

W.P.Nos.25310 & 25314 of 2021

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

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RESERVED ON : 04.04.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

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

W.P.Nos. 25310 & 25314 of 2021
and
W.M.P. Nos. 26718 & 26723 of 2021

Aspire Systems (India) Private Limited,
Having regd. Office at:
Old No. 4, New No.7, II Trust Link Road,
Mandaveli, Chennai – 600028. ...Petitioner in both WPs

Vs.

1. Mr. Venkatesh Veerasamy,
S/o. Veerasamy. P.,
Block IV, 2A, Ramaniyam Gauravv Apartments,
No.496, Model School Road,
Sholinganallur, Chennai – 600117. ...1st Respondent in WP 25310/2021

2. Aspire Systems (India) Private Limited,
Employees Group Gratuity Assurance Scheme,
Rep. by its Trustee Ms. Vinodhini S.,
Old No.4, New No.7, II Trust Link Road,
Mandaveli, Chennai – 600028. ...2nd Respondent in both WPs



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3. Ms. Sujatha Sugumaran,
W/o. Venkatesh V.,
Block IV, 2A, Ramaniyam Gauravv Apartments,
No.496, Model School Road,
Sholinganallur, Chennai – 600117. ...1st Respondent in WP 25314/2021

Prayer in W.P.No.25310 of 2021

To issue a Writ, Direction or Order in the nature of Writ of Certiorarified Mandamus calling for the records of the Controlling Authority for Gratuity, Chennai in PG.IA.Nos. 88 & 89 of 2021 in PG.IA. 192 of 2019 in PG.No.96 of 2019 dated 24.09.2021 and quash the same, and consequently direct the Controlling Authority for Gratuity, Chennai to recall its order dated 19.12.2019 passed in PG.IA.No.192 of 2019, and provide an opportunity of hearing in PG.IA.No.192 of 2019 and pass orders on merits, and pass such necessary or other orders.

Prayer in W.P.No.25314 of 2021

To issue a Writ, Direction or Order in the nature of Writ of Certiorarified Mandamus calling for the records of the Controlling Authority for Gratuity, Chennai in PG.IA.Nos.86 & 87 of 2021 in PG.IA.No.191 of 2019 in PG.No.95 of 2019 dated 24.09.2021 and quash the same, and consequently direct the Controlling Authority for Gratuity, Chennai to recall its order dated 19.12.2019 passed by in PG.IA.No.191 of 2019, and provide an opportunity of hearing in PG.IA.No.191 of 2019 and pass orders on merits, and pass such necessary or



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other orders.

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Prayer in WMP No. 26718 of 2021 (in W.P.No.25310 of 2021)

To Stay the proceeding in PG No.96 of 2019 before the Controlling Authority for Gratuity, Chennai pending the disposal of the present Writ Petition.

Prayer in WMP No. 26723 of 2021 (in W.P.No. 25314 of 2021)

To Stay the proceeding in PG No.95 of 2019 before the Controlling Authority for Gratuity, Chennai pending the disposal of the present Writ Petition.

Appearance of Parties:

For Petitioner

in both Wps : Ms. Anitha Suresh, Advocate
for M/s. Anitha Suresh, Bhagavath Krishnan
and Jyotsna Sivakumar, Advocates.

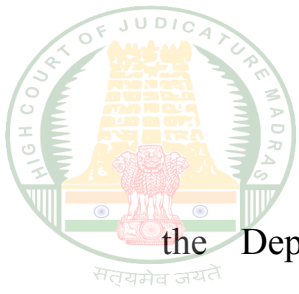
For Respondent 1 : Mr. Naveen Kumar, Advocate
In both WPs

For 2nd Respondent
In both Wps : No appearance.

COMMON JUDGMENT

Heard.

