IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :30.04.2024

CORAM:

THE HON'BLE DR JUSTICE D.NAGARJUN

W.P.No.27015 of 2021
and
WMP.No.28459 of 2021

The Management of
India Radiators Limited
99 Mount Road, 8th Floor
Guindy, Chennai – 600 032
Represented by its Director ...Petitioner

Versus

1.The Controlling Authority under the
Payment of Gratuity Act,
The Joint Commissioner of Labour – II Office
Chennai – 600 006.

2.V. Chezhian

3.V.Chandramouleeswaran

4.A.Chellamuthu

5.A.Ramamurthy (Died)

6.D.Samuvel Joseph

7.G.Ganapathy

8.R.Dakshinamoorthy

9.M.Elangovan

10.M.Kalidoss

11.G.Selvaraj

12.R.Radha

13.R.Rajagopalan (Died)

14.R.Swamidoss

15.P.Anbalagan

16.S.Joseph Amaidoss

17.S.Ayyamperumal

18.S.Jeyakumar

19.S.M.J.L Ambedkar

20.S.Kumararaja

21.S.Paramasivan

22.R.Retnathanagam

23.Mrs.Sheeba Emunavel

24.V.Jayashankar

25.V.P.Muralikrishnan

26.Mrs. B. Kalvi Sundari

27.V.Premakumari

28.R.Rajesh

29.A.R.Arunkumar

30.A.R.Vishnuvardhan ... Respondents

(Respondent Nos.27 and 28 are substituted as LRs of the deceased R13, as per order dated 15.02.2024 in WMP No.13053/2023 in WP.No.27015 of 2021 by NMJ)

(Respondent Nos.29 and 30 are substituted as LRs of the deceased R5 as per order dated 15.02.2024 in WMP.No.13061 of 2023 in WP.No.27015 of 2021 by NMJ)

Prayer: This writ petition is filed under Article 226 of the Constitution of India, with a prayer to issue a writ of Certiorari calling for the records of the 1st respondent in PG IA.No.10 to 34 of 2020 and quash its order dated 30.07.2021.

For Petitioner	:	Mr.P.Raghunathan for M/s.T.S.Gopalan & Co.
For Respondents		
R1	:	Mr.RU.Dinesh Raj Kumar Additional Government Pleader for R1
	:	Mr.K.Elango for R2 to R26

ORDER

This writ petition is filed under Article 226 of the Constitution of India, with a prayer to issue a writ of Certiorari calling for the records of the 1st respondent in PG IA.Nos.10 to 34 of 2020 and quash its order dated 30.07.2021.

2. The petitioner company set up its factory at Puzhal, Chennai for manufacturing of Copper / Brass Honey Comb Radiators mainly for TATA Motors Commercial Vehicle and motor cars. It used to employ more than 200 workmen including the Supervisors, Assistants, Engineers, Officers and Managers. There was a recognized union for the workers and Wages and allowance are being determined by long term settlement between the petitioner and the union.

3. The petitioner factory at Puzhal plant was covered under the Payment of Gratuity Act with effect from 16.09.1972. All the employees are eligible for gratuity after five years of service. The Life Insurance Corporation of India has a scheme by which any establishment covered under the Payment of Gratuity Act can take a master policy according to which on payment of prescribed premium by the employer, it will indemnify the establishment against the statutory gratuity payable to the eligible employees. The petitioner has taken the master policy with LIC called India Radiators Ltd Employees Group

Gratuity Fund. The purpose of the said policy is to ensure that gratuity payable to the employees will not be effected even if, the establishment were to face financial stringency.

4. On account of advancement in the technology of the vehicles the demand for the radiators become obsolete, thereby the petitioner has lost its market. After 1997, the factory activities were started continuously declining and ultimately came to grinding halt on 16.11.1999. It could not generate sufficient income even to meet standing charges. The network of the company became negative by July 2000, thereby a reference was made to Board of Industrial and Financial Reconstruction (BIFR). Several rehabilitation scheme were put forward before BIFR, however, none of them were materialised. On 15.09.2003, BIFR declared the petitioner company as sick company. An appeal was filed against the order of BIFR. The petitioner factory ceased to function from November 1999. The workers could not provide the work except to some of the supervisory, technical persons, officers and managers and salaries were paid to them until August 2002.

