IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 11 / 12 / 2025

JUDGMENT DELIVERED ON: 18 / 12 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

W.A.No.991 of 2025
AND
CMP NOS.18949 & 8145 OF 2025

The Management,
Colacumby Tea Manufacturers Pvt. Ltd.,
Ooty,
Represented by Dr.K.Shanmuganathan,
Sun Plaza, 39, GN Chetty Road,
Second Floor, Unit 5,
Chennai – 600 006. ... Appellant / Petitioner

Versus

1.Assistant Commissioner of Labour,
and the Authority of Payment of Gratuity,
Erode. ...1st Respondent/ 1st Respondent

2.N.Bhojan
Door No.1/608, Kenthorai Post,
Ooty, The Nilgiris – 643 002. ... 2nd Respondent/2nd Respondent

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent,

praying to allow the Writ Appeal and set aside the Order dated October 21, 2024 passed in W.P.No.28254 of 2024 by the learned Single Judge of this Court.

For Appellant	:	Mr.P.Raghunathan for M/s.T.S.Gopalan and Co.
For Respondent-1	:	Mr.R.Kumaravel Additional Government Pleader
For Respondent-2	:	Mr.S.Saravanan

J U D G M E N T

R.SAKTHIVEL, J.

The second respondent herein - N.Bhojan was employed under the appellant - Tea Manufacturer, at their dispensary and office management department, as pharmacist and Officer in-charge on July 16, 1991. He resigned on March 31, 2019. According to the second respondent, he served for totally 28 years under the appellant - Tea Manufacturer and received a sum of Rs.33,500/- (basic pay + dearness allowance + incentive) as last drawn wages. He submitted an application for gratuity claiming Rs.5,41,154/- with 10% interest thereon from May 1, 2019, in Form-I under Rule 7 (1) of 'the Tamil Nadu Payment of Gratuity Rules, 1973' ['Gratuity Rules' for short] on October 9, 2020 before the appellant - Tea Manufacturer. As there was no response on the

application, he approached the controlling authority / first respondent under Rule 10 of the Gratuity Rules. Despite notice, the appellant did not file counter and participate in the enquiry. Hence, after considering the application and the documents marked (Ex-P.1 to Ex-P.6), the first respondent passed an *Ex-parte* Order on February 28, 2023 under Rule 11 (4) read with Rule 11 (5) of the Gratuity Rules fixing the payment of gratuity at Rs.5,41,154/- and directing the appellant to pay the same along with 10% simple interest thereon from the date the amount was payable.

2. Then the appellant filed an 'application under Rule 11 (5) of the Gratuity Rules praying to set aside the *Ex-parte* Order dated February 28, 2023 passed by first respondent' ['the set aside application' for convenience] along with an 'application under Section 5 of the Limitation Act, 1963 read with Section 115 of the Code of Civil Procedure, 1908 praying to condone the delay of 316 days in filing the set aside application' ['the delay condonation application' for convenience]. Though these applications were dated January 9, 2024, they were received by the first respondent only on July 19, 2024. The first respondent vide their Order in proceedings in A.TI.MU.E1/4172/2024 dated July 25, 2024, returned the said applications by stating that they

were received 30 days beyond the date of *Ex-parte* Order passed by first respondent. The Order dated July 25, 2024 passed by the first respondent shall hereinafter be called 'the Impugned Order'.

3. Feeling aggrieved by the Impugned Order, the appellant - Tea Manufacturer filed a writ of certiorarified mandamus before this Court in W.P.No.28254 of 2024 praying to quash the same, and direct the first respondent to entertain the delay condonation application and the set aside application, and decide the same on merits. A learned Single Judge of this Court concluded that as per the proviso to Rule 11 (5) of the Gratuity Rules, a petition to set aside the Order passed under Rule 11 (5) must be presented within 30 days from the date of that Order and since the appellant missed the bus, the first respondent rightly rejected the applications on the point of limitation. Accordingly, the writ petition was dismissed.

