

W.P.Nos.4121, 4123 & 4126 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON : 24.04.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 4121, 4123 and 4126 of 2021
and

W.M.P.Nos. 4696, 4699 and 4701 of 2021 and
7932, 7935 and 7936 of 2022

The Management,
Anand Institute of Higher Technology,
Rep. by its Secretary – Dr.S.Arivalagi,
Kalasalingam Nagar,
Rajiv Gandhi Salai (O.M.R.)
Kazhipattur,
Chennai – 603 103.

....Petitioner in all WPs

Vs.

1.M.Somasekar,
S/o. C.Muthusamy,
No.8, Tower 10,
Vijaysanthi Lotus Pond,
Thiyur, OMR Kelambakkam,
Chennai – 603 103.

....1st Respondent in WP 4121/2021

2. S.Lakshmi Narayanan
S/o. Senthamaraikannan,
No.126-B, Krishna Nagar,
3rd Street, Varadharajapuram,
Chennai – 600 048.

...1st Respondent in WP 4123/2021

3. S.Gopalakrishnan,
S/o. G.Selvaraj,



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No.43, Vellalar Street,
Thethurai Post, Nedungal,
Cheyur Taluk – 604 408.
Thiruvanamalai Dist.

....1st Respondent in WP 4126/2021

4 Deputy Commissioner of labour (Addl.Incharge),
Office of the Joint Commissioner of Labour -2,
Chennai – 600 006.

.....2nd Respondent in all WPs

Prayer in W.P.No. 4121 of 2021

To issue a writ of certiorari calling for the records of the 2nd respondent in I.A.No. 204 of 2019 in P.G.Case No. 102 of 2020 and quash its order dated 02.02.2021 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in W.P.No. 4123 of 2021

To issue a writ of certiorari calling for the records of the 2nd respondent in I.A.No. 163 of 2019 in P.G.Case No. 103 of 2020 and quash its order dated 02.02.2021 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in W.P.No. 4126 of 2021

To issue a writ of certiorari calling for the records of the 2nd respondent in I.A.No. 164 of 2019 in P.G.Case No. 105 of 2020 and quash its order dated 02.02.2021 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in WMP No. 4696 of 2021 (in W.P.No.4121 of 2021)

To grant interim stay of all further proceedings in P.G.Case No. 102 of 2020



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pending before the 2nd Respondent during the pendency of the writ petition.

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Prayer in WMP No. 4699 of 2021 (in W.P.No.4123 of 2021)

To grant interim stay of all further proceedings in P.G.Case No. 103 of 2020 pending before the 2nd Respondent during the pendency of the writ petition.

Prayer in WMP No. 4701 of 2021 (in W.P.No.4126 of 2021)

To grant interim stay of all further proceedings in P.G.Case No. 105 of 2020 pending before the 2nd Respondent during the pendency of the writ petition.

Prayer in WMP No. 7932 of 2022 (in WMP 4696/2021 in W.P.No.4121 of 2021)

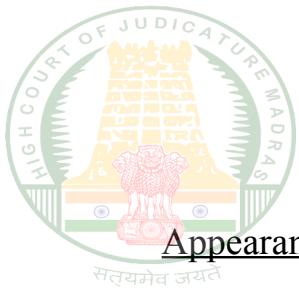
To vacate the interim stay in WMP No. 4696/2021 in W.P.No. 4121/2021 dt. on 19.02.2021 and pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in WMP No. 7935 of 2022 (in WMP 4699/2021 in W.P.No.4123 of 2021)

To vacate the interim stay in WMP No. 4699/2021 in W.P.No. 4123/2021 dt. on 19.02.2021 and pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in WMP No. 7936 of 2022 (in WMP 4701/2021 in W.P.No.4126 of 2021)

To vacate the interim stay in WMP No. 4701/2021 in W.P.No. 4126/2021 dt. on 19.02.2021 and pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.



