



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

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CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.7870 of 2024

and

WMP.Nos.18096, 8829 & 8831 of 2024

The Management
Rep.by its Secretary
Madras Race Club
Race Course Road Near Railway Station
Guindy, Chennai 600 032.

... Petitioner

Vs.

1.The Controlling Authority
Payment of Gratuity Act
The Deputy Commissioner of Labour
Office of the Joint Commissioner of Labour -I
Chennai 600 006.

2.K.Saraswathi
3.R.D.Raghuram
4.B.Geetha
5.P.S.Madhavi
6.K.V.Lakshmi
7.V.Akila
8.M.Lingesan
9.C.Kamala
10.N.Kamala



W.P.No.7870 of 2024

- 11.A.Mohammed Iqbal
- 12.Vaijyanthi
- 13.M.Seetha
- 14.Rajam
- 15.L.Sargunasundari
- 16.T.Jagadeesan
- 17.S.Hemalatha
- 18.R.Nagalakshmi
- 19.A.Gunasekaran
- 20.Vasanthanagarajan
- 21.T.S.Mani
- 22.R.Kabali
- 23.C.Nirmala Devi
- 24.K.Damodharan
- 25.S.Jayam
- 26.J.Radhamani
- 27.A.K.Radhabai
- 28.Ponnammal
- 29.L.Bhagavathi
- 30.D.Meera
- 31.D.Vasanthi
- 32.R.Vasanthi
- 33.R.Pushpa
- 34.S.Vasantha
- 35.Muniyammal
- 36.Meena
- 37.Sundaramurthy
- 38.Shyam Sundar
- 39.N.Kodhai
- 40.N.Kasthuri
- 41.S.Mythili
- 42.K.Sakunthala

...Respondents



W.P.No.7870 of 2024

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the orders passed by the first respondent in PG.I.A.Nos.128 of 2022 to 160 of 2022, 175 of 2022 to 179 of 2022 (excluding 177 of 2022) and 26 of 2023 to 29 of 2023 dated 10.10.2023 and quash the same.

For Petitioner : Mr.P.H.Aravind Pandiyan
Senior Counsel
Assisted by
Mr.T.Balaji

For Respondents : Ms.Anna Mathew for R3 to R19
to 23, 25 to 40 and 41
R2, R24 & R42 - deceased
steps due to bring the LR's on records

ORDER

This Writ Petition is filed challenging the order passed by the first respondent in PG.I.A.Nos.128 of 2022 to 160 of 2022, 175 of 2022 to 179 of 2022 (excluding 177 of 2022).

2. Heard Mr.P.H.Aravind Pandiyan, the learned Senior Counsel



W.P.No.7870 of 2024

appearing on behalf of the petitioner Management and Ms. Anna Mathew, the learned counsel appearing on behalf of the respondents 3 to 19 to 23, 25 to 40 and 41.

3. The brief facts leading to the filing of this Writ Petition are that the Workmen claim to be employees under the petitioner Management and they are said to have retired starting from the period 2011 onwards. Immediately, within 30 days from their retirement, they did not make any application for payment of gratuity as per Rule 7 of the Payment of Gratuity Rules 1972. They approached the petitioner management belatedly for payment of gratuity. The petitioner management passed an order on 18.06.2022. The relevant portion of the said order is extracted hereunder:

“ With reference to your cited application we write to inform that you have not attached credible an bonafide documentary evidence for the particulars mentioned as to the date of appointment, correct last drawn salary, date of superannuation and the workings of the gratuity.

In this regard, we are to point out that the race day employees services were regularised with effect from 01.06.2002 as per the direction of the Court Order in



W.A.No.1187 of 1990. Further we write to point out that most of the particulars furnished by you are not in conformity with the records available with the club.

In the above backdrop, we request you to kindly submit the documents as credible proof for the particulars furnished by you in the application.”

4. Construing the above order, as an action of refusing to entertain the application under Rule 7 of the Payment of Gratuity Rules 1972, the Workmen had approached the Controlling Authority under Rule 10 of the Payment of Gratuity Act. Under Rule 10 of the Payment of Gratuity Rules, 1972, they have to approach the Controlling Authority within a period of 90 days. Since the order is passed in the year 2022 and they approached the Authority only in the year 2023, they filed an application for condonation of delay under the proviso to Rule 10 (1) of the Payment of Gratuity Act. The said delay is now condoned by the order impugned in the Writ Petition. Aggrieved by which the management has filed the Writ Petition.

5. Mr.P.H.Aravind Pandiyan, learned Senior Counsel appearing on behalf of the Management would submit that firstly the delay ought to



W.P.No.7870 of 2024

have been reckoned from their date of superannuation. The Workmen has to make their claim within 30 days from their date of superannuation. Therefore merely by showing the delay of the date of communication of the management in the year 2022 is erroneous and as such this Court should interfere with the impugned order.

6. It is the second contention that the Workmen herein are all covered by 18 (1) settlement, in which they have received enhanced benefits along with the other beneficiaries in the settlement and as such after obtaining the benefits under 18 (1) settlement, they cannot be permitted to turn around and claim benefits under the Payment of Gratuity Act, 1972 also. Therefore, the Controlling Authority ought to have considered the same and ought not to have condoned the delay.

7. It is the third contention that the order which is impugned by the Workmen does not even reject their claim under Rule 7 of the Payment of Gratuity Rules, 1972. It would only direct them to resubmit the documents with credible proof of the particulars to be furnished by the workmen in the



W.P.No.7870 of 2024

application. Therefore there was no cause of action at all for the Workmen to have approached the Controlling Authority under Rule 10 (1) of the Payment of Gratuity Act, in as much as the order dated 18.06.2022 is not an order refusing to entertain the applications at all. Therefore, he would submit that this Court should interfere.

