
(2003) 02 MAD CK 0075

In the Madras High Court

Case No : Writ Petition No's. 12546, 12547 and 12770 to 12781 of 2002 and W.M.P. No's. 16901, 16902 and 17182 to 17205 of 2002

Akshaya Textiles Limited

APPELLANT

Vs

The Assistant Commissioner of Labour, Appropriate Authority
under the Payment of Gratuity Act, 1972

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Citation : (2003) 02 MAD CK 0075

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : P. Bagyalakshmi, for the Appellant; S.V. Durai Solaimalai, Government Advocate For Respondent 1, Hariparanthaman, For 2nd Respondent in W.P. Nos. 12770, 12772, 12773 and 12775/2002 and K.V. Shanmuganathan, For 2nd Respondent in W.P. No. 12771/2002, for the Respondent

Judgement

K. Sampath, J.—The writ petitions raise a common question, the prayer being to call for the records of the respondent herein in respect of

I.A. Nos. 113, 108, 112, 119, 109, 111, 120, 110, 117, 121, 118, 115, 114 and 116 of 2002 respectively in G.A. Nos. 189, 140, 144, 195,

141, 143, 196, 142, 193, 203, 194, 191, 190 and 192 of 2000 pertaining to the first respondent on his file, quash the same and consequently

direct the first respondent to condone the delay in filing the set aside petitions as mentioned above and direct the first respondent to afford an

opportunity to the petitioner to contest the above cited gratuity applications in accordance with law on the following allegations:

The petitioner company is a public limited textile company, which has incurred severe loss and filed a petition u/s 15(1) of the Sick Industrial

Companies Special Provision Act before the Board of Industrial and Financial

Reconstruction in Case No. 177/89, that the company has formulated a draft rehabilitation scheme to improve the financial prospects and as per the scheme, Indian Bank, Coimbatore, has agreed upon a financial package for the petitioner Mill, that the company has been declared as a sick industrial company since 1990 and not revived since then, that it was in the process of recovery till 1996, that thereafter due to depression, it started incurring severe loss till 31-3-2000 totalling Rs. 4.60 crores, that in those circumstances, it could not pay the bonus to the employees in November, 1999, that the workers went on an indefinite strike resulting in closure of the mill from 8-11-1999 to 18-9-2002, that during that period none of the staff of the management was allowed entry into the mill, the workers having erected barricades in front of the entrances of the mill, that 15 workers, who had retired from service on various dates, filed applications claiming gratuity under Payment of Gratuity Act, 1972 (hereinafter referred to as the Act) in Form I sub rule (1) of Rule 7 before the first respondent, that since the mill was under closure, no notice was served on the petitioner or its staff, that the petitioner was not aware of the case being posted to 25.10.2000, with the result, it could not be represented, that it was called absent and ex parte orders were passed on 30-10-2000, that the absence was neither wilful nor wanton, but due to the valid reasons set out above, that the workers in the claim petitions had suppressed the facts that a settlement u/s 18(1) with regard to gratuity had been arrived at, that the mill was providing employment even at the time of the filing of the writ petition on the basis of Section 18(1) Settlement, that the petitioner had valid defence before the authority under the Act, that on and after 18-9-2000 the petitioner had allowed the cotton traders, who are the creditors to run the mill for conversion of yarn, that at the time of filing of the writ petitions, they were running the mill on an agreement of understanding, that the petitioner was under the bona fide impression that the said creditor would settle the dues to the workers, that the same had not been done, that the petitioner filed applications to set aside the ex parte orders on 2-2-2000, 21-2-2000 and 30-10-2000 with a petition to condone the delay, that when the petitions were pending before the first respondent, the District Collector, Coimbatore, issued orders under the Revenue Recovery Act by proceedings on different dates

threatening that the District Collector and the Tahsildar would initiate action under Revenue Recovery Act, that the petitioner filed W.P. No.

21445/2001 and in W.M.P. Nos. 31705 and 341706 of 2001 stay of all further proceedings was granted by this Court on 8-11-2001, that the

writ petition is still pending, that subsequent thereto, the first respondent had rejected the application for condonation of delay by proceedings

dated 22-3-2002 on the ground that the applications had not been preferred within the period as stipulated under Rule 11(5) under the Act and

that in those circumstances, the present writ petitions have been filed.

2. On 15-4-2002 N.V. BALASUBRAMANIAN, J. directed the petitioner to implead the affected parties as party respondents in the writ

petitions. The writ petitions were being adjourned from time to time.

3. On 21-2-2003 when the cases came up before this Court, an objection was raised on behalf of the employees that against the orders passed by

the first respondent, an appeal is provided u/s 7 of the Act and without availing of the alternative remedy, the present writ petitions were not

maintainable.

4. The learned Counsel for the writ petitioner submitted that the writ petitions were indeed maintainable and in support of this contention, she relied

on a Bench judgment of this Court in THE MANAGEMENT OF EID PARRY (INDIA) LTD. VS. THE ASSISTANT COMMISSIONER OF

LABOUR - I reported in 2002 W.L.R. 423. The learned Counsel further submitted that under proviso to Rule 11(5) under the Act, the first

respondent had no powers to entertain an application beyond the time specified in that Rule and that only this Court could exercise jurisdiction

under Article 226 of the Constitution and grant relief.