4. Challenging the said dismissal Order of the learned Single Judge, the appellant has come up with this writ appeal.

5. Mr.P.Raghunathan for M/s.T.Gopalan and Co., Counsel on

record for the appellant - Tea Manufacturer, would submit that the appellant received the notice from the controlling authority / first respondent for the hearing on August 29, 2022 at Coonoor Camp Sitting and was present before the first respondent for the said hearing. However, the sitting was cancelled due to official reasons and thereafter, no notice for any subsequent hearings was served to the appellant. The Managing Director of the appellant frequently travels to abroad and got knowledge about the *Ex-parte* Order dated February 28, 2023 only on June 29, 2024. Upon such knowledge, the management filed the set aside application along with the delay condonation application and the same were returned by the first respondent on the point of limitation vide the Impugned Order.

5.1. He would draw attention of this Court to sub-rule 4 of Rule 11 of the Gratuity Rules and argue that the Impugned Order, regardless of whether contested or not, ought to be a reasoned order. It should contain discussion of evidence and reasons for the findings recorded. However the Impugned Order fails to satisfy these requirements and hence, it is not in consonance with Rule 11 (4) of the Gratuity Rules.

5.2. He would further argue that the 30 days time period prescribed

in the proviso to Rule 11 (5) for a petition to set aside an *Ex-parte* Order, is not an outer limit and hence, in appropriate cases like the instant case, the set aside application can be entertained even after 30 days considering the attending facts and circumstances. Though Section 5 of the Limitation Act, 1963 is not applicable to 'the Payment of Gratuity Act, 1972' ['Gratuity Act' for short] and the Gratuity Rules which are self-contained in nature *qua* limitation, the principles stated therein can be applied. Accordingly, he would pray to allow the writ appeal, set aside the Order passed by the learned Single Judge in the writ petition, and direct the first respondent to entertain the delay condonation application as well as the set aside application.

5.3. In support of his submissions, he would rely on the following Judgments:

(i) Judgment of the Co-ordinate Bench of this Court in ***The Management, Tamil Nadu Civil Supplies Corporation -vs- The Appellate Authority under the Payment of Gratuity Act***, reported in ***2019 SCC OnLine Mad 5170***.

(ii) Judgment of this Court in ***A.Francis Leo Gunaseelan -vs- The Special Joint Commissioner of Labour*** reported in ***2019 SCC***

OnLine Mad 10805.

(iii) Judgment of the Hon'ble High Court of Gujarat in ***Panoli Intermediate (India) Private Limited -vs- Union of India,*** reported in ***2015 SCC OnLine Guj 570***.

6. Per contra, Mr.S.Saravanan, learned Counsel appearing for the second respondent would submit that the appellant - Tea Manufacturer was served with notice in Form 'O' under Rule 11 (1) of the Gratuity Rules, and the appellant appeared through an advocate on August 29, 2022 at the Coonoor Camp Sitting. Hence, the appellant had knowledge about the proceedings. However, the appellant with an ulterior motive failed to appear thereafter. The first respondent after considering the second respondent's application and the documents in Ex-P.1 to Ex-P.6 passed an *Ex-parte* Order against the appellant under Rule 11 (4) read with Rule 11 (5) of the Gratuity Rules. A copy of the said Order was marked to the appellant. The appellant received the same on May 26, 2023. In fact, the appellant admitted the said fact in their affidavit filed in support of the delay condonation application. But in their affidavit filed in support of the set aside application, the appellant has stated that he got knowledge only on June 29, 2024. In one of the affidavits, the appellant

has impliedly admitted that they 'received' a copy of the *Ex-parte* Order dated February 28, 2023 on May 26, 2023. Hence the appellant ought to have filed the set aside application within 30 days from May 26, 2023 i.e., on or before June 26, 2023. But the set aside application was filed on July 19, 2024 which is way beyond the prescribed limit of 30 days under the proviso to Rule 11 (5). No proper reason was assigned other than the vague averment about the frequent foreign trips of the appellant's Managing Director. Even while assuming that the said reason is genuine, the appellant being a private limited company would have had other senior staffs in-charge of his role and hence, the reason is not acceptable. The first respondent as well as the Writ Court rightly appreciated the facts and ruled against the appellant. There is no warrant to interfere with it. Accordingly, he would pray to dismiss the writ appeal.

7. Heard on either side. Perused the materials available on record. The points that arise for consideration in this writ appeal are:

(i) Whether a petition praying to set aside an Order passed under Rule 11 (4) read with Rule 11 (5) of the Gratuity Rules can be entertained by the controlling authority / first respondent beyond the period of 30 days stipulated under the proviso to Rule 11

(5) ?