5. On 08.07.2009, the petitioner company made a settlement with Union under Section 12(3) of the Industrial Dispute Act covering 174 workers whereunder the workers have agreed that there was cessation of employment as on 15.09.2003 on the basis of which dues were worked out. As per the settlement the dues of the workmen were to be paid out of the sale proceeds realized from the sale of the land. Further, on 08.09.2015 since ceased to exist and all the cases were transferred to Company Law Board Tribunal.

6. As there was a dispute with the Government in respect of title of the land the petitioner company faced several difficulties in selling the lands. On 19.07.2019 a settlement was made between committee of five workmen representing the 142 workmen and their dues were settled. As per the settlement dated 08.07.2009 without payment of interest, gratuity and other dues were agreed to be paid. Apart from the 142 workmen covered under the settlement, the claims of 31 workmen were also settled. The settlement could not be arrived at with one workmen as he could not be traced.

7. On coming to know the settlement dated 19.07.2019 the contesting respondents who were not in the category of workers have made their claims for gratuity and other dues. 31 employees who were working under non workmen category filed their applications before the first respondent Controlling Authority under Payment of Gratuity Act with a petition to condone the delay ranging from 16 years to 21 years. The petitioner has contested the said petition of condonation of delay. Initially 25 applications were filed in I.A.Nos.10 to 34 of 2020. Later eight more applications were added. The petitioner Company has filed counter affidavit stating that there is no sufficient cause for condonation of delay, even if, the delay is condoned and gratuity become payable, it shall not attract any interest. It is also mentioned in the counter affidavit that the LIC has paid gratuity to most of the applicants and finally mentioned that the applicants who filed the condonation of delay applications shall be permitted to be cross examined by the petitioner company. On 30.07.2021, the first respondent has passed the orders in PG IA No.10 of 2020 to 34 of 2020 for condoning the delay in all 33 applications. Challenging the said orders, the present writ petition is filed.

8. It is submitted by the counsel for the petitioner that during the course of hearing of the condonation of delay applications before the first respondent, the learned counsel for the petitioner has insisted to cross examine the applicants. However, the first respondent has ignored the same and allowed all the applications without giving any valid reasons for condoning the delay. It is further submitted that as per Section 29(2) of the Limitation Act, if a different period of limitation is prescribed in any special statute, the same shall be applied and when such special period has not been prescribed under special statute then the provisions of Limitation Act are applicable. It is submitted further that as Payment of Gratuity Act does not prescribe the period of limitation, then the provisions of the Limitation Act will apply. Article 137 of the Limitation Act lays down that if no period is prescribed in the schedule then for application it shall be three years from the date on which the right to apply accrues.

9. It is further submitted by the petitioner that as per rule 10 of the State Rules under the Payment of Gratuity Act, 90 days period is

prescribed for filing the application before the controlling authority. It is further submitted that the said rules have got approval of the legislature and it is validly enacted subordinate legislation and if Rule 10 is not applicable then Article 137 of the Limitation Act will regulate the period the limitation.

10. It is further submitted that it is not permissible for employee to approach the controlling authority under the Payment of Gratuity Act after lapse of many years alleging that employer has not complied with the obligation to pay the gratuity as per the Payment of Gratuity Act. The breach of obligation of an employer to pay the gratuity will gives rise cause of action for the employee to move the authority under the Payment of Gratuity Act and that it cannot be contended that there is no limitation. It is submitted further that the order of the first respondent dated 30.07.2021 in PG I.A.Nos.10 to 34 of 2022 and 8 similar applications are vitiated by an error of law, therefore sought for setting aside them.

11. Learned counsel for the petitioner submits that the impugned

order of the 1st respondent is contrary to the legal position as decided by Hon'ble Supreme Court of India in ***Consolidated Engineering Vs. The Principal Secretary, Irrigation Department and Ors. (2008) 7 SCC 169.*** Learned counsel for the the petitioner further placed reliance on ***Bharat Barrel & Drum Mfg. Co. Ltd. & Anr Vs. Employees State Insurance Company*** (1971) 2 SCC 860 in support of his argument stating that power given to the State Government to frame Rules under Section 96 (1) of the ESI Act is materially different from the power given under Section 15 (1) of the Payment of Gratuity Act, 1972. In any event the 1st Respondent ought to have seen that the Hon'ble Supreme Court sustained the order of the Hon'ble Bombay High Court which held that Article 137 of the Limitation Act was applicable.

12. The respondents have not filed any counter affidavit. However, the affidavit filed along with the petition to vacate stay discloses that the management has filed the writ petition to protract the litigation and that the employees have been deprived of their statutory dues for more than 20 years.

