



W.P.No.36247 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2025

CORAM:

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.36247 of 2025
and WMP.No.40514 of 2025

The District Manager/Deputy Collector,
TASMAC, Coimbatore North
Coimbatore District.

... Petitioner

Vs

1. The Joint Commissioner of
Labour (Additional in charge)
Coimbatore.

2. C.Devaraj

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 16.06.2025 in P.W.No.21 of 2023 passed by the 1st respondent and to quash the same and consequently set aside the ex-parte order dated 04.07.2024 in P.W.21 of 2023 passed by the 1st respondent and direct the 1st respondent to dispose of the same on merits, after affording due opportunity to the petitioner and to grant such other further relief.

For Petitioner

: Mr.K.Sathish Kumar



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For Respondents

: Mrs.M.Jayanthy
Additional Government Pleader
for R1
Mr.A.Soundara Rajan
for R2

ORDER

This writ petition is filed to call for the records relating to the impugned order dated 16.06.2025, in P.W.No.21 of 2023, passed by the 1st respondent and to quash the same and direct the 1st respondent to dispose of the same on merits, after affording due opportunity to the petitioner and to grant such other further relief.

2. The petitioner states that the 2nd respondent was employed as Assistant Salesman at TASMACH Retail Shop No.1543, under the Coimbatore North Division from 08.02.2004, and he retired from service on 06.04.2019, on attaining the age of superannuation. The petitioner states that upon his retirement, the 2nd respondent, was paid security deposit refund of Rs.10,000/- and retirement benefit of Rs.60,577/- for the period of service rendered from 08.02.2004 to 06.04.2019, as per the proceedings of the Managing Director, TASMACH, Chennai, vide Ref.No.D3/02860/2018, dated 18.11.2019. The petitioner further states that due to administrative oversight, a sum of Rs.12,050/- was erroneously credited to the account of the 2nd respondent post retirement towards salary from 07.04.2019 to 31.05.2019. The petitioner states



that on noticing the error, the said amount was recovered from the 2nd respondent and deposited back into the TASMAL account.

3. While so, the 2nd respondent filed a petition under Section 15 of the Payment of Wages Act, 1936 before the 1st respondent claiming refund of the said wages of Rs.12,050/- from 07.04.2019 to 31.05.2019 and a consolidated salary of Rs.3,58,600/- for the period from October 2019 to May 2023. (i.e., Rs.8,150/- for 44 months). The petitioner states that the said claim of the 2nd respondent was untenable and unsustainable as he had already retired from service on 06.04.2019, and there was no record whatsoever, to establish that he was in service during the alleged period of claim. The petitioner states that the petitioner was set ex-parte on 21.03.2024 and thereafter, the 1st respondent on 04.07.2024, allowed the claim petition directing payment of the entire amount of Rs.3,58,600/- to the 2nd respondent. Subsequently, the petitioner filed an application on 28.05.2025, to set aside the ex-parte order, however the 1st respondent by the impugned order dated 16.06.2025 rejected the application on the ground of delay. Aggrieved by the impugned order, the petitioner has filed the above writ petition for the aforesaid relief.

4. The learned counsel for the petitioner submitted that the impugned order dated 16.06.2025, was illegal in as much as the 1st respondent



mechanically dismissed the application on the sole ground of limitation without considering the genuine reasons stated for the delay. The learned counsel therefore submitted that the impugned order deserved to be set aside.

5. I heard both the learned counsels and perused the materials available on record.

6. From a reading of the impugned order dated 16.06.2025, it is evident that the 1st respondent invoking Rule 8 of the Payment of Wages (Procedure) Rules, 1937, rejected the petitioners application to condone the delay of 300 days in filing the petition to set aside the ex-parte order. Clause 3 of Rule 8 of the Payment of Wages (Procedure) Rules, 1937 reads as follows:

“If the applicant fails to appear on the specified date, the Authority may dismiss the application:

Provided that an order passed under sub-rule (2) or sub-rule (3) may be set aside and the application re-heard on good cause being shown within one month of the date of the said order. Notice being served on opposite party of the date fixed for rehearing.”

7. From a reading of the aforesaid Rule, it is clear that the application to set aside the ex-parte order has to be filed within one month from the date of the order and only if, good cause is shown, the application could be re-heard. In the



present case, admittedly, there is a delay of 300 days in filing the petition to set aside the ex-parte order. The reason stated for condoning the exorbitant delay is found in para 2 of the affidavit filed in support of the petition. Para 2 reads as follows:

“2) The above Petition came on 04.07.2024 for arguments. The Respondent Counsel on record who was residing and practicing in Chennai having rushed up to the Court. He was unable to appear before this Hon'ble Court within time on 04.07.2024 itself an ex-parte order passed against me. Later my Counsel understood that Corporation was set ex-parte for his non-appearance. This above case petition and order copy was misplaced in our office and unable to communicate my counsel in time.”

The aforesaid averment is not substantiated by any material and therefore the 1st respondent cannot be faulted for rejecting the petitioners application. The Hon'ble Suprme Court in the case of ***Assistant Commissioner [CT] LTU, Kakinada and Others Vs. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***2020 [19] SCC 681***, held that the High Court exercising its jurisdiction under Article 226 cannot enlarge the limitation provided under the statute. Para 19 of the aforesaid judgments reads as follows:

"19. We may now revert to the Full Bench decision of the



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Andhra Pradesh High Court in Electronics Corpn. of India

Ltd. [Electronics Corpn. of India Ltd. v. Union of India, 2018 SCC

OnLine Hyd 21 : (2018) 361 ELT 22] , which had adopted the view

taken by the Full Bench of the Gujarat High Court in Panoli

Intermediate (India) (P) Ltd. v. Union of India [Panoli

Intermediate (India) (P) Ltd. v. Union of India, 2015 SCC OnLine

Guj 570 : AIR 2015 Guj 97] and also of the Karnataka High Court

in Phoenix Plasts Co. v. CCE [Phoenix Plasts Co. v. CCE, 2013

SCC OnLine Kar 10432 : (2013) 298 ELT 481] . The logic applied

in these decisions proceeds on fallacious premise. For, these

decisions are premised on the logic that provision such as Section

31 of the 2005 Act, cannot curtail the jurisdiction of the High

Court under Articles 226 and 227 of the Constitution. This

approach is faulty. It is not a matter of taking away the jurisdiction

of the High Court. In a given case, the assessee may approach the

High Court before the statutory period of appeal expires to

challenge the assessment order by way of writ petition on the

ground that the same is without jurisdiction or passed in excess of

jurisdiction — by overstepping or crossing the limits of jurisdiction

including in flagrant disregard of law and rules of procedure or in



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violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in ONGC [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47] In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose."

8. If the relief prayed for by the petitioner is granted, it will not only be



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inconsistent with the legislative intent of the Payment of Wages (Procedure) Rules, 1937, but would also be against the law laid down by the Hon'ble Supreme Court, in aforesaid judgment.

9. Under the facts and circumstances of the case and in view of the above discussions, I find no merit in the writ petition. Accordingly, writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

06.10.2025

Index: Yes/No
Speaking order/Non-speaking order
dpq/dsn

To
The Joint Commissioner of
Labour (Additional in charge)
Coimbatore.



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N.MALA, J.

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