
(1988) 04 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No's. 9247 and 9248

Madura Coats Ltd.

APPELLANT

Vs

Assistant Commissioner of Labour and Others

RESPONDENT

Date of Decision : 06-04-1988

Acts Referred:

Payment of Gratuity Act, 1972 — Section 7(4)

Tamil Nadu Payment of Gratuity Rules, 1973 — Rule 10, 10(1)

Citation : (1993) 3 LLJ 923

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Advocate : Sanjay Mohan, for the Appellant; P. Chandrasekaran, N.G.R. Prasad and M. Chhidambaram, for the Respondent

Final Decision : Allowed

Judgement

S. Nainar Sundaram, J.—In these two writ petitions, applications were preferred by persons, stated to be employees of the petitioner, for

determination of the amount of gratuity u/s 7(4) of the Payment of Gratuity Act, 39 of 1972, hereinafter referred to as the Act. The applications

were not preferred within the time prescribed. There is a move to have the delay condoned. The first respondent in these two writ petitions,

without first deciding the question of condonation of delay would say, by the impugned orders, that the main applications themselves would be

considered, both on merits as well as from the angle of delay. Rule 10 of the Tamil Nadu Payment of Gratuity Rules, 1973, hereinafter referred to

as the Rules, does prescribe a time limit for preferring an application of present nature. 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 first respondent, in my view, committed a patent error

when he passed the impugned orders proposing to deal with the main matters on merits as well as from the angle of delay. Hence, the first

respondent was not in order in declining to first consider the question of condonation of delay. Accordingly, these two writ petitions are allowed

and the matters are remitted to the file of the first respondent, for him to first consider the question of condonation of delay in preferring the

applications for determination of amount of the gratuity u/s 7(4) of the Act and if the first respondent finds a warrant for such condonation, to pass

orders on the questions of condonation of delay and thereafter to take up the main applications for consideration on merits. The first respondent

shall deal with the question of condonation of delay, as directed above, within a period of twelve weeks from the date of receipt of a copy of this

order. If the first respondent should choose to condone the delay and pass orders doing so, the petitioner is at liberty to agitate against the said

orders. There will be no order as to costs.