

HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE NINTH DAY OF APRIL
TWO THOUSAND AND NINETEEN

PRSENT

THE HONOURABLE SRI JUSTICE G. SHYAM PRASAD
WRIT PETITION NO: 34560 OF 2017

Between:

1. NARAHARI KAMALA SASTRY, SPSR NELLORE DIST & ANOTHER
Correspondent,
Siddardha College of Education Musunuruvillage and post Kavali
Mandalam,
SPSR Nellore District.
2. The Principal, Siddhardha College of Education
Musunuru Village,
Kavali Mandalam,
SPSR Nellore District

...PETITIONER(S)

AND:

1. SECY, DEPT OF LABOUR & EMPLOYMENT, GUNTUR & 3 OTHERS
Rep.by it's Secretary,
Department of Labour and Employment.
Secretariat at Amaravathi
Vijayawada.
3. The Appellate Authority Under Payment of -Gratuity Act and Deputy
Commissioner-Of Labour, Nellore.
4. The Controlling Authority Under Payment-Of Gratuity Act, 1972-Cum-
Assistnat -Commissioner of Labour,
Nellore.
5. S.S.V. Prasad, S/o. Pitchaiah,
Aged About: 56 Years,
Musunuru Village and Post
Kavali Mandalam
SPSR Nellore District.

...RESPONDENTS

Counsel for the Petitioner(s): A HARIPRASAD REDDY

Counsel for the Respondents: GP FOR LABOUR (AP)

The Court made the following: ORDER

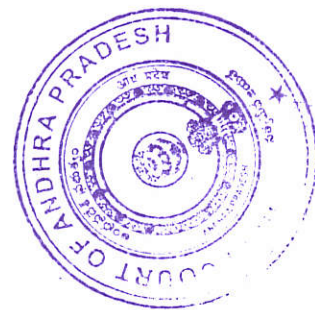
IN THE HIGH COURT OF ANDHRA PRADESH
(Special Original Jurisdiction)

TUESDAY, THE NINTH DAY OF APRIL
TWO THOUSAND AND NINETEEN

PRESENT

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION NO: 34560 OF 2017



Between:

1. Narahari Kamala Sastry, Correspondent, Siddardha College of Education Musunuru Village and post Kavali Mandalam, SPSR Nellore District.
2. The Principal, Siddhardha College of Education Musunuru Village, Kavali Mandalam, SPSR Nellore District

AND

...Petitioners

1. The State of A.P., Rep. by it's Secretary, Department of Labour and Employment. Secretariat at Amaravathi Vijayawada.
2. The Appellate Authority Under Payment of Gratuity Act, and Deputy Commissioner of Labour, Nellore.
3. The Controlling Authority Under Payment of Gratuity Act, 1972 -cum- Assistant Commissioner of Labour, Nellore.
4. S.S.V. Prasad, S/o. Pitchaijah, Aged About: 56 Years, Musunuru Village and Post Kavali Mandalam SPSR Nellore District.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue any appropriate writ order or direction essentially one in the nature of Writ of Mandamus setting aside the order of the 2nd Respondent in file No.B/1742/2017, Dated.07-09-2017 in returning the delay application as not maintainable is bad and illegal, contrary to law and in violation of the Article 14 and 21 of the Constitution of India. And in violation of the principle of nature justice consecutively direct the 2nd Respondent to allow the delay petition and take the appeal of the petitioners on file for disposal.

WPMP. NO: 42957 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the 2nd Respondent to receive the condone delay petition and allow the same and proceed with the appeal filed by petitioner, pending disposal of the above Writ Petition.

Counsel for the Petitioners: SRI A.HARIPRASAD REDDY

Counsel for the Respondent Nos.1 to 3: G.P. FOR LABOUR

Counsel for the Respondent No.4: SRI. M. RAVINDRA

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**WRIT PETITION NO.34560 OF 2017****ORDER:**

This is a writ of mandamus filed by the petitioners under Article 226 of the Constitution of India seeking a direction to the 2nd respondent to allow the delay petition and take up the appeal of the petitioners on file for disposal according to law.

