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Mathew Joseph vs the Controlling Authority Under the Payment of Gratuity Act 1972

Mathew Joseph vs the Controlling Authority Under the Payment of Gratuity Act 1972

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Court : Kerala

Decided On : Jun-28-2022

Judge : Honourable Mr.Justice Murali Purushothaman

Appeal No. : WP(C)/13650/2022

Appellant : Mathew Joseph

Respondent : The Controlling Authority Under the Payment of Gratuity Act 1972

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN TUESDAY, THE 28TH DAY OF JUNE 2022 / 7TH ASHADHA, 1944 PETITIONER/S: MATHEW JOSEPH AGED 73 YEARS MANAGING DIRECTOR, ATHANI BRICKS AND METALS, S/O. LATE JOSEPH, AGED 73 YEARS, RESIDING AT MATTAM HOUSE, KURIANAD P.O., MONIPPALY, KOTTAYAM-683 636 BY ADV JAMES KURIAN RESPONDENTS:

1 THE CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT 1972 UNDER THE PAYMENT OF GRATUITY ACT 1972, (DEPUTY LABOUR COMMISSIONER) , CIVIL STATION, KOZHIKODE-673 020 2 THE DEPUTY COLLECTOR, (REVENUE RECOVERY), COLLECTORATE P.O., KALPETTA, WAYANAD-673 121 3 THE DEPUTY TAHSILDAR, VYTHIRI TALUK, VYTHIRI, WAYANAD-673 576 4 MANEESH.N.S., THARA BHAVAN, PANAYAMUTTAM P.O., NEDUMANGAD, THIRUVANANTHAPURAM-695 561 BY ADV M.HEMALATHA FOR R4 BY ADV. SMT. RASHMI K.M. FOR R1 TO R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The 4th respondent filed Ext.P6 application before the 1st respondent under Section 7(4) (b) of the Payment of Gratuity Act, 1972 ('Act' for short) claiming gratuity from the petitioner. The petitioner was declared ex-parte and the evidence of 4th respondent was taken. The 1st respondent-Controlling Authority, vide Ext.P10, found that the 4th respondent is eligible for Gratuity of Rs.1,58,654/- with interest at the rate of 10% from 1.6.2020 till the date of payment.

2. The petitioner submitted Ext.P11 application before the Controlling Authority to set aside the ex-parte

order stating that he did not receive notice of the

proceedings. Ext.P11 was rejected by the 1 st respondent by Ext.P12 stating that the notice issued to the petitioner was returned with the postal endorsement 'refused -returned to sender' and that the application under Rule 11 (5) of the Payment of Gratuity (Central) Rules 1972 to set aside the ex parte order was filed beyond the time limit. Exts.P10 and P12 orders are impugned in the writ petition.

3. Heard the learned counsel for the petitioner, Smt. Hemalatha for the 4 th respondent and learned Government Pleader for respondents 1 to 3.

4. According to the petitioner, he did not receive notice from the Controlling Authority as he was not staying in Wayanad where notice is stated to be addressed

and the crusher unit was not functioning. This was opposed by Smt. Hemalaltha stating that the unit was functioning at the relevant time. With regard to the delay in filing the application under Section 11(5) of the Act it is submitted by the learned counsel for the petitioner that the application was filed well within the time in the light of the decision of the Hon'ble Supreme Court In re: Cognizance for Extension of Limitation judgment dated 10th January, 2022, where the Court held Period from 15.3.2020 till 28.2.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special Laws in respect of all judicial or quasi- judicial proceedings.

5. The learned counsel for the petitioner submits that the petitioner was not given an opportunity to contest the case on merits.

6. Ext.P11 application of the petitioner to set aside

Ext.P10 ex parte order was rejected by the Controlling Authority on the ground that the application is filed beyond 30 days. Ext.P11 is filed after 4 months and 26 days. The case of the petitioner in Ext.P11 is that he is aged 73 and having heart ailments and was not staying near the quarry unit and no notice of the application under Section 7(4) of the Act was served on him.

However, Ext.P11 application was rejected by the Controlling Authority at the threshold on the ground that the application cannot be entertained.

