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W.P.No.11543 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.11543 of 2024

and

W.M.P.No.12639 and 12640 of 2024

The Management
SRM Transports India Pvt. Ltd.,
No.3, Veerasamy Street,
West Mambalam,
Chennai – 600 033.

... Petitioner

Vs.

1. The Joint Commissioner of Labour,
The Hon'ble Controlling Authority,
DMS Complex,
Teynampet, Chennai – 600 006.

2. P.Srinivasan

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records pertaining to order made in Na.Ka.No.E/0783/2024 dated 19.03.2024 in P.G.I.A.No.Nil/2024 in P.G.No.98/2024 passed by the first respondent and quash the same as illegal and unconstitutional and consequently, remand the matter before the first respondent to dispose accordance law.



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For petitioner : Mr.V.R.Kamalanathan
For R1 : Mr.K.Tamil Vandan
Government Advocate

ORDER

This writ petition is filed seeking for a certiorarified mandamus to call for the records pertaining to the order made in Na.Ka.No.E/0783/2024 dated 19.03.2024 in P.G.I.A.No.Nil/2024 in P.G.No.98 of 2023 passed by the first respondent and quash the same as illegal and unconstitutional and consequently, remand the matter before the first respondent with the direction to dispose in accordance with law.

2. The petitioner management is a private transportation company which had a large fleet of buses and lorries. Due to Covid pandemic the said business was closed as many staff members have left for their home town and only few staff members were working in the petitioner management on a consolidated fixed salary basis.

3. The second respondent was employed in the petitioner management as Executive Director and he resigned from service on



25.02.2022. Due to certain reasons beyond the control of the management the service benefits was not settled to the second respondent. The second respondent has filed a application before the first respondent in P.G.D.A No.82 of 2023 along with P.G.Nil of 2023 to condone the delay of 274 days in filing the P.G. petition seeking for Payment of Gratuity and the said delay was condoned without giving notice under Payment of Gratuity Act. Accordingly, P.G. Application was filed as P.G.No.98 of 2023 and the same was taken up for hearing. However, the petitioner could not file any reply on account of non operation of transport business due to Covid 19 pandemic and thereby, an *ex parte* order was passed against the petitioner on 30.10.2023. In the above said petition, P.G.D.A the second respondent has claimed Rs.10,26,000/- as gratuity from the respondent by calculating at Rs.71,136/- as his last drawn salary and the Controlling Authority/ first respondent has fixed Rs.80,136/- as his last drawn salary and passed an award fixing the gratuity as Rs.11,09,575/- to be payable with interest at the rate of 10% to the second respondent.

4. Aggrieved by the same, the petitioner management preferred two applications, one to condone the delay of 90 days in filing application to set aside the *ex-parte* order and another application to set aside the *ex-*



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parte order. The application filed in P.G.I.A.No.Nil of 2024 in P.G.No.98 of 2023 for condoning delay and the same was dismissed on 19.03.2024 by invoking Rule 11 (5) of the Tamil Nadu Payment of Gratuity Rules. Aggrieved by the same, petitioner has filed this writ petition.

5. Mr.K.Tamil Vendam, Government Advocate has taken notice on behalf of the first respondent.

6. Heard both sides and perused the materials available on record.

7. On perusal of the entire records and on hearing both sides, it is clear that the first respondent without numbering the application filed by the petitioner to condone the delay of 90 days in in P.G.I.A.No.Nil of 2024 in P.G.No.98 of 2023 has dismissed the unnumbered petition thereby, principals of natural justice were denied. Further, the application filed by the petitioner to condone the delay should have been numbered and notice should have been issued to other side and after hearing both sides, on considering the documents on record the respondents should have passed orders in respect of condonation of delay. However, without



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numbering the application, without giving notice to the parties and without hearing both sides the petition was arbitrarily dismissed.

8. In view of the above, this writ petition is disposed of setting aside the impugned order dated 19.03.2024 in Na.Ka.No.E/0783/2024 and the first respondent is directed to number P.G.I.A.No.Nil/2024 in P.G.No.98/2024 and issue notice to the respondents and the petitioner and on hearing both sides to pass orders on merits as quickly as possible not later than 12 weeks from the date of receipt of a copy of this order. Connected W.M.P is closed. No costs.

26.04.2024

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Internet : Yes/No
Index : Yes/No
Citation : Yes/No



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Dr.D.NAGARJUN,J.

vca

To,

1. The Joint Commissioner of Labour,
The Hon'ble Controlling Authority,
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