(ii) Whether the appellant has made out a case for condonation of delay of 316 days in preferring the set aside petition ?

8. To answer Point No.(i), it is essential to understand the object of the Gratuity Act and understand the nature of Rule 11 (5) of the Gratuity Rules. It has to be determined whether Rule 11 (5) is mandatory or directory in nature. If mandatory in nature, the time line prescribed is rigid and a petition to set aside the *ex-parte* order post the expiry of 30 days cannot be entertained. On the other hand, if it is directory in nature, the 30 days time line is not strict and set aside petitions can be entertained provided sufficient reason for the delay is shown.

9. The object of the Gratuity Act is to provide for a scheme of payment of gratuity for employees engaged in factories, mines, oil fields, plantations, ports, railway companies, shops or other establishments. It aimed to provide financial and social security to employees and their families in the event of their resignation, retirement, demise or termination. It is a social beneficial legislation aimed for the welfare of the employees. Section 4 of the Gratuity Act speaks about the liability of the employer to pay gratuity to his employee on termination of his/her

employment subject to certain conditions, and also provides the eligibility criteria of employees for gratuity. Section 5 thereof empowers the appropriate government to exempt certain establishment from the purview of the Gratuity Act subject to conditions as may be prescribed. Section 6 thereof speaks about nomination by employee for the purpose of gratuity under sub-section 1 of Section 4 thereof. Section 7 of the Gratuity Act speaks about determination of the gratuity amount. Section 7 (1) deals with submission of application to employer for payment of gratuity. Section 7 (2) imposes an obligation on the employer to determine the amount of gratuity and intimate the quantum determined in writing to the employee as well as the controlling authority. Section 7 (3) provides that the employer within 30 days shall arrange to pay the gratuity from the date it becomes payable. If the employer did not pay the amount as per sub-section 3, the amount shall attract simple interest not exceeding the rate notified by the Central Government from time to time, subject to the exception provided in the proviso thereto. As per Section 7 (4) (a), if any dispute arises with regard to payment of gratuity, the employer is bound to deposit the admitted amount to the controlling authority and then, as per Section 7 (4) (b), either the employer or the employee shall make an application before the controlling authority for

deciding the dispute. Section 7 (4) (c) empowers the controlling authority to, after due enquiry, determine the gratuity amount and accordingly enhance, modify or reduce the deposited amount, and issue appropriate directions to the employer to pay such amount. The relevant rules for Section 7 (4) are Rules 10 and 11 of the Gratuity Rules. Rule 10 deals with the application made by the employee or his nominees or legal heirs to controlling authority and Rule 11 deals with the procedure for the controlling authority to deal with the application and determine the gratuity amount. Rule 11 (5) deals with *Ex-parte* Order and the *proviso* thereto provides that the employer or the employee shall seek to set aside the *Ex-parte* Order and seek rehearing, within 30 days from the date of *Ex-parte* Order. Coming back to the Gratuity Act, Section 7 (5) thereof stipulates the powers of the controlling authority for the purpose of conducting enquiry under sub-section 4; it says that the controlling authority shall have such powers a Civil Court would have while trying a Civil Suit under CPC, when it comes to enforcing any person's attendance, examining them on oath, discovery and production of documents, receiving evidence on affidavit, and examination of witnesses through commission. Sub-section 7 provides for appeal remedy and *proviso* to that subsection prescribes the period of limitation therefor as

60 days from the date of receipt of the Order passed under sub-section 4, extendable by another 60 days if sufficient cause is shown. The relevant rule for sub-section 7 is Rule 18, which provides for the procedure for filing an appeal. This Court deems fit to extract Section 7 of the Gratuity Act and Rules 10 and 11 of the Gratuity Rules hereunder:

Section 7:

"7. Determination of the amount of gratuity:-- (1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause(a), the

employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit—

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the

guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) enforcing the attendance of any person or examining him on oath ;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits ;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date

of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf.

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellant authority such amount.

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority."

