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W.P.No.16613 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P.No.16613 of 2024
and W.M.P.No.18223 of 2024

K.V.Divya

... Petitioner

Vs.

1. The Deputy Commissioner of Labour
O/o. The Joint Commissioner of Labour – II,
The Controlling Authority under the
Payment of Gratuity,
DMS Campus, Teynampet,
Chennai – 600 006.

2. HASBRO Clothing Pvt., Ltd.,
No.23 B, Alapakkam Main Road,
Maduravoyal, Chennai – 600 095
Rep. by its Director,
Mohamed Hanif

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus to declaring the order dated 19.07.2023 passed by the first respondent pertaining to the Review Petition No.212 of 2022 setting aside the *ex parte* order passed against the second respondent is illegal and void.



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For Petitioners : Mr.Amalnath

For Respondents : Mr.M.Jayanthy
Additional Govt. Pleader for R1

Ms.Ruth Reji Philip
for Ms.George Cheriyan for R2

ORDER

Heard Mr.Amalnath, the learned Counsel for the petitioner and Mr.M.Jayanthy, the learned Additional Government Pleader for the first respondent and Ms.Ruth Reji Philip, the learned counsel for the second respondent.

2. The petitioner has filed this writ petition challenging the order of the first respondent dated 19.07.2023 through which the petitions filed by the first respondent in PG IA No.212/2022 for setting aside the *ex parte* order and reopening the case has been allowed.

3. The petitioner has raised an Industrial Dispute before the Controlling Authority under the Payment of Gratuity Act for claiming gratuity. As the second respondent did not appear, an *ex parte* order has been passed in favour of the petitioner on 28.07.2021. Since the petitioner was not able to get the copy of the order, she had filed an application under



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RTI seeking information. In the reply received by the petitioner, it has been stated that the petitions filed by the second respondent in I.A.No.94/2020 and 212/2022 have been allowed in terms of the orders of the High Court passed in W.P.No.15168/2022 dated 24.06.2022. For the sake of clarity the operative part of the order in W.P.No.15168/2022 dated 24.06.2022 is reproduced as below:

“ ... 9. In view of the above, this Court is inclined to pass orders as follows:

(i) The petitioner-company is directed to resubmit the application before the Deputy Commissioner of Labour / the first respondent, within a period of one week from the date of receipt of a copy of this order.

(ii) If any such application received by the Deputy Commissioner of Labour / the first respondent, the same shall be considered in the light of the aforesaid Rule 11(5) of the Payment of Gratuity (Central) Rules, 1972 and to take appropriate decision, on merits and in accordance with law.”

4. Since the order has been passed *ex parte*, the second respondent has filed I.A.No.212 of 2022 to set aside the *ex parte* order. But in the writ petition filed challenging the *ex parte* order passed in the IA No.94 of 2020, the Court has passed an order to hear the matter afresh. The Court has found that Rule 11 (5) of the Payment of Gratuity Central Rules, 1972 has to be



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applied which is applicable to the review petitions.

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5. All along, the proceedings conducted in W.P.No.15168/2022 this Court was given to understand that the second respondent has filed a review petition. In fact the petition which is actually filed was the petition to set aside the *ex parte* order. Since the Court has considered the IA No.212 of 2022 as the review petition, the first respondent authority has allowed it and renumbered the main matter as G.C.No.54/2023. Before passing the order allowing I.A.No.212 of 2022, the first respondent ought to have scrutinized and considered both side's submissions. While passing the order it is obligatory on the part of the first respondent to render the findings whether I.A.No.212 of 2022 has been considered as a review application or it is an application just to set aside the *ex parte* order. In fact if I.A.No.212 of 2022 has to be considered as a Review Application and on the basis of which fresh hearing is made in the main Payment of Gratuity Application, then the first respondent authority is expected to pass an order as to whether the review petition is filed within the period of limitation.

6. Even though this Court has given directions in W.P.No.15168/2022 in its order dated 24.06.2022, the second respondent was not given with



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notice. It is probably because this Court thought that the matter is only between the petitioner and the first respondent in understanding about their entitlement to file an appeal / review by challenging the order passed in PG IA No.94 of 2020. But the Court was not appraised properly by the first respondent that IA. No.212 of 2022 has been filed only for setting aside the *ex parte* order and it is not a review application. Even for any extraneous reasons, the first respondent considers I.A.No.212 of 2022 as a Review Application, at least before numbering the said petition it ought to have checked whether the petition has been filed within the limitation contemplated for filing a Review Petition. So, the whole exercise done by the first respondent is only by taking the benefit of the order passed by this Court in earlier writ petition in W.P.No.15168/2022 during which proceedings neither the first respondent nor the second respondent have properly appraised the facts before the Court. As the petitioner was not aware how I.A.No.212/2022 has been allowed, he was put to surprise when the main matter is once again taken up for hearing.

7. Since I.A.No.212 of 2022 has been allowed in pursuant to the order which was passed without getting proper appraisal of what has been actually filed before the first respondent authorities, I feel it is appropriate to



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direct the first respondent to pass a detailed order in I.A.No.212 of 2022 and give a finding as to whether I.A.No.212 of 2022 can be considered as a review application / petition to set aside the *ex parte* order and whether it has been filed within the period of limitation and if so, to grant an opportunity to the petitioner herein to make her submission and then pass orders on merits. To be noted that while passing orders in W.P.No.15168/ this Court did deprive the opportunity of the petitioner being heard by the first respondent.

8. In view of the above discussion, this writ petition is disposed and the order passed by the Controlling Authority dated 19.07.2023 made in I.A.No.212 of 2022 is hereby set aside and the first respondent is directed to consider the matter in order to render a finding as stated above and then pass an order on merits, within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

09.09.2024

Index : Yes/No

Neutral citation : Yes/No

Speaking Order/Non-Speaking Order

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To:

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R.N.MANJULA, J.

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