Handling Workers Association, No.165, Amman Koil Street, Kakkanji Nagar, Vyasarpadi, Chennai-39.

3.Smt.U.Devi
4.Shri K.Srinivasan (deceased)
5.S.Muniyammal
6.S.Sundaramoorthy
7.S.Manimaran
8.Shri S.Kandasamy

9.Shri M.Ponnan
10.Shri G.Pandian
11.Shri M.Devaraj
12.Shri R.Niraimathi
13.Shri K.Annappan
14.Shri E.Sekar
15.Shri M.Murthy
16.Shri M.Elumalai
17.Shri R.Sekar
18.Shri K.Rajendran ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the order dated 21.2.2023 passed by the first respondent in File No. 48/6 to 15, 18, 19 & 34/2018 B3 (13 gratuity applications) and quash the same.

For Petitioner : Mr.Krishna Ravindran
For Respondent-1 : Mr.V.Ashok Kumar, CGSC

ORDER

This is a petition filed by the petitioner seeking to quash the common order dated 21.2.2023 passed by the first respondent in File No.48/6 to 15, 18, 19 & 34/2018 B3.

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

(i) The second respondent association was a contractor and it was formed by the workers, who were earlier involved in the activity of cleaning the ore spillages when they were transported and exported through the Chennai Port. The petitioner availed the services of the second respondent, which used to outsource the entire work including appointment and management of workers. There had been a memorandum of understanding entered into between the petitioner and the second respondent on 02.5.1995 for cleaning the iron ore spillage in the Mechanized Ore Handling Plant, Ore Handling Division.

(ii) During the first week of every month, the second respondent was raising the bill and the petitioner used to pay the bill amount to the second respondent. There was no direct relationship between the petitioner and the workers of the second respondent association. As per the said memorandum of understanding, the second respondent was paying the wages and provident fund contributions first to the Regional Provident Fund Commissioner concerned and thereafter, the same was reimbursed by the petitioner on producing sufficient documents.

(iii) Pursuant to orders of the Hon'ble Supreme Court and the Government of India, the iron ore export was banned and the memorandum of understanding entered into between the petitioner and the second respondent association became redundant and it was terminated on 06.12.2012 after obtaining suitable orders from the Board. After termination of the said memorandum of understanding, the workers filed W.P.No.33614 of 2012 and several other writ petitions seeking to absorb them as employees of the petitioner. Further, on consideration of the plight of the workers, the petitioner engaged their services on temporary basis for some other works at the Port with the approval of the resolution of the Board dated 30.12.2013 with applicable minimum wages. In addition, this Court, in M.P.No.2 of 2014 in the said writ petition, directed the petitioner to pay the workers namely respondents 3, 4 and 8 to 18 the salary that was paid in November 2012 and the same was complied with by the petitioner.

(iv) The said writ petition was dismissed along with other writ petitions by a common order dated 22.7.2016. As against the same, the workers preferred W.A.No.1020 of 2016, in which, a Division Bench of this Court, by a common judgment dated 05.1.2017 along with other writ appeals, held that all the spillage handling workers should be treated and transferred as employees of the Ennore Port Limited and that if the Ennore Port could not employ the workers, it would be a matter of adjustment between the petitioner and the Ennore Port.

(v) Aggrieved by the said common judgment of the Division Bench of this Court, the petitioner and the Ennore Port preferred Civil Appeal Nos.2114 and 2115 of 2018 as well as 2116 to 2118 of 2018 and by a common judgment dated 15.2.2018, the Apex Court allowed the civil appeals, set aside the said common judgment of the Division Bench of this Court, dismissed the writ petitions, out of which the civil appeals arose and granted liberty to the writ petitioners and the Port Trusts to approach the Arbitrator as per Clause 31 of the said memorandum of understanding.

(vi) Pursuant to the orders of the Apex Court, a Retired Judge of the Apex Court was appointed as the Sole Arbitrator and an award came to be passed on 14.6.2023. During the pendency of the arbitration proceedings, respondents 3, 4 and 8 to 18 filed applications for payment of gratuity before the first respondent, who passed the impugned order directing the petitioner either directly or through the second respondent to pay the gratuity amount as tabulated against each of the applicants within 30 days together with simple interest. During the pendency of the arbitration proceedings, the fourth respondent died and his legal heirs are arrayed as respondents 5 to 7 in this writ petition.

(vii) The grievance of the petitioner is that though the first respondent was informed about the pendency of the matter before the learned Arbitrator pursuant to the directions of the Apex Court, the impugned order came to be passed. During the course of arbitration proceedings, though the counsel appearing for respondents 3 to 18 submitted that in case of arriving at a settlement, they would withdraw the applications for payment of gratuity made before the first respondent. However, they failed to do so. Further, the first respondent had no jurisdiction to entertain the applications for payment of gratuity since the matter was seized of by the learned Arbitrator. Though an appeal remedy is available to the petitioner, due to the peculiar nature of this case, the petitioner is before this Court.