Rules 10 and 11:

"10. Application to controlling authority for direction.-(1) If an employer-

(i) refuses to accept a nomination or to entertain an application sought to be filed under rule 7, or

(ii) issues a notice under sub-rule (1) of rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or

(iii) having received an application under rule 7 fails to issue any notice as required under rule 8 within the time specified therein,

the claimant employee, nominee or legal heir, as the case may be, may, within ninety days of the occurrence of the cause for the application, apply in Form 'N' to the controlling authority for issuing a direction under sub-section (4) of section 7 with as many extra copies as are opposite parties:

Provided that the controlling authority may accept any application under this sub-rule, on sufficient cause being shown by the applicant, after the expiry

of the specified period.

(2) Application under sub-rule (1) and other documents relevant to such an application shall be presented in person to the controlling authority or shall be sent by registered post acknowledgement due.

11. Procedure for dealing with application for direction.-(1) On receipt of an application under rule 10 the controlling authority shall, by issuing a notice in Form 'O', call upon the applicant as well as the employer to appear before him on a specified date, time and place, either by himself or through his authorised representative together with all relevant documents and witnesses, if any.

(2) Any person desiring to act on behalf of an employer or employee, nominee or legal heir, as the cases may be, shall present to the controlling authority a letter of authority from the employer or the person concerned, as the case may be, on whose behalf he seeks to act together with a written statement explaining his interest in the matter and praying for permission so to act. The controlling authority shall record thereon an order either according his approval or specifying, in the case of

refusal to grant the permission prayed for, the reasons for the refusal.

(3) A party appearing by an authorised representative shall be bound by the acts of the representative.

(4) After completion of hearing on the date fixed under sub-rule (1), or after such further evidence, examination of documents, witnesses, hearing and enquiry, as may be deemed necessary, the controlling authority shall record his finding as to whether any amount is payable to the applicant under the Act. A copy of the finding shall be given to each of the parties.

(5) If the employer concerned fails to appear on the specified date of hearing after due service of notice without sufficient cause, the controlling authority may proceed to hear and determine the application ex parte. If the applicant fails to appear on the specified date of hearing without sufficient cause, the controlling authority may dismiss the application:

Provided that an order under this sub-rule may, on good cause being shown within thirty days of the

said order, be reviewed and the application re-heard after giving not less than fourteen days' notice to the opposite party of the date fixed for rehearing of the application."

10. At this point, reference shall be made to the Judgment of Hon'ble Supreme Court in ***Salem Advocate Bar Association -vs- Union of India***, reported in ***(2005) 6 SCC 344***, popularly known as Salem Advocate Bar Association Case (2). Order VIII Rule 1 of the Code of Civil Procedure, 1908 states that the defendant(s) shall file written statement within 30 days from the date of service of summons. At the same time, it provides that the defendant(s) may be permitted to file the written statement not later than 90 days from the date of service of summons for the reason to be recorded in writing. The question as to whether a written statement can be entertained even after the expiry of the 90 days arose before the Hon'ble Supreme Court and it was answered in affirmation as follows:

"15. The question is whether the court has any power or jurisdiction to extend the period beyond 90 days. The maximum period of 90 days to file written statement has been provided but the consequences on failure to file written statement within the said period

have not been provided for in Order 8 Rule 1. The point for consideration is whether the provision providing for maximum period of ninety days is mandatory and, therefore, the court is altogether powerless to extend the time even in an exceptionally hard case.

16. It has been common practice for the parties to take long adjournments for filing written statements. The legislature with a view to curb this practice and to avoid unnecessary delay and adjournments, has provided for the maximum period within which the written statement is required to be filed. The mandatory or directory nature of Order 8 Rule 1 shall have to be determined by having regard to the object sought to be achieved by the amendment. It is, thus, necessary to find out the intention of the legislature. The consequences which may follow and whether the same were intended by the legislature have also to be kept in view.

17. In Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur [(1965) 1 SCR 970 : AIR 1965 SC 895] a Constitution Bench of this Court held that the question whether a particular provision is mandatory or directory cannot be resolved by laying down any general rule and it would depend

upon the facts of each case and for that purpose the object of the statute in making out the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

x x x *x x x* *x x x*

20. The use of the word "shall" in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in

question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice."