2.In both writ petitions, the petitioner is the Management. In W.P. No. 25310 of 2021, the petitioner challenges the order dated 24.09.2021 passed by



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the Deputy Commissioner of Labour, Chennai, whereby the interim

WEB applications in P.G.I.A. Nos. 88 and 89 of 2021 in P.G. Case No. 96 of 2019 were dismissed. I.A. No. 88 of 2021, arising from I.A. No. 192 of 2020 in the same P.G. case, sought recall of the earlier order dated 16.12.2019. I.A. No. 89 of 2021, also arising from I.A. No. 192 of 2020, prayed for condonation of delay in filing documents, which had been served on the petitioner on 23.01.2020, with a request that the matter be heard on merits. Both interim applications were filed on 31.03.2021.

3.The contesting respondent in W.P. No. 25310 of 2021 filed an application under the Payment of Gratuity Act before the Controlling Authority (Deputy Commissioner of Labour), seeking payment of gratuity to the tune of Rs.5,56,500/- along with interest at 12% per annum. Believing that there was a delay of 238 days in filing the application, the respondent also filed an interim application seeking condonation of the said delay. In support of this request, the reasons for the delay were set out in paragraphs 3 and 4 of the accompanying affidavit.

“3. It is further submitted that I had relied upon the intimation dt. 12.12.2017 and the email dt. 02.02.2018 of the Respondents to settle the Gratuity monies dues and payable. I was unfortunately misled into trusting the Respondents that the Gratuity payments



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would be taken care of by them. The trust in the Respondents was wholly misplaced and in vain given the eventual outcome therein.

4. On account of the above I had inadvertently missed the time period within which one ought to have approached this Hon'ble Forum. As understood considering the last date of service was 29.12.2017 the petition for claiming gratuity ought to have been filed by 29.04.2018. However since the same was prolonged due to the restive attitude of the Respondents the claim petition could be filed only on 26.12.2018. Hence there has been an apparent delay of by about 238 days in approaching this Hon'ble Forum."

4.The petitioner contended that the notes paper dated 25.11.2019 contained the following recorded entry:—

"Petitioner filed an affidavit to condone delay. For counter. NH-16.12.2019"

5.On 16.12.2019, counsel for both parties appeared and endorsed their presence on the notes paper maintained by the authority. As no counter affidavit had been filed by the petitioner, the authority recorded the following observation:—

"மனுதாரரின் காலதாமத இடைமனு அனுமதிக்கப்பட்டு பிரதான மனு எண்.96/2019 வழங்கப்படுகிறது என்பதை பணிவுடன் தெரிவித்துக் கொள்ளப்படுகிறது."

As no counter affidavit was filed, the application for condonation of delay was



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allowed. Subsequently, the petitioner filed I.A. No. 192 of 2020 seeking recall of the order dated 16.12.2019. In the supporting affidavit filed by the junior counsel, it was stated that the senior counsel was out of station, and she had appeared on that date only to request a copy of the condonation application. This development led to the filing of two further interim applications, as already referred to earlier.

6.In W.P. No. 25314 of 2021, the contesting respondent, Ms. Sujatha Sukumaran, filed an application for gratuity before the Controlling Authority on 13.12.2018, along with an application seeking condonation of delay. The Controlling Authority, by order dated 16.12.2019, allowed the delay condonation application. The petitioner thereafter filed I.A. No. 191 of 2020 seeking recall of the said order, followed by two additional interim applications—namely, I.A. Nos. 86 and 87 of 2021—again seeking recall of the order dated 16.12.2019 and condonation of delay in filing supporting documents. In response, the contesting first respondent filed a common counter affidavit opposing the interim applications, wherein the explanation provided in paragraph 4(c) was as follows:—

“A perusal of this Hon’ble Forum ‘A’ Diary proceedings would reveal that on 25.11.2019 the Respondent herein had filed the