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Appearance of Parties:

For Petitioner

In all Wps : M/s. P.Nehru, G.K.Kalidasan and
B.Mohanakrishnan, Advocates

For Respondent 1

: Mr.A.Thirumaran, Advocate

In all WPs

For Respondent 2

: Mr.R.Kumaravel, AGP

In all WPs

COMMON JUDGMENT

Heard.

2.The petitioner is an engineering college, and the contesting 1st respondents were employed as Assistant Professors in the said institution. According to the petitioner college, all three individuals left the college on 30.11.2016. Nearly three years later, on 09.09.2019, they submitted Form-I under the Payment of Gratuity Act, 1972, seeking payment of gratuity. It is admitted that the petitioner did not issue any response to the said Form -I notice. Consequently, all three individuals submitted Form-N to the 2nd respondent, initiating a formal claim for gratuity against the petitioner.

3.As there was a delay in submitting the Form-N applications, the



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contesting respondents filed Interim Applications Nos. 204/2019, 163/2019, and 104/2019 before the 2nd respondent, seeking condonation of delay. In the affidavits filed in support of these applications, each of them stated that, ever since their relief from service, they had been making oral representations to the college for payment of gratuity. However, as there was no response, they were compelled to issue notices in Form-I, which also went unanswered. The 2nd respondent thereafter issued notices in respect of both the Form-N claims and the applications for condonation of delay.

4.The petitioner filed a counter statement contending that the reasons offered for condonation of delay were unsatisfactory and false. However, they reserved their right to file detailed counter statements in the main proceedings at a later stage. Notably, the petitioner made no mention of having responded to the Form-I notice issued by the respondents. After hearing both sides, the authority observed that gratuity is not a gratuitous benefit but a statutory entitlement that recognises an employee's service. Referring to Section 7(3) of the Payment of Gratuity Act, the authority held that the obligation to pay gratuity arises within 30 days from the date of cessation of employment, irrespective of whether an application is made by the employee. It is the



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employer's duty to ensure timely payment. The petitioner's failure to respond even after receipt of Form-I notice amounted to a clear disregard of the statutory mandate. Consequently, the authority rejected the petitioner's objections and condoned the delay.

5.The main gratuity applications in P.G. Case Nos. 102/2020, 103/2020, and 105/2020 remain pending without adjudication, as the petitioners have approached this Court by filing the present writ petitions. These writ petitions were admitted on 19.02.2021, and an interim stay of further proceedings was granted on the same day. The contesting respondents have entered appearance and filed three applications seeking vacation of the interim stay, supported by a counter affidavit. In the said counter, they contended that the Payment of Gratuity Act does not prescribe a specific statutory limitation period for claiming gratuity and that the employer's obligation to pay gratuity is not discharged merely because the employee did not make a formal demand.

6.However, the interim applications seeking vacation of the stay were not

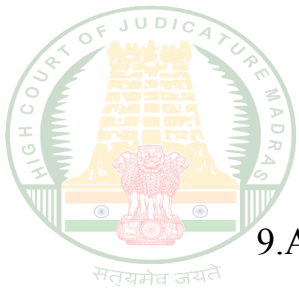


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taken up for hearing. When the matter was listed on 05.11.2024, this Court directed that all three writ petitions be referred to the Lok Adalat scheduled for 14.12.2024. As no settlement could be arrived at, the matters were returned to this Court for hearing on merits.

7.The sole issue for consideration is whether the petitioners' challenge to the 2nd respondent's order condoning the delay in filing the gratuity applications by the contesting 1st respondents warrants interference by this Court.

8.Counsel for the petitioner relied on the judgment of the Supreme Court in **State of Madhya Pradesh v. Bherulal, SLP (C) Diary No. 9217 of 2020, dated 15.10.2020**, to argue that delay must be dealt with strictly. However, the relevance of that decision to the present case is unclear. In **Bherulal**, the Supreme Court rejected the State's explanation for the delay in approaching the Court and imposed costs for the belated filing. The context and facts in the present writ petitions are entirely different and do not involve similar circumstances.