5. The learned Counsel for the employees submitted that entertainment of the appeal contemplated deposit of the amount before the Authority and

to circumvent the same, the present writ petitions have been filed. The learned Counsel also relied on the judgment of the same Division Bench in

MANAGEMENT OF BHAVANJI MILLS VS. DEPUTY COMMISSIONER OF LABOUR AND ANOTHER 99 FJR 706 rendered under

the Workmen's Compensation Act. The learned Counsel also submitted that the liability quantified by the first respondent was an admitted liability

and the petitioner had absolutely no defence to the applications filed by the

employees under the Act.

6. It is not disputed that there is a provision for appeal. It is also not disputed that condition precedent for entertainment of appeal by the Appellate

Authority is deposit of gratuity amount ascertained by the first authority.

7. The question is whether the writ petitions are maintainable.

8. The authority relied on by the learned Counsel for the petitioner in THE MANAGEMENT OF EID PARRY (INDIA) LTD. ETC. VS. THE

ASSISTANT COMMISSIONER OF LABOUR - I ETC. 2002 W L.R. 423 arose in a different context. There was a common order passed by

the Assistant commissioner of Labour/Controlling Authority under the Act, in which different employees filed separate applications u/s 7 of the Act.

However, finding that the said applications were belated, subsequent applications to condone the delay came to be filed by the employees. The

said applications for condonation of delay were resisted by the writ petitioner/appellant before the Bench and ultimately, by a common order the

said applications came to be allowed. Against that common order, a writ petition came to be filed and along with the writ petition, a writ

miscellaneous petition was taken out for permission to file a single writ petition instead of filing independent petitions against every one of the

employees. The learned single Judge did not agree and in the appeal, the Bench held that a joint petition could not be filed by a person having

distinct cause of action, could not be relied upon for holding that one petitioner could not file a single petition against several respondents. The

Bench, on consideration of provisions of Rules 2-A and 2-B of Madras High Court Appellate Side Rules, held that had the order gone against the

employees, their grievances would have been common that the delay caused in filing the applications was not condoned, that the source of right

which they sought to enforce would have also been absolutely common, so also the nature of the cause of action and the nature of the relief prayed

for can could not be identical and that therefore, they could have filed a joint petition, that in its opinion, the case before it was a proper case where

permission to file a single writ petition could be given, particularly because the applications to condone the delay were on common grounds, that

they were commonly treated and disposed of by a common order and their claims in those petitions were also identical. So holding, the writ appeal

was allowed. The Bench did not decide as to whether the writ petition when there was an alternative remedy available, was maintainable. It gave

its decision only regarding the maintainability of a petition under rule 2-B of the High Court Appellate Side rules relating to writ petitions under

Article 226 of the Constitution. The decision does not help the petitioner.

9. The same Bench decided a matter arising under the Workmen's Compensation Act. That was a case where the employee died in harness. The

Commissioner of Workmen's Compensation found that the deceased had not been insured under the Employees Insurance Act and therefore,

directed the employer to pay workmen's compensation. The employer did not prefer appeal u/s 30, but preferred writ petition after limitation for

filing appeal expired. The Bench held that the writ petition was not bona fide observing as follows:

The appeal under the Workmen's Compensation Act has a special significance. It is not like an ordinary appeal under the taxing statutes where

the parties are required to pay taxes. The appeal under the Workmen's Compensation Act is on an entirely different footing because there some

one is dead and that some one is a workman. Therefore, the salutary provision of the payment of the compensation first which has been made as a

sine qua non for the entertainment of an appeal. Now, if such an appeal was not filed and instead a writ petition was chosen to be filed, in our

opinion, even if the writ petitioner explained as to why the writ petition was filed and raised substantial question of law, the writ petition would still

be without any bona fides. After all, by filing the writ petition the employer avoided his liability to make the payment of the compensation, which

was a compensation for the death of a labourer, who was the only son. In that view, we do not wish to go into the other aspects of the matter. In

our opinion, since the writ petition itself was not maintainable, there is no question of deciding any further question as to whether the person

concerned was an ""insured person"" or not.

The Bench directed the appellant to make payment of the compensation.

10. Our problem does not end there. As per the provisions of the Act, the first respondent, the competent authority under the Act, has no powers

to condone delay in filing applications beyond 30 days. He was well within his powers to dismiss the applications for want of powers under the

provisions. Even if the appeals had been filed before the Appellate Authority, the result would have been the same. But, that was not the argument put forward on behalf of the writ petitioner. The High Court, no doubt, has powers in deserving cases to exercise discretion and grant relief. The entitlement of the employees to payment of gratuity has not at all been challenged on the side of the petitioner. The appellant's idea is to drag on and delay the matters to cause hardship to the employees. Those employees have retired from service and are in dire need of payment of their gratuity dues. The delay of 265 days and more in filing the applications for setting aside the ex parte order has also not been satisfactorily explained. Still, having regard to the fact that the writ petitioner had not been heard, I deem it proper to afford an opportunity to the writ petitioner to have a decision on merits. But, such an indulgence could be shown only on terms. The petitioner shall deposit the gratuity amount due to each of the employees with the first respondent within a period of six weeks from today. On such deposit being made, the petitions for condonation of delay which have been dismissed, will stand allowed. The main applications will stand restored to the file of the first respondent. The first respondent shall take up the main applications and dispose them of within a period of twelve weeks from the date of deposit of the amounts by the writ petitioner. The petitioner shall pay the second respondent in each of the writ petitions, a sum of Rs. 500/- as costs. The writ petitions are disposed of on the above terms. The connected miscellaneous petitions are closed.