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condone delay in I.A.No.191 of 2019. On the said date there was no representation from the Applicant / Respondent / Respondent side at the hearing. Hence an additional copy of the condone delay I.A.No.191 of 2019 was put up in the court bundles along with the original filed so as to enable the court office provide the Applicant herein with a copy when they enter appearance. The matter was posted to 16.12.2019 for filing counter in I.A.No.191 of 2019. On 16.12.2019 the Applicant / Respondent / Respondent was present at the hearing. However no counter was filed by them in the said condone delay application on the said date. Hence the Hon'ble Forum after giving sufficient opportunity had passed the order dt. 16.12.2019 stating: "Petitioner and Respondent present. Since Respondent failed to file counter in I.A. I.A.is allowed". Thus it may be seen that it was in the presence of the Applicant counsel herein this Hon'ble Forum had allowed the said application. The Applicant counsel herein had not objected / opposed in allowing the condone delay application I.A.191 of 2019 at the said hearing on 16.12.2019. After passing orders the endorsement signatures of the Applicant counsel herein at the said hearing evidenced that allowing of the condone dela application was within knowledge of the Applicant counsel herein. Hence the averment of the Applicant Counsel herein is denied and said to be afterthought that on 16.12.2019 that she was not aware of the fact that I.A.was allowed."

7.However, by a common order dated 24.09.2021, the Controlling Authority dismissed the interim applications in both cases. The dismissal was based on the facts and circumstances of the cases, with specific reference to the observations made in File No. 95/2019. Aggrieved by these orders, the



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petitioners filed the present writ petitions. When the matters were taken up on 29.11.2021, this Court directed issuance of notice to the contesting respondents and granted an interim stay of further proceedings. The interim stay was subsequently extended until further orders by an order dated 03.01.2022. Thereafter, when the matters were listed on 05.11.2024, the Court directed them to be placed before the Lok Adalat scheduled for 14.12.2024. As no settlement was arrived at, the cases were posted for final hearing.

8.Learned counsel for the petitioner contended that the procedure adopted by the Controlling Authority was flawed and that the writ petitions are maintainable even at the interlocutory stage. In support of this contention, reliance was placed on the judgment of the Andhra Pradesh High Court in **Motor Car Beedi Factory v. Controlling Authority under the Payment of Gratuity Act, 1972, reported in 2008 SCC OnLine AP 333**. Attention was specifically drawn to the following passage in paragraph 16 of the said judgment:—

“Under these circumstances, it cannot be said that the writ petitions are not maintainable. Therefore, the objection raised by



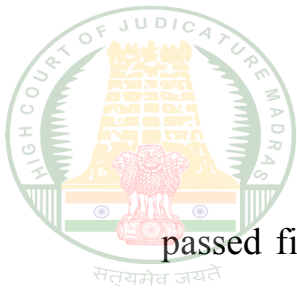
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the learned Counsel for the claimants is overruled. It has already been pointed out that the first respondent did not undertake any adjudication, worth its name. The only view expressed by him is that he is "determined that the claimants are entitled for gratuity".

Failure to make any mention to the evidence on record, apart from amounting to a serious lapse in the adjudication process, would in a way constitute violation of principles of natural justice also. The reason is that mere service of a notice, cannot be treated as a compliance with the principles of natural justice and the actual compliance can be said to have taken place, only when the contents of the reply are taken into account. There was not even a remote reference to the objection raised by the petitioner, about the absence of relationship of employer and employee. When there is no adjudication in its real sense, an appeal against such orders, would hardly be of any use. An appellate authority would, in the ultimate analysis, reexamine the reasons assigned by the original authority. Therefore, the remedy of appeal in these cases would be futile. This Court is of the view that 1st respondent needs to be required to determine the issues referred to above, duly furnishing reasons in support of his conclusions."

9. It is unclear how the judgment relied upon by the petitioner is of any relevance at this stage, where the only issue under consideration is the condonation of delay in filing the gratuity applications, and the main proceedings are still pending. The petitioner has not yet filed its statement of defence in either of the gratuity claims. In fact, a reading of paragraph 12 of the cited A.P. High Court judgment reveals that the facts in that case were entirely different. There, the grievance arose from the Controlling Authority having



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passed final orders without affording a proper opportunity to the employer or

considering the relevant material. Paragraph 12 of the judgment reads as

follows:—

“The individual orders passed by the first respondent run into two typed pages. Almost 95% of the order is referred to the facts and the documents that are placed before it. The only discussion undertaken by the first respondent on the controversy reads as under:

On the above oral and documentary evidence, I am determined that the applicant is entitled for gratuity as claimed in the application for the period of service rendered with the respondent.