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9.As the petitioners have raised the issue of delay, it becomes necessary to examine whether the Payment of Gratuity Act prescribes any period of limitation for approaching the Controlling Authority or the Appellate Authority. While Section 7(7) of the Act, which provides for an appeal to the Appellate Authority, stipulates a limitation period of 60 days, no such limitation is prescribed under the Act for filing an application before the Controlling Authority. In fact, Section 7(4)(b) simply states that parties having a dispute may approach the Controlling Authority, without imposing any time restriction for doing so.

10.It is only under Section 7(1) of the Act that an employee eligible for gratuity is required to make a written application to the employer within such time and in such form as may be prescribed. However, no similar stipulation exists for approaching the Controlling Authority. Rule 10 of the Tamil Nadu Payment of Gratuity Rules, 1973, prescribes the manner and the time frame within which an application may be submitted, and it reads as follows: –

“10. Application to controlling authority for direction.--

(1) If an employer –

- (i) refuses to accept a nomination or to entertain an application sought to be filed under rule 7, or
- (ii) issues a notice under sub-rule (1) of rule 8 either specifying an



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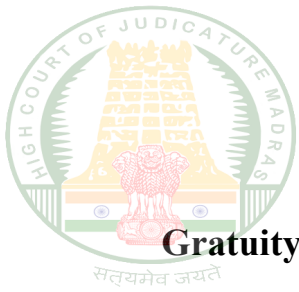
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amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or (iii) having received an application under rule 7 fails to issue any notice as required under rule 8 within the time specified therein, the claimant employee, nominee or legal heir, as the case may be, may, within ninety days of the occurrence of the cause for the application, apply in Form 'N' to the 6 controlling authority for issuing a direction under sub-section (4) of section 7 with as many extra copies as there are opposite parties:

Provided that the controlling authority may accept any application under this subrule, on sufficient cause being shown by the applicant, after the expiry of the specified period. ”

11.It is important to note that the prescription of a period of limitation is a matter of substantive legislative power. The Payment of Gratuity Act does not impose any limitation for approaching the Controlling Authority, and no such condition is attached under the main enactment. Even Section 15(1) of the Act, which empowers the appropriate government to frame rules, does not confer any authority to prescribe a limitation period. It is unclear how, under delegated rule-making powers, the appropriate government could prescribe a limitation period. Any such prescription would be *ultra vires* the Act and legally unsustainable.

12.In **Backiasamy K.P. v. Appellate Authority under the Payment of**



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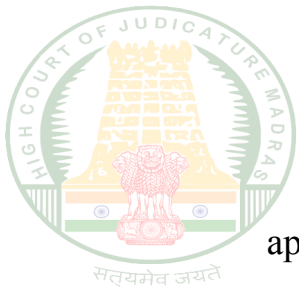
Gratuity Act, 1972 and Regional Labour Commissioner (Central),

Chennai, reported in 2008 (1) LLJ 575 (Mad), this Court held that the rule-

making power conferred on the State Government does not include the authority to prescribe a period of limitation. Consequently, the requirement that an application must be filed within 90 days was declared invalid and unenforceable.

13.In Rasipuram Co-operative Urban Bank Limited v. The Authority under the Payment of Gratuity Act / Assistant Commissioner of Labour & Others, reported in (2016) 1 MAD CK 0036, this Court, in paragraph 8, referred to the judgment of the Hon'ble Supreme Court and elaborated on what constitutes "sufficient cause" for condoning delay in filing an application. The Court held as follows: –

"8.The Hon'ble Supreme Court in the case of Basawaraj referred to supra, summarises the decisions rendered by the Hon'ble Supreme Court interpreting the expression 'Sufficient Cause', taking note of the decisions in the case of Madanlal V. Shyamlal reported in (2002) 1 SCC 535 and Ram Nath Sao V. Gobardhan Sao reported in (2002) 3 SCC 195. The Hon'ble Supreme Court pointed out that there can be no straitjacket formula in such cases and each case has to be decided on its facts. Therefore, to throw out an application on the ground of limitation, it has to be established that there was gross negligence, inaction or lack of bona fides and unless any one of these factors are established, an



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application cannot be rejected on the ground of limitation.”

