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W.P.No.29721 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

CORAM :

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

W.P.No.29721 of 2023

The Management,
Metropolitan Transport Corporation,
No.2, Anna Salai,
Chennai – 2.

... Petitioner

Vs.

1. The Deputy Commissioner of Labour, (Addl. Charge),
Authority under Payment of Gratuity Act,
DMS Compound,
Teynampet,
Chennai – 600 006.

2. M.Ramamoorthy

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the first respondent pertaining to his proceedings in P.G.No.37 of 2022 and quash the order dated 25.07.2022.

For petitioner	:	Mr.A.Vinothraj
For R1	:	Mr.R.U.Dinesh Rajkumar Additional Government Pleader
For R2	:	Mrs.V.Porkodi



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ORDER

This writ petition is filed seeking for issuance of writ of certiorari to quash the proceedings in P.G.No.37 of 2022 dated 25.07.2022.

2. It is submitted by the learned counsel for petitioner that the petitioner joined as a Conductor in the petitioner Corporation on 16.09.1981 and retired on 31.01.2017 on attaining the age of superannuation. His total service was 35 years. However, the petitioner had not worked for 240 days continuous service in 15 years and hence, his service benefits were calculated only for 20 years excluding 15 years. Accordingly, gratuity amount of Rs.3,92,169/- was sanctioned and the second respondent received the same without any objections.

3. It is further submitted by the learned counsel for the petitioner that the second respondent belatedly approached the first respondent authority to revise the gratuity and to the difference of gratuity amount of Rs.3,58,581/- with 18% interest. The said application was filed before the first respondent authority with a delay of 1641 days without assigning any valid reasons for the delay. However,



the first respondent has condoned the delay and final orders were passed in P.G.No.37 of 2022 directing the petitioner Corporation to pay arrears to a tune of Rs.3,58,581/- with interest at the rate of 10% as per Section 7 (3A) of the Payment of Gratuity Act from the date of his superannuation, i.e. 31.01.2017, till the date of realization. Aggrieved by the same, the petitioner Corporation has approached this Court and filed writ petition.

4. Counter affidavit has been filed by the second respondent and submitted that the second respondent joined the petitioner's Corporation as a Conductor on 16.09.1981 and retired on 31.01.2017, after rendering 37 years of service. The petitioner Corporation has calculated only 20 years of his service and paid an amount of Rs.3,92,169/-. Hence, the second respondent filed P.G.No.37 of 2022 before the first respondent authority along with an application to condone the delay in filing the said application. The said P.G.by order dated 25.07.2022 was allowed and directed to pay the difference in gratuity amount to a tune of Rs.3,58,581/- at the rate of 10% per annum within a period of 30 days from the date of retirement of the second respondent to the date of actual payment.



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5. It is further submitted by the learned counsel for the second respondent that the second respondent submitted a letter to the petitioner Corporation to sanction the above awarded amount but he was informed by the petitioner Corporation that if he was willing to give up the interest portion, the said amount would be paid. Hence, the second respondent submitted letters dated 26.11.2022 and 30.12.2022 stating that he was ready to forego the interest part and agreed to receive the principal amount only, accordingly the second respondent submitted an undertaking on 22.12.2022 as required by the petitioner Corporation. But there was no response for the same. Thereby, the second respondent by way of letter dated 12.06.2023 informed the petitioner Corporation that he withdrew all the undertakings given on an earlier occasions and requested to pay the entire principal amount along with interest as per the award passed by the first respondent authority. Further, the petitioner management has filed Statutory Appeal under Section 7 (7) against the order passed by the first respondent authority after a lapse of 120 days and hence, prayed for dismissal of this writ petition.

6. Heard both sides and perused the materials available.



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7. The short point for consideration is whether the petitioner Corporation can approach this Court directly and file this writ petition under 226 without exhausting the remedy available under Payment of Gratuity Act, 1972. Section 7 (2), *ibid*, is extracted below for better appreciation:

" (2)As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined. "

8. The petitioner Corporation, aggrieved by the orders of the first respondent authority in P.G.No. 37 of 2022 should have approached the appellate authorities under the Payment of Gratuity Act, 1972 within 60 days from the date of the order and by showing sufficient reasons. However, the petitioner Corporation has not made any attempt to prefer any appeal before the appellate authorities. Law is very much settled that once Statutory Appeal available under Payment of Gratuity Act, 1972, this writ petition under 226 will not be entertained.