13. It is further mentioned in the affidavit that the management however has entered into a settlement on 19.07.2019 with the workmen under the 12 (3) of the ID Act, before the Special Joint Commissioner of Labour Chennai. After the settlement, the workers were paid gratuity, gesture payment and etc., However, the workers who are respondents in this writ petition are not the members of the said union which entered into settlement with the management under Section 12 (3) of the said Act. As the management did not pay the statutory duties including gratuity, a petition was filed by the respondent-workmen, under Section 4 of the Payment of the Gratuity Act, 1972 before the 2nd respondent, claiming gratuity until 15.09.2003 from the date of their employment. Since the management has assured the workmen/respondents to pay the gratuity they could not file the application for release of gratuity, thereby delay occurred, they filed application IA.Nos.10 to 39 of 2020 before the 2nd respondent for condonation of delay. All those applications were allowed and the delay was condoned.

14. It is mentioned further in the affidavit that payment of gratuity is a beneficial legislation thereby as per Section 7 (2) of the Act it is

mandatory that the gratuity has to be paid. It is also mentioned that the Payment of Gratuity Act, 1972 is Special Enactment and Rule 10 of Tamil Nadu Payment of Gratuity Rules, 1973 provides 90 days for filing of the application and Rule 10 (1) of the Rules permit the authority to accept any application filed after the expiry of limitation if sufficient cause is shown, Section 14 of the Act, especially excludes application of any law, which is inconsistent with the Act, the Limitation Act will not apply to the proceedings under the Payment of Gratuity Act.

15. Learned counsel for the 1st respondent / controlling authority placed reliance on the judgment of the Supreme Court in ***Bharat Barrel & Drum Mfg. Co. Ltd. & Anr Vs. Employees State Insurance Company*** (1971) 2 SCC 860 for the proposition that Rule 10 of the Payment of Gratuity Rules is invalid as Payment of Gratuity Act does not provide for limitation, then in terms of Section 29 (2) and the limitation prescribed in the Schedule to the Limitation Act will apply.

16. Heard both sides and on perusal of all the available materials

on record.

17. This writ petition is filed seeking to set aside the impugned order passed by the Joint Commissioner of Labour – II, Chennai in proceedings in PG IA.No.10 to 34 of 2020 dated 30.07.2021 condoning the delay in filing the application before the authority. The relevant portion of the order is extracted hereunder for ready reference:

> *"The legal position is well settled that the provision for limitation cannot be make by way of subordination legislation when the parent enactment does not contemplate the same as held by the Hon'ble Supreme Court of India in **Bharat Barrel and Drum Manufacturing Co.Ltd., Vs. ESI Corporation** [(1971) 2 SCC 860]. Further, it is trite law that the subordinate legislation which is inconsistent with the parent enactment would be ultra vires and cannot have any effect."*

18. Admittedly, the respondents/employees have been working under the management for not less than five (5) years. It is mandatory on the part of the management to settle the gratuity as soon as it fell due to the employees. As per Section 7 (2) and (3) of the Payment of

Gratuity Act, the employees can make application seeking gratuity within a period of 30 days from the date of which it becomes due and even if such application is not filed still the management is in the obligation to pay the gratuity and as per Section 7 (3) (A), the employee is entitled to simple interest from the employer in respect of delayed payments.

19. On careful perusal of the impugned order the authority has interpreted the limitation under the Gratuity Rules stating that the Payment of Gratuity Act, does not contain any provision for Limitation for filing application for settlement of dues and thereby, Rules under the Payment of Gratuity Act, which imposes limitation for filing of application for gratuity within 30 days, will not sustain. In the impugned order, the learned authority has observed that subordinate legislation is inconsistent with the parent enactment thereby it is ultra vires and it will not have any effect.

20. It is true that the Parent Act does not have any provision regarding limitation, there is also no provision in the main enactment, to

interpret that the application can be filed at any time. Therefore, the finding of the authority to the effect that since main act does not have anything in respect of the limitation, the Rules made under the enactment cannot create any specific provision in respect of limitation has to be examined. The authority is bound to follow the Rules made under the Act as Rules are framed by the Government with the consent of the Governor.

