

(1992) 11 MAD CK 0028

In the Madras High Court

Case No : Writ Petition No"s. 3605-11/etc 1992

M. Devarajulu

APPELLANT

Vs

Asst. Commissioner of Labour and Others

RESPONDENT

Date of Decision : 25-11-1992

Acts Referred:

Payment of Gratuity (Central) Rules, 1972 — Rule 10(1), 7
Payment of Gratuity Act, 1972 — Section 15

Citation : (1995) 1 LLJ 348

Hon'ble Judges : D. Raju, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : J.P. Dolia, for Aiyar and Dolia, for the Appellant; V. Raghupathi, Addl. Govt. Pleader For Respondent No. 1 and K.K. Parthasarathy, for the Respondent

Judgement

1. These writ petitions, about 35 in number, have been filed by the petitioner, who is said to be a handling Contractor, challenging the common

order dated November 26, 1991 in I.A.Nos. 1/91 etc. in P.G. Case Nos. 173/91, etc. passed by the 1st respondent, condoning the delay in filing

the applications under the provisions of the Payment of Gratuity Act, 1972 and also in allowing the claim of the workers for the payment of

gratuity, simultaneously, with a further direction that the amounts specified in the annexure to the said order be paid within 30 days from the date of

order.

2. The workers, who are arrayed as the 2nd respondent in these writ petitions, respectively, claimed before the 1 st respondent that they were

employed under the petitioner/management, as steel handling labourers with effect from September 1, 1976 and that their services were terminated

for reasons not disclosed to them, on October 31, 1989 and consequently, they

were obliged to submit applications under Rule 7(1) of the Payment of Gratuity Rules, 1972, Since the writ petitioner failed to pay them the gratuity, they had to approach the 1st respondent and in doing so, there was a delay and within the frame work of the rules governing the matter, they filed applications for condonation of the delay in the filing of their claim petitions before the 1st respondent under Rule 10(1) of the Payment of Gratuity (Central) Rules 1972. In support of those claim petitions, the workers contended that they had earlier applied for the payment of gratuity to the writ petitioner/employer in Form No. 1 and since there was no positive response, they approached the 1st respondent in Form No. N and that the delay was on account of the negotiations that were going on between the workers and the employer for settlement and on its failure, they approached the 1st respondent. The writ petitioner/employer objected to the condonation of the delay.

3. The 1st respondent has conducted an enquiry and after hearing both sides, had passed the impugned order. Thereupon, the petitioner/management has filed these writ petitions. The main and only ground that has been urged by learned counsel for the petitioner at the threshold before us is that the 1 st respondent had committed an error in passing the impugned order on the question of condonation of delay in filing the claim petitions as also the merit of the claims so made and the issue relating to the jurisdiction. It is contended that the procedure adopted by the 1st respondent resulted in the denial of an opportunity to the petitioner/management to file its counter affidavit in the main application regarding the claim and that therefore, the impugned order is liable to be set aside. In substance, the complaint is about the procedural infirmity alleged in the manner of disposal of the claim petitions filed before the 1st respondent.

4. Mr. K.K. Parthasarathy, learned counsel for the workers, took us at length through the impugned order and contended that though a separate order for condonation of the delay has not been passed by the 1st respondent before entertaining the claim petitions on merits, the decision about the condonation of the delay was made known and only thereafter, evidence was let in on merits and a combined order came to be passed. He would add that the move of the petitioner/management is only to see that the

workers are not realising the benefits of the order in their favour and this is borne out by the fact that till date, they have not been paid the dues towards gratuity and the management is taking all dilatory tactics to see that the workers are not getting any money due to them.