I hold that the respondent is liable to pay gratuity to the applicant.”

10.Learned counsel for the petitioner also relied on a judgment of the Supreme Court in **Sadananda Halo v. Momtaz Ali Sheikh, reported in (2008) 4 SCC 619**, which arose under service jurisprudence. In support of his contention, he referred to and relied upon the following observations found in paragraphs 62 and 64 of the judgment:—

“We have already shown in the earlier part of our judgment that there were proper advertisements issued and reasonable procedure was chalked out in the earlier meetings held by the authorities, even the guidelines were defined and the interviews



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proceeded along those guidelines. A mere expression of doubts only on the ground of large number of candidates appearing and their not being objectively and properly tested without any further material, in our opinion, cannot by itself render the whole selection process illegal.”

“The Division Bench thus could not have condoned the non supply of copy of the writ petitions prior to the hearing of the writ petitions before the learned Single Judge. Similarly, after having noticed that the notice issued by the learned Single Judge was vague and that the impleaded selected candidates were constantly crying for the copies of the writ petitions, the Division Bench could not have simply brushed aside those weighty objections. We also do not understand the alleged stand taken by the counsel for the selected candidates before Division Bench regarding their readiness to argue. It is for this reason that we have extensively quoted the arguments by the counsel in paras 19 to 22 of this judgment where the non supply of copies of petitions was criticised.”

11.It is unclear how the passages cited above bear any relevance to the orders passed by the Controlling Authority condoning the delay in filing the gratuity applications by the contesting respondents. If the petitioner intends to make any personal allegations against the Controlling Authority, it is pertinent to note that the said authority has not been impleaded as a party to the present writ petitions. Consequently, any such personal allegations cannot be



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entertained in these proceedings.

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12.It is relevant to note that in both cases, the petitioners have taken a stand forfeiting the gratuity payable to the respective contesting respondents. In the case of the second respondent in W.P. No. 25310 of 2021, Mr. Venkatesh Veerasamy, the final order of forfeiture dated 29.06.2018 was passed under Section 4(6) of the Payment of Gratuity Act, and concluded as follows:—

“All the above actions constitute misconduct. Your services have been terminated. The loss caused by you to the Company is over Rs.10,00,000/-. The Gratuity that would ordinarily be payable to you is Rs.5,56,500/- and the same is forfeited in full.

This is without prejudice to any other actions and proceedings that the company may take against you under law.”

13.Likewise, in the case of the second respondent in W.P. No. 25314 of 2021, the forfeiture order dated 29.06.2018 reads as follows:—

“All the above actions constitute misconduct. Your services have been terminated. The loss caused by you to the Company is over Rs.10,00,000/-. The Gratuity that would ordinarily be payable to you is Rs.3,87,688/- and the same is forfeited in full.



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This is without prejudice to any other actions and proceedings that the company may take against you under law.”

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14. In cases where forfeiture is effected under Section 4(6) of the Payment of Gratuity Act, the authority designated under Section 7 of the Act is empowered to determine the amount of gratuity payable to the workman. The relevant provisions under Section 7(4)(a), (b), and (c) are as follows:—

“7 (4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

7(4) (b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

7(4)(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.”

15. The forfeiture of gratuity payable to an employee is penal in nature



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and must be preceded by due process. The employer does not have the final say

in the matter, as such forfeiture is subject to adjudication by the competent authority. In the present cases, the petitioners have withheld substantial gratuity amounts from both employees, effectively depriving them of any terminal benefit following their termination. In this context, it becomes necessary to consider whether gratuity can be denied at the threshold, without affording the employees an opportunity for review or redressal before the appropriate authority.

16.As the petitioners have raised the issue of delay, it is 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 stipulates a limitation period of 60 days for filing an appeal before the Appellate Authority, there is no corresponding provision prescribing a limitation period for initiating proceedings before the Controlling Authority. On the contrary, as seen from Section 7(4)(b), which has been extracted earlier, the provision merely states that parties having a dispute may approach the Controlling Authority, without prescribing any specific time limit for doing so.