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14. Counsel for the contesting respondents also brought to the attention of the Court two judgments of this Court, wherein similar views were taken after considering the amendment to the Payment of Gratuity Act introduced by Central Amendment Act 22 of 1987, effective from 12.08.1987. The first of these judgments is **Sri Muthukumaran Institute of Technology v. J. Rajalakshmi, reported in CDJ 2021 MHC 109**, where, in identical circumstances, this Court upheld the condonation of delay by the Controlling Authority and observed as follows:

“8. These provisions have been interpreted by the Supreme Court in H. Gangahanume Gowda -vs- Karnataka Agro Industries Corpn Ltd., [2003 I CLR 705], where the Court held as follows:

"From the provisions made in [Section 7](#), a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. ... Payment of gratuity with or without interest as the case may be does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied."



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The Supreme Court held that in view of the clear mandate of Section 7, no residual discretion vested in the High Court to relieve the obligation imposed on the employer of paying interest on account of the delayed payment of gratuity.

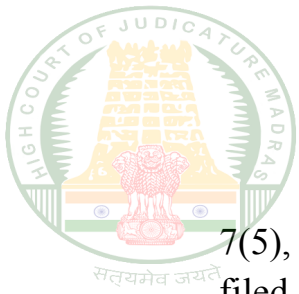
9. On behalf of the Respondent, however, reliance was sought to be placed on the rules framed under the Payment of Gratuity Act, 1972. These Rules, it must be noted at the outset, were framed prior to the Amending Acts of 1984 and 1987. The Payment of Gratuity Act, 1972, it may be noted, has made no provision for a specified period for the submission of an application to the Controlling Authority in Section 7(4)(b) of the Act. As contradistinguished from this, Section 7(7) provides for a specific period of limitation of sixty days for preferring an appeal to the appropriate Government against the decision of the Controlling Authority under Section 7(4). In *Sitaram -vs- M.N.Nagrashana* (AIR 1960 SC 260), the Supreme Court considered Section 10 of the Workmen's Compensation Act which provided a period of limitation to make a claim for compensation to the Commissioner but empowered the latter to condone delay for sufficient cause. This provision of the Act was held by the Supreme Court to be similar to Section 5 of the Limitation Act and the Court held that the explanation must cover the whole period of delay. In *Gurunath Vithal Tamse -vs- National Textile Corporation* [2002 I CLR 809] this Court held that significantly, the legislature had advisedly not specified any particular period of limitation for moving the Controlling Authority under the Payment of Gratuity Act, 1972. But the submission before the Court now on behalf of the the Respondent, is that the limitation which has been provided for in Rules 7 and 10 of the Rules framed under the Payment of Gratuity Act, 1972 was not brought to the attention of the Court in that case. Before dealing with this submission on first principle, it would be necessary to note that at least three High Courts have had occasion to consider the question. The Delhi High Court, in *M.C.D. -vs- Nand Kishore* [2003 (97) FLR