3. Learned counsel for the petitioner would submit that there was no direct employer-employee relationship between the petitioner and the respondents which was even upheld by the Hon'ble Division Bench of this Court while considering the appeals filed by the petitioner and the Ennore Port. Though the petitioner was aware that there is an appellate remedy under the Gratuity Act, however, since there was a parallel comprehensive proceedings pending before the Arbitral Tribunal pursuant to the orders of the Hon'ble Supreme Court, while approaching the Gratuity authority, Section 7 of the Payment of the Gratuity Act, 1972 is not applicable to the present case. However, without adverting to the above facts, the 1st respondent/controlling authority holding the entire liability against the petitioner by ordering payment of gratuity amount is not sustainable. Accordingly, he prayed for allowing this Writ Petition.

4. Per contra, learned Central Government Standing counsel appearing for the 1st respondent would submit that the Tribunal has approached this Court after an inordinate delay that too without filing any

appeal, the petitioner has not chosen to prefer an appeal within the period of limitation or even the extended period. Even as per the statute, the appellate authority has no power to entertain the appeal beyond the period of limitation and this Court under article 226 cannot accede to the request of the petitioner when the petitioner has failed to act diligently. Accordingly, he prayed for dismissal of this Writ Petition.

5. Heard the learned counsel for the petitioner and the learned Central Government Standing Counsel accepting notice for the first respondent. In view of the nature of order this Court proposes to pass, the writ petition itself is taken up for final disposal without ordering notice to respondents 2, 3 and 5 to 18.

6. The issue arises in this Writ Petition is no longer *res integra* as similar issue has already been dealt with by this Court in the case of ***The Commissioner of Udumalpet Municipality, Coimbatore District Vs Rajammal & Others*** in W.P.No.14533 of 2001 vide order dated 08.06.2010, wherein, this Court had dismissed the Writ Petition on the

following grounds. The relevant portion of the order is extracted hereunder:-

> *7 (23) The legal position is as follows:*
>
> *(a) An appeal under Section 30(1) of the Tamil Nadu General Sales Tax Act, 1959 has to be filed within 30 days before the appellate Assistant Commissioner. The appellate Assistant Commissioner is empowered to condone the delay for further period of 30 days of sufficient cause for not presenting the appeal in time is shown and satisfied by the appellate authority.*
>
> *(b) Under no circumstances, the appellate authority has power to condone the delay beyond 30 days.*
>
> *(c) While the High Court exercising the jurisdiction under Article 226 of Constitution of India, approves the correctness of the order of the appellate authority, it has no power to direct the appellate authority to consider the appeal on merits as otherwise it would be nothing but Court extending the period of limitation.*
>
> *(d) Even if the High Court accepts the explanation given by the assessee for not filing the appeal within the period prescribed under the Act, it cannot direct the appellate authority to consider the matter on merits as the High Court exercision jurisdiction under article 226 of Constitution of India, cannot re-write the provisions of the Act."*

From the above decision, it is clear that even as per Section 30(1) of the Tamil Nadu General Sales Tax Act, 1959, as against the order of controlling authority, the Appeal has to be preferred within the period of limitation of 30 days and within an extended period of another 30 days by seeking condonation of delay. When the Appeal is preferred beyond the period of limitation, the Appellate Authority has no power to condone the delay beyond the period of 60 days. Even this Court, exercising its jurisdiction under Article 226, shall not condone the delay and issue a direction to the appellate authority to consider the issue, as otherwise, the said order would be nothing but an act of extending the period of limitation.

7. In the present case, the petitioner has approached this Court after an inordinate delay that too without filing any appeal, the petitioner has not chosen to prefer an appeal within the period of limitation or even the extended period. Further, no sufficient cause has been shown for the inordinate delay. Even as per the statute, the appellate authority has no power to entertain the appeal filed beyond the period of limitation of 60

days. When the petitioner has failed to exercise diligence in preferring the appeal on time, this Court cannot grant any concession to the petitioner by invoking its extraordinary jurisdiction. If this Court accedes to the relief prayed for by the petitioner, it would not only be stepping into the shoes of the appellate authority but would also be an act beyond the statute. In such view of the matter, this Court is not inclined to grant relief as sought for by the petitioner and this Writ Petition deserves to be dismissed.

8. For the reasons aforesaid, this Writ Petition is devoid on merits and the same is dismissed accordingly. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition stands closed.

28.08.2023

Index : Yes (or) No
Neutral Citation : Yes (or) No
NHS
To
The Controlling Authority under
the Payment of Gratuity Act, 1972
and the Assistant Labour Commissioner
(Central), Sasthri Bhavan, Haddows
Road, Chennai-5.

M.DHANDAPANI,J

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