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17.It is only under Section 7(1) of the Act that a person eligible to receive gratuity is required to submit a written application to the employer within the prescribed time and in the prescribed form. However, no such time limit is stipulated for filing an application before the Controlling Authority. The procedure and time frame for such an application are instead outlined under Rule 10 of the Tamil Nadu Payment of Gratuity Rules, 1973, which 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 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 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 sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period.

18.It is well established that the prescription of a period of limitation is a

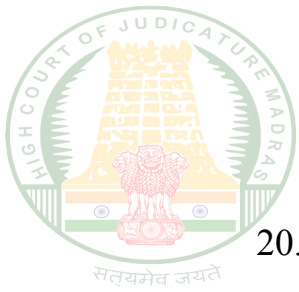


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matter of substantive legislative power. The Payment of Gratuity Act does not

impose any limitation for approaching the Controlling Authority, and no such condition is found in the substantive provisions of the Act. Even Section 15(1), which empowers the appropriate government to frame rules, does not delegate any power to prescribe a period of limitation for filing applications before the Controlling Authority. Therefore, any attempt by the delegate—the appropriate government—to introduce a limitation period through subordinate legislation would be beyond the scope of the delegated power and consequently, ultra vires the Act.

19. In **Backiasamy K.P. v. Appellate Authority under the Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central), Chennai, reported in 2008 (1) LLJ 575 (Mad)**, this Court held that the State Government does not possess the authority, under the rule-making power, to prescribe any period of limitation for filing gratuity applications. Consequently, the requirement that an application must be filed within 90 days was declared to be without legal validity.



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20.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 36, this Court, in paragraph 8, referred

to a judgment of the Supreme Court while explaining the concept of “sufficient

cause” for condoning delay in filing an application. The relevant portion reads

as follows:—

“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 application cannot be rejected on the ground of limitation.”

21.In Ram Nath Sao alias Ram Nath Sahu & Others v. Gobardhan

Sao & Others, reported in (2002) 3 SCC 195, the Supreme Court, in

paragraph 12, held that the expression “sufficient cause” for condoning delay

must be interpreted liberally, and that there can be no rigid or straightjacket

formula for determining its applicability. The Court observed as follows:—



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“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 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.”

22.In the foregoing circumstances, this Court finds no illegality in the



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orders passed by the Controlling Authority in condoning the delay in the

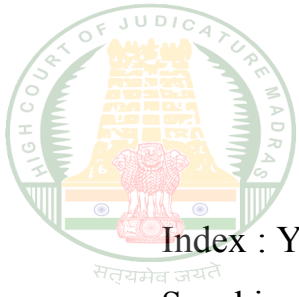
applications filed by the contesting respondents. In view of the said orders, the two interim applications filed by the petitioner in each of the P.G. Cases are held to be vexatious and are liable to be rejected. The petitioner cannot evade adjudication on the merits, particularly when substantial amounts claimed as gratuity have been forfeited without proper justification. Accordingly, both writ petitions stand dismissed. The Controlling Authority is at liberty to proceed with the adjudication of the gratuity claims in P.G. Case Nos. 96/2019 and 95/2019, after issuing notice to both parties and disposing of the cases on their merits. The petitioner is directed to file its counter within a period of four (4) weeks from the date of receipt of this order. The Deputy Commissioner of Labour (Controlling Authority under the Payment of Gratuity Act, 1972, Chennai-6) is directed to complete the adjudication and pass appropriate orders within three (3) months thereafter. All connected miscellaneous petitions stand closed. There shall be no order as to costs.

29.05.2025

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NCC : Yes / No

19/22



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Index : Yes / No

Speaking Order / Non-speaking Order

To

The Deputy Commissioner of Labour,
(Controlling Authority under the
Payment of Gratuity Act, 1972)
DMS Office Compound,
Teynampet,
Chennai 600006.



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W.P.Nos.25310 & 25314 of 2021

DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P.No. 25310 of 2021 & 25314 of 2021
and
W.M.P. Nos. 26718 & 26723 of 2021



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