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9. The learned counsel for the respondent has brought to the notice of this Court the order dated 08.04.2021 in W.P.No.1388 of 2021 and the relevant portion is extracted below:

“ 3. In the present case on hand, the Controlling Authority has passed an order on 20.08.2019 and the Management has received it on 09.09.2019. The Management has deposited the amount on 27.10.2020 and preferred an appeal on 28.10.2020. In the said process, the appeal has been filed only on 28.10.2020 and the time period of 120 days expired as early as in January, 2020 itself, which is before Covid lock down. The lock down was declared in March 2020. Though the Apex Court has held that the period of lock down needs to be excluded for the purpose of computing the limitation, in this case the delay of 120 days had expired even before lock down, viz., in the month of January, 2020 and that the appeal has not been filed within 120 days as contemplated under Section 7(7) of Payment of Gratuity Act, 1972. Hence, in the considered opinion of this Court, the Order dated 02.11.2020 passed by the 2nd Respondent is perfectly justified and if the petitioner / Management is allowed to approach this Court after the expiry of 120 days, all the Managements will approach the Court, by allowing the statutory period to expire and thereafter, try to get an order from this Court so as to rewrite the legislation, which is not permissible.”

10. The learned counsel for the respondent has also circulated another judgement dated 05.04.2024 in W.P.No.28325 of 2018, the relevant part of which is extracted below:



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“7.It is seen that the order was passed by the authority on 17.04.2018 and the petitioner filed the writ petition on 05.10.2018. Admittedly the appeal had to be preferred within 60 days from the date of receipt of a copy of the order under Rule 5 A of the Rules of Tamil Nadu Payment of Subsistence Allowance Act 1981. The writ petitioner in the affidavit stated that as the Director incharge of PSA cases went on leave for more than two months from the first week of June 2018 to 10th August, 2018 the appeal could not be preferred in time. The learned counsel for the petitioner further stated that as there is no provision to condone the delay in the Act the petitioner was constrained to approach this Court under Article 226 of the Constitution of India. This Court in the case of The Management, PeriyaKarumalai Tea Producing and Company Limited Vs. Venmathi and Another in W.P.No.1388 of 2021 dated 08.04.2021, while considering similar issue rejected the writ petition on the ground of limitation and stated that if the petitioner/Management was allowed to approach the Court after the period of limitation provided under the Act, it would amount to re-writing the legislature, which was not permissible. I am of the view that the said Judgment applies squarely to the facts of the present case. In the present case, the petitioner failed to exhaust the remedy of appeal under Rule 5 A of the Rules of Tamil Nadu Payment of Subsistence Allowance Act, 1981 within the statutory period of limitation and approached this Court stating that there is no provision for condoning the delay. As held by this Court in the above writ petition, if the writ petition is entertained, it would amount to rewriting the statute. Even on facts there is absolutely no explanation given by the petitioner as to the steps taken by him after August, 2018. Assuming that the authority was on leave between June 2018 to August, 2018, the petitioner approached this Court only on 05.10.2018, which is almost two months after 10.08.2018 and therefore,



even on facts I find no plausible reason to entertain the writ petition. In view of the facts, I find absolutely no justification for invoking the extraordinary jurisdiction of this Court.”

11. Considering the submissions made by both sides and also taking into consideration the orders passed by this Court as stated *supra*, basing on Section 7 (7), *ibid*, this Court is of the opinion that this writ petition has been filed without exhausting the remedy of Payment of Gratuity Act, 1972 and the same cannot be considered.

12. At this juncture, the learned counsel for the petitioner requested this Court to give the petitioner liberty so that he could make attempts before the appellate authorities. However, the learned counsel for the second respondent raised objection stating that if liberty is given it amounts to giving a fresh limitation to approach the appellate authorities.

13. Considering the above discussions, this writ petition is dismissed while giving liberty to the petitioner Corporation to approach the appellate authorities. It is made clear that merely because liberty is given to the petitioner Corporation to approach the appellate authorities



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does not mean that this Court has extension of limitation under Section 7 (7) *ibid*. In case, if the petitioner Corporation files any application or appeal before the appellate authorities, the authorities under Payment of Gratuity Act, 1972 shall dispose of the same by following the law laid down scrupulously in Payment of Gratuity Act, 1972 without considering the fact that liberty is given to the petitioner Corporation to file the appeal.

14. Accordingly, this writ petition is dismissed. No costs.

Connected W.M.P.is closed.

17.04.2024

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

To

The Deputy Commissioner of Labour, (Addl. Charge),
Authority under Payment of Gratuity Act,
DMS Compound,
Teynampet,
Chennai – 600 006.



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Dr.D.NAGARJUN,J.

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