7. Having heard the counsel for the petitioner, the 4th respondent and the learned Government Pleader, in the interest of equity and justice and in the facts and circumstance of the case, I feel it appropriate to remit the matter to the 1st respondent for consideration of

Exts.P6 and P7 applications of the 4th respondent on merits and in accordance with law and on terms. Accordingly, Exts.P10 and P12 orders of the 1 st respondent

are set aside. The 1st respondent shall issue fresh notice to the petitioner in the address to be furnished by the petitioner and the 4th respondent and pass appropriate orders in accordance with law. The parties shall be permitted to adduce evidence. The petitioner shall pay an amount of Rs.10,000/- to the 4th respondent as costs. This shall be done within a period of two weeks and shall

produce the receipt of the same before the 1 st respondent. The 1st respondent shall endeavour to dispose of the applications expeditiously, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above. Sd/- MURALI PURUSHOTHAMAN JUDGE al/- APPENDIX OF WP(C) 13650/2022 PETITIONER EXHIBITS Exhibit P1 COPY OF THE PROCEEDINGS OF THE DISASTER MANAGEMENT AUTHORITY CHAIRMAN AND DISTRICT COLLECTOR, WAYANAD DATED 3.8.2018 WITH TRANSLATION Exhibit P2 COPY OF THE REQUISITION NO.2022/383/11 DATED 1.2.2022 IN FORM NO.24 ISSUED BY THE 1ST RESPONDENT FOR REVENUE RECOVERY Exhibit P3 COPY OF THE CERTIFICATE OF RECOVERY NO.RRC NO.2022/383/11 DATED 4.2.2022 ISSUED BY THE DEPUTY COLLECTOR, WAYANAD DISTRICT Exhibit P4 COPY OF THE REVENUE RECOVERY NOTICE FOR

RS.1,85,169/- WITH 10% ANNUAL INTEREST FOR THE PRINCIPAL AMOUNT OF RS.1,58,654/- FROM 1.6.20220 TILL REALIZATION WITH 5% COLLECTION CHARGES ISSUED BY THE 3RD RESPONDENT DATED 21.2.2020 WITH TRANSLATION Exhibit P5 COPY OF THE NOTICE FOR ATTACHMENT OF THE PROPERTIES ISSUED BY THE 3RD RESPONDENT DATED 21.2.2022 WITH TRANSLATION Exhibit P6 COPY OF THE APPLICATION IN FORM N DATED 23.2.2022 1FOR GRATUITY FILED BY THE 4TH RESPONDENT BEFORE THE 1ST RESPONDENT AGAINST THE PETITIONER

Exhibit P7 COPY OF THE DETAILED APPLICATION IN MALAYALAM FILED ALONG WITH EXHIBIT P6 BY THE 4TH RESPONDENT WITH ENGLISH TRANSLATION Exhibit P8 COPY OF THE MATTER TYPED IN THE PETITIONERS LETTER PAD WITH SIGNATURE OF THE PETITIONER FILED BY THE 4TH RESPONDENT AS ANNEXURE A1 Exhibit P8A COPY OF THE DOCUMENT PRODUCED BEFORE THE

1ST RESPONDENT BY THE 4TH RESPONDENT AS IF IT IS THE COPY OF THE LEDGER ISSUED TO HIM AND MARKED AS ANNEXURE A2 Exhibit P9 COPY OF THE DEPOSITION OF THE 4TH RESPONDENT BEFORE THE 1ST RESPONDENT IN G.C.NO.4 OF 2021 WITH TRANSLATION Exhibit P10 COPY OF THE ORDER DATED 6.10.2021 PASSED BY THE 1ST RESPONDENT IN G.C NO.4 OF 2021 WITH TRANSLATION Exhibit P11 COPY OF THE PETITION FILED BY THE PETITIONER DATED 2.3.2022 UNDER RULE 11(5) OF THE PAYMENT OF GRATUITY (CENTRAL) RULES 1972 FILED BEFORE THE 1ST RESPONDENT IN GC NO.4 OF 2021 TO SET

ASIDE THE EXPARTE ORDER

Exhibit P12 COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT DATED 2.3.2022 WITH TRANSLATION

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