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W.P.No.24130 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.24130 of 2024

Jayakanthan R

...

Petitioner

versus

1.The Joint Commissioner of Labour,
Chennai.

2.Optum Insight (India) Pvt Ltd.,
Tamarai Tech Park,
S.P.Plot No.16-20 & 20A South Block,
5th Floor, Thiruvika Industrial Estate,
Inner Ring Road, Guindy,
Chennai - 600 032.

3.United Health Group Inc
P.O. Box 1459,
Minneapolis,
MN 55440-1459, USA.

4.Optum Inc
13625 Technology Dr,
Eden Prairie,
MN 55344, USA.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Mandamus, directing the first respondent



Authority to expeditiously proceed with the appeal in T.N.S.E.No.4 of 2022 and decide the same on merits in accordance with law.

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For Petitioner : Mr.V.Prakash
Senior Counsel
for Mr.Hari Prashanth

For Respondent No.1 : M/s.M.Jayanthy
Additional Government Pleader

For Respondent Nos.2 to 4 : Mr.Ananda Gopalan
for M/s.Agam Legal

ORDER

The Writ Petition has been filed seeking direction against the first respondent Authority to expeditiously proceed with the appeal in T.N.S.E.No.4 of 2022 and decide the same on merits in accordance with law.

2. Heard Mr.V.Prakash, learned Senior Counsel for the petitioner, M/s.M.Jayanthy, learned Additional Government Pleader for the first respondent and Mr.Ananda Gopalan, learned counsel for the respondents 2 to 4 and perused the materials available on record.



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3. The petitioner, who is a workman, has filed an appeal before the designated appellate authority under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947, in T.N.S.E.No.4 of 2022.

4. Mr.V.Prakash, learned Senior Counsel for the petitioner submitted that the appeal has been pending for more than two years and due to financial constraints faced by the petitioner, it has to be given with an early disposal.

5. However, the vehement argument of Mr.Ananda Gopalan, learned counsel for the respondents 2 to 4 is that, whenever such disputes are brought before the appellate authority by a workman, as per the rule of equity during the settlement of compensation in case any excess payment is made, it is obligatory on the part of the appellant / workman to deposit the same before he proceeds with the appeal.

6. However, the counter argument on the side of the petitioner is that Section 41 of the Tamil Nadu Shops and Establishment Act does not contemplate the condition as stated by the respondents 2 to 4. Obviously, Section 41 of the Tamil Nadu Shops and Establishment Act does not



presupposes any condition in the nature as submitted by the learned counsel for the respondents 2 to 4.

7. However, the argument of the learned counsel for the respondents 2 to 4 is that even though the rules do not make any explicit reference as per the rule of equity, the employee shall not be allowed to enjoy an undue bargain and then maintain the dispute as well and hence, the issue as to whether the petitioner has received any excess payment has to be decided first and then the appeal to be taken up for hearing.

8. In fact, the parties filed the required applications before the appellate authority concerned in order to get the issue as to whether any excess amount has been made to the petitioner. The apprehension of the petitioner is that, in the event of getting any adverse finding with regard to excess payment, the respondents might challenge the said order and that would keep the appeal pending. If the petitioner gets an unfavourable order, he may also tend to challenge the same and thereby the appeal might be kept pending till the disposal of those proceedings.



9. In the absence of any specific provision for taking up any particular issue as a preliminary issue before deciding the main appeal, it is right on the part of the appropriate authority to exercise his discretion and deal with the applications. However, in the context of the concerns now raised by the petitioner, I feel no prejudice would be caused to the respondents 2 to 4, if the authority is directed to take up the appeal and the interim applications simultaneously.

10. It is not a case where the writ of mandamus is sought by alleging that the authorities have omitted to do certain things or done certain things not in a manner he is bound to do. This writ petition has arisen out of some apprehension of not seeing the matter delayed if the appropriate authority exercises his discretion and decides the interim applications separately and then proceed to decide the appeal. The only direction now sought would serve the interest of both the parties. However, the petitioner cannot claim any priority over the other appeals pending before appropriate authority and hence, instead of giving any time limit as required by the petitioner, I feel appropriate direction be given just by requiring the authority to decide the matter simultaneously as expeditiously as possible.



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11. In the result, this Writ Petition is **disposed** and the first respondent is directed to decide the appeal as well as the interim applications simultaneously in view of the reasons above stated and see that disposed as expeditiously as possible. No costs.

09.09.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri



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To
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The Joint Commissioner of Labour,
Chennai.



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R.N.MANJULA, J.

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