11. Approaching the instant case in light of the legal principles enumerated in ***Salem Advocate Bar Association's Case***, bare reading of sub-section 4 of Section 7 along with Rules 10 and 11 would show that Rule 11 (5) is procedural in nature. Rule 11 (5) states that the controlling authority may proceed *ex-parte* if the employee concerned fails to appear on a certain hearing date without sufficient cause despite sufficient notice and that the controlling authority may dismiss the application if the applicant does so. Thus, it regulates the conduct of the quasi-judicial proceedings. In other words it forms a part of the procedural steps involved in the proceedings of the controlling authority and hence, it is clearly procedural in nature and there is nothing substantive in it. Further, the Gratuity Act is a social beneficial legislation aimed at providing financial as well as social security to employees or their family, post the employee's retirement, resignation, termination or demise. Welfare of the

employees is a paramount consideration while interpreting the provisions of the Gratuity Act and the connected rules. Rule 11 (5) applies to both employer and employee. If the short window of 30 days for seeking to set aside an *ex-parte* order / dismissed for default order is held to be rigid and inflexible, even when the aggrieved party shows sufficient grounds for their failure to seek the relief within the 30 days, it would undermine the fundamental object of the Gratuity Act which is welfare of the employees. This is because employers generally have more resources and knowledge to navigate through these statutes effectively and may find compliance with such provisions easy and manageable. But on the other hand, the employees whose interests the Gratuity Act seeks to protect, would be in a disadvantageous position with the inflexibility of the rule. If employees misses the short critical time period of 30 days, especially those who are not financially settled, they would face serious consequences and increased financial stress and hardships. In some cases, it could even cause irreparable loss, as the employees would have planned their finances based on the gratuity amount. Furthermore, Rule 11 (5) does not prescribe an outer limit for seeking to set aside an *ex-parte* order / dismissed for default order, like in Section 7 (7) of the Gratuity Act which is a substantive provision and mandatory in nature.

For these reasons, the 30 days time period prescribed under the *proviso* to Rule 11 (5) can only be directory in nature and not mandatory. Hence, in appropriate cases, if sufficient reasons are shown, the controlling authority can condone the delay, set aside the *ex-parte* order / the dismissal order (for default) and rehear the matter.

12. If an *ex-parte* order is passed under Rule 11 (4) read with Rule 11 (5), the aggrieved party has two remedies. One is to pray to set aside the same and another is to prefer an appeal under Section 7 of the Gratuity Act. Section 7 of the Gratuity Act is partly procedural and partly substantive in nature. The time period prescribed in sub-sections 1 and 3 of Section 7 are merely procedural, hence they are directive in nature. Such time periods can be condoned for sufficient reasons. However, sub-section 7 of Section 7 dealing with limitation for filing an appeal against an order passed under sub-section 4 of Section 7, prescribes 60 days from the date of receipt of the order as the time period for filing an appeal. Further, the proviso thereto says if the appellant was prevented by sufficient cause to file appeal within the said 60 days, the limitation period may be extended by a further period of 60 days. It provides an outer limit. Since the Gratuity Act is a self-contained Act and the period of limitation has been prescribed in itself, the Limitation Act, 1963 would

not apply. An appeal is a substantive right and remedy, and Section 7 (7) provides the limitation therefor and hence, Section 7 (7) is substantive in nature. Hence, the appeal has to be within a maximum period of 120 days whatsoever.

13. As stated *supra*, the 30 days timeline under Rule 11 (5) is not rigid and inflexible. But at the same time, it cannot mean that the aggrieved party can seek to set aside the order at any time, even after lapse of a long time. If so, the object of the Gratuity Act to provide for financial and social security would be defeated. Hence, proviso to Rule 11 (5) has to be read conjointly with Section 7 (7) of the Gratuity Act which is substantive in nature and deals with the Appeal remedy providing a maximum timeline of 120 days as stated above. When the appeal itself has to be filed within 120 days, the aggrieved party cannot have indefinite time to pray to set aside the order, else the provisions would be in contradiction. Harmoniously constructing Rule 11 (5) and Section 7 (7), a delay condonation petition could not be entertained 120 days after the date of *ex-parte* order / dismissed for default order. In other words, no condonation of delay can be sought in this regard for more than 90 days post the expiry of 30 days from the date of *ex-parte* order or dismissed for default order, as the case may be. This interpretation would

further the object of the Gratuity Act, while not exceeding the limitation period prescribed therein. Point No.(i) is answered accordingly.