8. Per contra, Ms. Anna Mathew, the learned counsel appearing on behalf of the respondent Workmen would submit that the delay would start from the date of the order impugned in the application under Rule 10 of the Payment of Gratuity Act. The application has to be filed within 90 days from the date of the order. The proviso empowers the Authority to condone the delay if sufficient reason is shown. Accordingly, the workmen had shown sufficient reasons for condoning the delay. Other contentions can be raised only before the Authority. The impugned order also speaks about the order in Writ Appeal etc. Therefore, according to the Workmen, it amounts to refusal,. In any event, the said questions can only be gone into in the enquiry before the Controlling Authority and this Court under Article 226 should not entertain the same.



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9. I have considered the rival submissions made on behalf either side and perused the records of the case.

10. Firstly, the relevant Rules 7 and Rule 10 of the Payment of Gratuity Rules, 1972 are extracted hereunder:

“7. Application for gratuity.-(1) 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 of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.

(2) A nominee of an employee who is eligible for payment of gratuity under the second proviso to sub-section (I) of section 4 shall apply, ordinarily within thirty days from the date of gratuity became payable to him, in Form 'J' to the employer:

Provided that an application in plain paper with relevant particulars shall also be accepted. The employer may obtain



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W.P.No.7870 of 2024

such other particulars as may be deemed necessary by him.

(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, ordinarily within one year from the date of gratuity became payable to him, in Form 'K' to the employer.

(4) Where gratuity becomes payable! under the Act before the commencement of these rules, the periods of limitation specified in sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such commencement.

(5) An application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.

(6) An application under this rule shall be presented to the employer either by personal service or by registered post acknowledgement due.

10. Application to controlling authority for direction.-

(1) If an employer-



W.P.No.7870 of 2024

(i) refuses to accept a nomination or to entertain an application sought to be filed under rule 7, or

(ii) issues a notice under sub-rule (1) of rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment or gratuity, or

(iii) having received an application under rule 7 fails to issue any notice as required under rule 8 within the time specified therein,

the claimant employee, nominee or legal heir, as the case may be, may, within ninety days of the occurrence of the cause for the application, apply in Form 'N' to the controlling authority for issuing a direction under sub-section (4) of section 7 with as many extra copies as are the opposite parties:

Provided that the controlling authority may accept any application under this sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period.

(2) Application under sub-rule (1) and other documents relevant to such an application shall be presented in person to the controlling authority or shall be sent by registered post acknowledgement due. ”

11. Thus, it is clear that an employee has to make the application



W.P.No.7870 of 2024

for Payment of Gratuity within 30 days from their date of superannuation.

Even if they have not made, they are entitled to make an application before the employer by adducing sufficient cause, which has to be considered by the employer. If the employer refuses to entertain the application, they are entitled to move the Controlling Authority under Rule 10 of the Payment of Gratuity Rules. They have construed the order dated 18.06.2022 as refusing to entertain their application and have moved the Controlling Authority. 90 days is the time limit for moving the Controlling Authority and the Controlling Authority has powers to condone the delay if the application is filed beyond therein. Therefore, I reject the contention of the learned Senior Counsel that the delay has to be calculated before the Controlling Authority from the date of superannuation. It has to be calculated only from the date of the Management refusing to entertain the application.

12. Accordingly, I hold that the period of delay is correctly calculated by the Workmen. When the order was passed in the year 2022 and considering the reasons for condonation of delay including the pandemic, the delay is condoned, especially when the application is for enforcement of a



W.P.No.7870 of 2024

beneficial labour provision and considering the fact that the applicants are all workmen, I am of the view that normally liberal approach has to be taken in matters of condonation of delay and no exception whatsoever can be taken in respect of the Authority allowing the application for condonation of delay. As far as, the other two submissions made by the learned Senior Counsel that they ordered only return of the application and not refusal and that the Workman being covered by the settlement, they will not be entitled for the gratuity are concerned, the same are the defences to be taken while considering the application under Section 10 on merits.

13. As such, the said questions are left open to be raised before the Authority and the Authority will consider the same on its own merits in accordance with law. The same cannot be the grounds to challenge the order of condoning the delay. Therefore leaving open the said questions to be raised before the Authority and the Authority shall consider the same on its own merits, I do not find any error in the orders impugned in the Writ Petition condoning the delay. However the learned Senior Counsel would submit that today the date of hearing is fixed and only today the Writ Petition is being



W.P.No.7870 of 2024

dealt with by this Court. Therefore, it is made clear that both the Counsel can represent before the Authority about the Writ Petition itself being disposed of only today and seek an adjournment. If such a prayer is made without insisting on a copy of the order being produced, the Controlling Authority can give one opportunity of sufficient time to the Management as prayed for and from the next date of hearing onwards, the enquiry can proceed further. Except for giving the above limited relief of adjournment, there are no other merit in the Writ Petition.

14. Accordingly, with the above observations giving one adjournment, the Writ Petition is disposed of, upholding the orders of the Controlling Authority. No costs. Consequently, connected Miscellaneous Petitions are closed.

28.11.2024

Neutral Citation : Yes
dna

To

13/15



W.P.No.7870 of 2024

The Controlling Authority
Payment of Gratuity Act
The Deputy Commissioner of Labour
Office of the Joint Commissioner of Labour -I
Chennai 600 006.



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W.P.No.7870 of 2024

D.BHARATHA CHAKRAVARTHY, J.
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