5. We have carefully considered the arguments of both the learned counsel on either side. Though the grievance expressed by the learned ; counsel

for the workers about the delaying tactics of the petitioner/management cannot be brushed aside as frivolous or insignificant, the infirmity which has

been allowed to enter into the adjudication due to the combined consideration and disposal of the matter, both on the issue relating to the

condonation of the delay in the filing of the claim petition as well as on merits and jurisdiction, could not be equally brushed aside. It is an axiomatic

principle of law well recognised in judicial proceedings that the statutory authorities entrusted with the task of determining the rights of parties,

before an adjudication on the merits of a claim is made should see that a valid proceeding is instituted and entertained or pending before that forum

which it could consider on merits. In cases where the institution of any proceeding is conditioned upon any time limit and when a proceeding is

instituted beyond the time limit and is accompanied by an application for condonation of the delay in presenting such a claim or petition, unless such

a delay is condoned after hearing the parties before it, it could not be legitimately stated that a valid proceeding had been instituted before the

forum, to enable it to enter into an adjudication of the claim on merits. Till the delay is condoned by a specific order for that purpose under the

signature and authority of the presiding officer of the forum concerned, in law, it should be taken that there is no proceeding, as such, before it. A

similar issue had arisen before a learned single Judge of this court in *Madura Coats Ltd. Tuticorin v. Assistant Commissioner of Labour,*

Palayamkottai 1988 CLR.512, under the very same provision of law, where *Nainar Sundaram, J.*, as the learned Judge then was, held that before

the main claim petition could be considered on merits, the delay should first be considered and condoned and orders passed thereon and only

thereafter, the legality of the claim on its merits has to be taken up. The learned Judge has observed thus:

When there is a delay in preferring the application, the Authority has to condone

the delay, on sufficient cause being shown by the applicant. This he must do first. This is the implication of the proviso to Rule 10(1) of the Rules. The general rule is that every application, which has got to be preferred within a time prescribed therefor, if not so preferred, shall be dismissed as time barred. By virtue of the power conferred on the Authority or forum, the question of condonation of delay and thereby entertaining the matter for consideration on merits will arise. If there is no condonation of delay, the main matter does not get entertained for the purpose of consideration on merits. The main matter has got to be first entertained, after clearing the hurdle of condonation of delay. Without doing that, there could not be a consideration of the main matter on merits. The 1st respondent, in my view, committed a patent error when he passed the impugned order proposing to deal the main matter on merits as well as from the angle of delay".

In our view, the view taken by the learned Judge accords with the universal and invariable principle of law to be applied in such circumstances. We are in respectful agreement with the view taken by the learned Judge and we see no reason to take a view different from the one arrived at by the learned Judge on the construction of the provisions of the Act and the Rules as well as by the scheme underlying the same.

5-A. Consequently, we are of the view that the impugned order is liable to be quashed to the extent that the 1st respondent has proceeded to adjudicate on the merits of the claims itself. Learned counsel for the petitioner did not seriously contest the sufficiency of the reasons assigned by the 1st respondent for condonation of the delay. Even that apart, on going through the reasons assigned in the affidavit filed by the 2nd respondent/workers before the 1st respondent, we are satisfied that sufficient cause has been shown by the workers to have the delay condoned.

The reasons assigned not only appear to be plausible but are also genuine and that therefore, we are satisfied that the 1st respondent was right in condoning the delay in approaching him with their claim petitions,

6. In view of the fact that the procedure adopted by the first respondent by a combined consideration and adjudication on the claims of the workers on merits also even before an order was made condoning the delay has been disapproved by us, the order of the 1st respondent in so far

as it relates to the adjudication of the claims on merits, shall stand hereby quashed. Consequently, the 1st respondent shall restore the claim petitions on its file and adjudicate and decide the claims on merits, after affording an opportunity to let in further evidence, to both the parties on merits. The 1st respondent will also retain the evidence already on record and consider the same along with the evidence, if any to be let in, pursuant to this order and then pass appropriate orders on merits. The 1st respondent is directed to take effective and expeditious steps to take up the matter on file and dispose of the same and pass orders within three months from to- day. Mr. Dolia, learned counsel for the petitioner, fairly states that he will be co-operative in the disposal of the claim on merits within the time stipulated above and will make ready the counter affidavit to be filed on merits on the first hearing date itself. In other respects, the 1st respondent shall be at liberty to deal with the claims on merits in accordance with law and dispose of the same as directed above.

7. The writ petitions are allowed in part to the extent indicated with the directions as stated above. There will be no order as to costs.