



W.P.(MD) No.28676 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.28676 of 2024

and

W.M.P.(MD) Nos.24329 of 2024, 383 & 385 of 2025

The Management of
M/s.Bannari Amman
Spinning Mills Ltd., Unit II
Velvarkottai Post
Dindigul – Trichy NH
Dindigul-624 803
Dindigul District

... Petitioner

-vs-

1.The learned Controlling Authority
under Payment of Gratuity Act, 1972 /
Deputy Commissioner of Labour
Dindigul

2.The Appellate Authority
under Payment of Gratuity Act, 1972 /
Additional Commissioner of Labour
Tiruchirappalli

3.G.Thilagaveni

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records of the second respondent in his order dated 24.09.2024 made in P.G.A.No.02 of 2024, by confirming the order passed by the first respondent in his order dated 05.04.2023 made in P.G.No. 42 of 2021 and quash the same.

For Petitioner : Mr.K.Hemakarthikeyan

For Respondents : No appearance for R1 & R2
Mr.P.Mahendran for R3

ORDER

This writ petition has been filed by the petitioner challenging the order dated 24.09.2024, passed by the Appellate Authority / second respondent, in P.G.A.No.2 of 2024, confirming the order dated 05.04.2023, passed by the Controlling Authority / first respondent in P.G.No.42 of 2021.

2. The third respondent herein made a claim for payment of gratuity before the first respondent in P.G.No.42 of 2021 and the said claim was allowed by the first respondent by passing an order dated 05.04.2023



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directing the petitioner herein to pay a sum of Rs.3,55,548/- together with 10% interest per annum, to the third respondent.

3. The petitioner herein aggrieved by the said order dated 05.04.2023 approached this Court by filing a writ petition in W.P.(MD) No. 22983 of 2023. However, this Court, by an order dated 01.12.2023, declined to entertain the said writ petition and relegated the petitioner herein to avail the appeal remedy provided under the statute. The operative portion of the said order reads as under:

“4. In view of the above said facts, this writ petition is dismissed with liberty to the writ petitioner to approach the appellate authority within a period of four weeks from the date of receipt of a copy of this order. If any condone delay application is filed, the same may be considered in the light of the fact that the writ petition was pending before this Court between 12.09.2023 till 01.12.2023. The learned counsel for the respondents are at liberty to raise the issue of limitation before the appellate authority.”

4. It is pursuant to the said order dated 01.12.2023 passed by this Court in W.P.(MD) No.22983 of 2023, the petitioner herein filed an appeal



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5. As already noted above, the learned Appellate Authority / second respondent refused to interfere with the order, dated 05.04.2023, passed by the Controlling Authority / first respondent, on merits.

6. This Court, having heard the learned counsel for the petitioner, intended to know whether the appeal that was filed by the petitioner before the Appellate Authority was within the time in terms of Section 7(7) of the Payment of Gratuity Act, 1972 or not. On verification of the same, today, it is brought to the notice of this Court that the appeal that was filed by the petitioner herein before the Appellate Authority against the order dated 05.04.2023, passed by the Controlling Authority in P.G.No.42 of 2021, was



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filed beyond the period of 120 days, however, the same was filed within the period of four weeks's time granted by this Court *vide* order dated 01.12.2023, passed in W.P.(MD) No.22983 of 2023.

7. Having taken note of the same, this Court verified the order dated 01.12.2023, passed by this Court in W.P.(MD) No.22983 of 2023 and accordingly, it is concluded that this Court, while permitting the petitioner herein to file an appeal within four weeks from the date of receipt of a copy of the order dated 01.12.2023, made it clear that it is open for the petitioner herein to file an application to condone the delay by duly taking into consideration the fact that the said writ petition in W.P.(MD) No.22983 of 2023 was pending before this Court between 12.09.2023 and 01.12.2023. By virtue of the said view, it is evident that the period during which the said writ petition i.e. W.P.(MD) No.22983 of 2023 was pending before this Court *viz.*, from 12.09.2023 to 01.12.2023 is alone required to be excluded while computing the period of limitation in filing the appeal before the Appellate Authority / second respondent against the order dated 05.04.2023, passed by the Controlling Authority / first respondent in P.G.No.42 of 2021.



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8. On verification of the facts of the case, now it is concluded that even if the said period is excluded, the appeal filed by the petitioner before the Appellate Authority is beyond the period of 120 days. By now, it is well settled legal position that any appeal against the order passed by the Controlling Authority is required to be filed within a period of sixty days and in case of any delay, the delay can be condoned only for a further period of sixty days, but not beyond the further period of sixty days.

9. In the instant case, the appeal in question filed by the petitioner herein was beyond the period of 120 days. In case if any appeal is filed beyond the period of 120 days, the Appellate Authority has no competence to condone the delay and entertain the appeal. But, in the instant case, the appeal that was filed by the petitioner herein beyond the period of 120 days was entertained by the Appellate Authority / second respondent and was rejected on merits.

10. As already noted above, on merits also, the claim of the petitioner was rejected by the Appellate Authority / second respondent. In the light of the settled legal position, the Appellate Authority ought to have



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examined at the first instance as to whether the appeal that was filed by the petitioner was filed within the period of 120 days or not and only in case if the same was filed within the period of 120 days, the Appellate Authority can assume jurisdiction, otherwise, the Appellate Authority lacks competence to entertain the said appeal in the light of the settled legal position.

11. In view of the same, the appeal filed by the petitioner in P.G.A.No.2 of 2024 before the Appellate Authority / second respondent itself is incompetent and the same ought to have been rejected by the Appellate Authority on that ground also.

12. In the light of the above, this Court is of the considered view that the said appeal itself is incompetent and ought not to have been entertained by the Appellate Authority.

13. Accordingly, this Court is not inclined to interfere with the impugned order dated 24.09.2024, passed by the second respondent in P.G.A.No.2 of 2024, and this writ petition is dismissed. The Controlling Authority / first respondent is directed to disburse the amounts that are already in deposit, together with interest accrued if any, to the petitioner



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herein within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

19.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Note to Office:

Issue order copy by 24.03.2025.

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MUMMINENI SUDHEER KUMAR, J.

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