14. As regards Point No.(ii), firstly as held above, the delay condonation application ought to have been filed within 120 days from the date of order or from the date of knowledge of the order. The date of the *Ex-parte* Order passed by the first respondent is February 28, 2023. Hence, the appellant ought to have filed the set aside application on or before June 28, 2023. Even according to the appellant as stated in its affidavits in support of the set aside application and the delay condonation application, the copy of the *Ex-parte* Order was received by its office on May 26, 2023. While assuming it to be true, even then, the appellant ought to have filed the applications on or before September 23, 2023. The appellant claims that he got knowledge of the Ex-parte Order only on June 29, 2024 which is unacceptable when the appellant has admitted that its office staff members received the same as early as May 26, 2023. Further, the delay condonation application was sworn by the appellant's managing director on January 1, 2024 and the set aside application was sworn on July 16, 2024. However, they both were sent to the controlling authority only on July 19, 2024. The appellant is far beyond the said period of 120 days in filing the applications. Secondly,

there should be a valid cause behind the delay. The only reason assigned by the appellant is that its Managing Director was on frequent foreign trips and hence, the applications could not be filed within time. The same is untenable on the face of it. There would have been someone in-charge of the managing director's position and the appellant would have got knowledge of the *Ex-parte* Order. The reason assigned is also not acceptable one. Hence, the appellant has not made out a case for condonation of delay. Point No.(ii) is answered in favour of the second respondent and against the appellant.

15. As regards ***Tamil Nadu Civil Supplies Corporation's Case***, it was *inter alia* held by a learned Single Judge of this Court that if authority exercises power in excess, oversteps jurisdiction, blatantly disregards law, in such scenarios, affected persons can very well invoke Article 226 of the Constitution of India. No dispute with the fact that writ remedy is always available in appropriate cases.

16. As regards ***A.Francis Leo Gunaseelan's Case,*** it deals with Section 41 (2) of the Tamil Nadu Shops and Establishment Act, 1947 which does not prescribe any time line or limitation. But the said provisions expressly enables the State Government to frame rules *qua*

limitation and hence, the corresponding rule is Rule 9 of the Tamil Nadu Shops and Establishment Rules, 1948 is a substantive provision. Rule 9 (2) prescribes 30 days time period for preferring appeal, but the proviso thereto provides that if sufficient cause is shown, the appeal may be admitted even after 30 days and no outer limit has been set for the same. Rule 9 A thereof deals with rehearing of the appeal. The issue in that case was whether *ex-parte* / dismissed for default order passed in appeal can be set aside post the time limit of 30 days prescribed in Rule 9 A. In view of the fact that the substantive provision itself provides for entertaining application for appeal beyond the time frame fixed in appropriate cases, a learned Single Judge of this Court held that petition to restore appeal can be entertained at any time even after the expiry of 30 days on showing sufficient cause under Rule 9 A. There is no such provision expressly providing for filing an appeal even after 120 days on showing sufficient cause in the Gratuity Act. Hence, *A.Francis Leo Gunaseelan's Case* is not applicable to the instant case.

17. In ***Panoli Intermediate (India) Private Limited Case***, it was held that when there is flagrant violation of law and principles of natural justice, writ jurisdiction can be invoked. There is no dispute with the said fact. In this case, the first respondent issued notice to the appellant and

even according to him, he received the notice. Hence, the appellant is aware of the proceedings. Further, the first respondent has arrived at a decision only after considering Ex-P.1 to Ex-P.6. Hence, there is no violation of principles of natural justice and there seems to be no irregularity with the Order passed by the first respondent.

18. Resultantly, the writ appeal is dismissed as devoid of merits for the reasons stated *supra*. In view of the facts and circumstances of this case, there shall be no order as to costs. Connected Civil Miscellaneous Petitions are closed.

[M.S.R., J.] [R.S.V., J.]
18 / 12 / 2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
pam

To

The Assistant Commissioner of Labour,
and the Authority of Payment of Gratuity,
Erode.

M.S.RAMESH, J.
AND
R.SAKTHIVEL, J.

pam

PRE-DELIVERY JUDGMENT MADE IN
W.A.No.991 of 2025

18 / 12 / 2025