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158], dealt with the submission that the Controlling Authority had not taken into consideration the delay of the employee in filing an application under the Payment of Gratuity Act, 1972. The Delhi High Court held that "the grievance of the appellant is misconceived as the nonpayment of gratuity due to the Respondent was a continuing wrong and there was no question of any delay in approaching the Controlling Authority. A Learned Single Judge of the Kerala High Court in *Neelakandan -vs- State of Kerala* [2001 II CLR 448] adverted to the provisions of Section 7 of the Act as amended and held that while Rule 7 of the Gratuity Rules provides that an application be filed within a prescribed time, these provisions under the Rules "cannot of course, be taken as over reaching the provision of Section 7(2) of the Act". The Court held that perhaps the impact of the Amending Acts of 1984 and 1987 had not been taken notice of by the rule making body. Upon the amendment of Section 7, it has now unambiguously been laid down that an employer has a duty to pay gratuity whether or not an application is filed. The Payment of Gratuity Act is a piece of beneficial legislation and a liberal interpretation would have to be adopted since an employee, it was held, may not at times be aware of his rights. The Act imposes an obligation on the employer and it would not be open to the employer to benefit from a delay in making an application for the payment of gratuity. The Karnataka High Court in *General Secretary, Vokkaligara Sangha, Bangalore -vs- R. Chandramouli* [2002 II CLR 1070] noted that Rule 7(5) permits the entertainment of the applications for payment of gratuity after the expiry of the period specified and claim shall not be invalid merely because the claimant failed to present the application within the specified period.

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



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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



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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 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.”

15.The second judgment relied upon is **Poompuhar Shipping Corporation Limited v. The Appellate Authority, Chennai & Others, in W.P. (MD) No. 28 of 2017, dated 19.08.2024.** In this case, another learned Judge of this Court took a similar view, as reflected in paragraph 10 of the judgment, which reads as follows: –

“10. Insofar as the ground of limitation raised by the petitioner to file the application for claiming gratuity is concerned, admittedly the Payment of Gratuity Act does not prescribe any limitation for



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claiming gratuity and therefore, this Court is not inclined to accept the contention of the petitioner that the application for payment of gratuity was filed by the workman belatedly.”

16.Finally, the question of whether the authority was justified in condoning the delay upon finding sufficient cause is not one that warrants interference by this Court. The Supreme Court, in **Ram Nath Sao alias Ram Nath Sahu & Others v. Gobardhan Sao & Others**, reported in (2002) 3 SCC 195, held in paragraph 12 that the expression “sufficient cause” must be interpreted liberally, and that there can be no rigid or straitjacket formula for its application. The Court observed as follows: –

“Thus it becomes plain that the expression "sufficient cause" within the meaning of [Section 5](#) of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact



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that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.”

17.In view of the foregoing, this Court finds no ground to interfere with the impugned orders passed by the second respondent in all three writ petitions. Accordingly, all three writ petitions stand dismissed. Consequently, the second respondent is at liberty to proceed with the adjudication of the main P.G. cases filed by the contesting respondents. The three W.M.Ps. filed by the petitioners, as well as the three applications filed by the contesting respondents for vacating the interim stay, have become infructuous and are dismissed.

18.It must be noted that the petitioner, being an educational institution, was expected to be aware of the applicable legal provisions before approaching this Court. In fact, in the counter filed before the Authority, the petitioner itself contended that the three contesting respondents, being Assistant Professors,



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ought to have known the law and approached the Authority within time.

However, by filing these writ petitions, the petitioner has effectively stalled the adjudication of the gratuity claims and caused undue prejudice to the contesting respondents. Therefore, a cost of Rs.5,000/- is imposed on the petitioner in each of the writ petitions, payable to the counsel for the first respondent as legal fees.

29.05.2025

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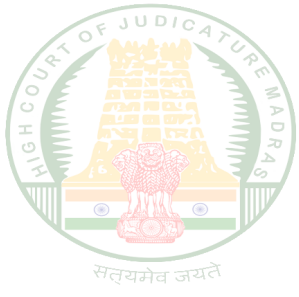
NCC : Yes / No

Index : Yes / No

Speaking Order / Non-speaking Order

To

Deputy Commissioner of labour (Addl.Incharge),
Office of the Joint Commissioner of Labour -2,
Chennai – 600 006.



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
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