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W.P.No. 38089 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.No. 38089 of 2024

S. Balamurugan

... Petitioner

Vs

1. The Controlling Authority under the
Payment of Gratuity Act, 1972/
The Deputy Commissioner of Labour,
Office of the Joint Commissioner of Labour -1,
Teynampet, Chennai - 600 006.

2. BGR Energy Systems Limited,
Rep. by its Managing Director,
443, Anna Salai, Teynampet,
Chennai - 600 018.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the first respondent vide No.Na.Ka.E/2830/2024 on 24.10.2024 returning the direction petition filed by the petitioner insisting him to file the condone delay application in filing the direction petition for payment of gratuity against the second respondent and quash the same and further direct the first respondent to number the application for direction for the payment of gratuity field by the petitioner



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without insisting for filing of the condone delay application.

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For Petitioner	: Mr.K.V.Shanmuganathan
For R1	: Mr.K.Surendran Additional Government Pleader
For R2	: No appearance

ORDER

This writ petition is filed calling for the records pertaining to the proceedings of the first respondent, namely the Controlling Authority under the Payment of Gratuity Act, 1972 -the Deputy Commissioner of Labour, Teynampet, Chennai- 600 006, dated 24.10.2024, inasmuch as it returns the application filed by the petitioner in Form N under Rule 10 of the Payment of Gratuity (Central) Rules, 1972, on the ground that the application for condonation of delay was not filed.

2. On perusal of the rules, it can be seen that any employee is entitled to apply to the employer in Form I for payment of gratuity if the amount remains unpaid. If the same is not acted upon or refused by the employer, the employee concerned is entitled to file an application before the Controlling Authority within a period of 90 days.



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3. In this case, there is no dispute that the application in Form N has been filed within a period of 90 days. The only objection on the part of the first respondent, while repeatedly returning the application is that the petitioner's services came to an end on 31.12.2023 and therefore when 30 days had already passed, no application for condonation of delay was filed.

4. In this regard, the learned counsel for the petitioner relies upon the judgement in W.P.No. 12937 of 2018 dated 01.10.2020 passed by this Court. A perusal of the same, this Court had considered the judgement of the Bombay High Court in ***H.Jayarama Shetty –vs- Sangli Bank Limited.,[(2005) 3 LLJ 637 (Bom)]*** where the Bombay High Court held that the Payment of Gratuity (Central) Rules, 1972, has to be read in consonance with the provisions of the Act. When no limitation is prescribed under the Act, the rules have to be interpreted accordingly, as it is beneficial legislation. Every day when the employer fails to pay the gratuity, the same would be a recurring cause of action. Therefore, an application for condonation of delay was not necessary. This Court had followed the said judgement and held accordingly.



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5. In view thereof, when the application in Form N was returned by the first respondent, in the re-presentation memo, the petitioner duly cited the said judgment. However, without considering the same and without giving any reasons, the application was once again returned by the impugned proceedings

6. I am of the view that, in view of the judgement in W.P.No. 12937 of 2018, no application for condonation of delay was necessary and authority ought to have numbered the petition and entertained it on merits. Since this issue only pertains to the re-presentation and numbering of the petition, this Court considered the matter at the admission stage itself. No notice has been issued to the second respondent management and the writ petition is disposed of on the following terms:-

(i) The petitioner shall once again re-present the papers by duly enclosing the judgment of this Court in W.P.No. 12937 of 2018 dated 01.10.2020.

(ii) Upon such re-presentation, the first respondent shall consider and number the petition in accordance with law, issue notice to the parties and dispose of the same in accordance with law.

(iii) No costs.



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Neutral Citation: Yes/No
nsl

To
The Controlling Authority under the
Payment of Gratuity Act, 1972/
The Deputy Commissioner of Labour,
Office of the Joint Commissioner of Labour -1,
Teynampet, Chennai - 600 006.

D.BHARATHA CHAKRAVARTHY, J.

nsl



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