21. However, this Court W.P.No.3222 of 2019 decided on 01.10.2020 in a case between ***Sri Muthukumaran Institute of Technology Vs. J. Rajalakshmi And Ors.*** [2021 (3) LLN 357 Mad] has observed that there cannot be a Rule imposing limitation for filing of the applications before the authorities for Payment of Gratuity and relevant portion is extracted hereunder:

> *"10. The Rules framed under the Payment of Gratuity Act, 1972 provide for two separate periods of time in relation to the making of an application. The first under Rule 7 is an application to the employer within 30 days from the date on which gratuity becomes payable. Rule 7(5), however, provides that an application*

for payment of gratuity filed after the expiry of the period specified shall also be entertained by the employer if the applicant adduces sufficient cause for delay and no claim for gratuity shall be invalid merely because the claimant failed to present his application within *the specified period. This must be in a juxtaposed with Section 7(2) which requires the employer to make a determination of gratuity payable and to furnish a notice to the employee and to the Controlling Authority as soon as gratuity becomes payable whether or not an application under Section 7(1) has been made. Clearly therefore, the employer cannot set up limitation as a defence on the ground that the application to him was not presented within thirty days. The clear answer to such a defence, if it is set up is that the employer is obliged to determine and make arrangement to pay gratuity whether or not an application is made. The second time period that is prescribed is under Rule 10. Rule 10 inter alia provides a period of 90 days for making an application before the Controlling Authority upon the employer failing to issue a notice as required under Rule 8 upon the receipt* *of an application from the employee under Rule 7. The delay under Rule 10 can be condoned by the Controlling Authority on sufficient cause being shown.*

11. The rules which were framed in 1972 must be read in a manner which is consistent with the statutory provisions of Section 7 *particularly after the amendments that were introduced by Amending Act 25 of 1984 (with effect from 1st April 1984) and by Amending Act 22 of 1987 (with effect from 1st October 1987). The provisions of Section 7 emphasise that the obligation is that of the employer to determine and to make arrangements for the payment of gratuity and upon his failure to do so, to pay interest at the rate which is statutorily prescribed. Even if the period that is prescribed in the Rules is taken into consideration, the Rules themselves lay down that the delay on the part of the employer, if any, can be condoned if sufficient cause is shown. A breach of the employer to comply with his obligation under section 7 provides a recurring and continuous cause of action. The Act is a piece of social welfare legislation and the employer cannot be* *permitted by reason of his own default in complying with his obligation to defeat the just entitlement of the employee. Finally, it may be noted that the employer has to determine and pay gratuity whether or not an application is filed to him. The filing of an application before the employer is not a condition precedent. Rule 7 makes procedural provisions for such an https://www.mhc.tn.gov.in/judis/ application. On receipt of an application under Rule 7, the employer has to issue a notice under Rule 8 either admitting the claim or to specify the reasons why he holds the claim inadmissible. It is thereafter that time is prescribed in Rule 10 for an application to the Controlling Authority. The making of an application under Rule 7 therefore invokes a chain of events in Rules 8 and 10. Once the making of an application to the employer is not mandatory under the provisions of Section 7(2) of the substantive provisions of the act, the limitation under the Rules which is triggered upon the filing of the application under Rule 7 can obviously not defeat the claim of the employee." This Court is in agreement with the aforesaid views expressed"*

22. However merely because Payment of Gratuity Act does not contain any provision imposing the limitation, it does not mean that the respondents 2 to 8 can file the application seeking gratuity after the lapse of any number of years. The authority has to consider whether the reasons explained for not approaching the authority immediately after arising of cause of action are sound, reasonable and can be accepted. However, except discussing the issue of limitation in claiming the gratuity the impugned orders has not properly considered and discussed the reasons for condoning the delay of huge number of years.

23. In view of the above, the orders of the 1st respondent/ The Joint Commissioner of Labour – II in PG IA.No.10 to 34 of 2020 dated 30.07.2021 are set aside and the matter is remanded back to the authority with a direction to dispose off the condonation delay application in PG IA.Nos.10 to 34 of 2020 dated 30.07.2021 by giving opportunity on hearing both sides on the questions limitation in filing the application for gratuity and also in respect of reasons for not approaching the Court immediately after arising of cause of action. The

authority is further directed to complete the process within a period of about 6 (six) months from the date of receipt of copy of this order.

24. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs. Connected miscellaneous petition stands closed.

30.04.2024

Index :Yes/No
Speaking :Yes/No
Neutral Citation Case:Yes/No

nst/jai

DR. D.NAGARJUN, J.

Nst/jai

To:
The Controlling Authority under the
Payment of Gratuity Act,
The Joint Commissioner of Labour – II Office
Chennai – 600 006.

W.P.No.27015 of 2021
and
WMP.No.28459 of 2021

30.04.2024