2. The 1st petitioner is the correspondent of Siddardha College of Education, Musunuru village, Kavali Mandal, SPSR Nellore District. The 4th respondent worked in Siddardha College of Education as Senior Assistant from 01.06.1985 to 01.11.2013. Thereafter, he was removed from service. He filed an application for payment of gratuity for his 29 years of service before the 3rd respondent. There was delay of 115 days in filing the application. The application was numbered as P.G.M.P.Case No.1 of 2014 and the delay was condoned, vide order, dated 20.05.2015 and the case was admitted as P.G.M.P.Case No.2 of 2015. On merits, order, dated 16.09.2016 was passed by the 3rd respondent allowing the application and directing the respondent herein to pay an amount of Rs.1,23,545/- towards gratuity within one month after receiving the orders. The petitioners have received the orders on 19.09.2016 and acknowledged the same. The petitioners have preferred an appeal under Section 7 (7) of the Payment of Gratuity Act, 1972 (for short 'the Act') before the 2nd respondent. The 1st petitioner has conducted mediation for payment of gratuity amount from 2007 to 2013. The 4th respondent has failed to attend for mediation, but sought for implementation of the orders, dated 16.09.2016 passed by the 3rd respondent. In that connection, there was a delay of 273 days in preferring

the appeal. It is the further case of the petitioners that the 4th respondent himself resigned from employment when he was directed to produce the certificates of educational qualifications for consideration of his further promotion to the post of Senior Assistant. The 2nd respondent has returned the delay condone petition as it is not maintainable under Section 7 (7) of the Act. Section 7 (7) of the Act reads as follows:

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

The appellate authority, vide order, dated 07.09.2017 returned the appeal as the appeal was filed after 300 days of passing orders. The application was not maintainable under Section 7 (7) of the Payment of Gratuity Act, 1972 and hence, the application was returned.

3. As per Section 7 (7) of the Act, within 60 days from the date of receipt of order, an appeal can be preferred to the appropriate Government or such other authority. The appropriate Government or appellate authority, if satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period of 60 days, may extend such period for a period of another 60 days. In the instant case, the period of 120 days has exceeded as there was delay of 273 days. As per the above provision, the appellate authority or appropriate Government can condone the delay up to 120 days.

4. Learned counsel for the 4th respondent submits that there are no merits in the appeal filed by the petitioners. Even on merits, the petitioners are not entitled for condonation of delay.

5. Learned counsel for the petitioners submits that the petitioners have got sufficient cause for condoning the delay of 273 days. The petitioners have stated in the affidavit that the respondent No.4 knowing fully well that he was unable to produce the required qualifications, had voluntarily resigned from the employment. At the request of the 4th respondent, the petitioners have given service certificate by mentioning the dates of appointment and relieved him from the service. The respondent taking advantage of service certificate without submitting the entire records to the college authorities, has filed the application for payment of gratuity. The respondent management has been merged with Krishnamoorthy Memorial Technical Educational and Cultural Society, Kavali, in the year 2007.

6. It is further stated that the authority passed the award to pay gratuity for an amount of Rs.1,23,545/- with subsequent interest at 10% per annum from the date of resignation till the date of payment of the award amount. On the orders of the authority, the petitioner has conducted mediation to pay his share amount for the period from 2007 to 2013. It is the case of the petitioners that there are no willful laches on the part of the petitioners and that they have got good case to succeed and sought for condoning the delay of 273 days in preferring the appeal.

7. On consideration of the submissions of the counsel and the material placed on record, it is obvious that as per Section 7 (7) of the Act, there is no provision for

condoning the delay beyond 120 days. The delay occurred in this case is 273 days in preferring the appeal. The reason stated by the petitioners is that there was change in the management in the year 2007. It is the duty of the employer to pay the gratuity to the resigned employee after accepting his resignation. It is submitted by the petitioners that the gratuity amount of Rs.1,23,545/- has already been deposited before the appellate authority.

8. Learned counsel for the 4th respondent submits that Section 5 of the Limitation Act is not applicable in this case as this is a special enactment. The payment of Gratuity Act, which prevail over general law provides for specific time for condoning the delay. Therefore, Section 5 of the Limitation Act has no application in this case.

9. The settled proposition of law is that an application under Section 5 of the Limitation Act is not maintainable in case where a special enactment of Payment of Gratuity Act is holding the field under Section 7 (7) of the Act. The inherent powers of the High Court cannot be invoked in such a case where there is a specific provision. When there is no specific provision, then inherent powers under Section 151 CPC can be invoked.

10. Learned counsel for the 4th respondent submits that the 4th respondent is a small employee. He has resigned from service and he is entitled for payment of gratuity and there are no merits in this appeal also for consideration and therefore, sought for dismissal of the petition filed for condoning the delay.

11. In the light of the facts and circumstances of the case, there are no valid grounds to set aside the orders

passed by the appellate Court in returning the application for condoning the delay.

12. Accordingly, the Writ Petition is dismissed. No order as to costs. Miscellaneous petitions, if any pending in this writ petition shall stand closed.

//TRUE COPY//

Sd/- K.TATA RAO
ASSISTANT REGISTRAR

SECTION OFFICER

One Fair Copy to the Hon'ble Sri Justice Gudiseva Shyam Prasad
(For His Lordships Kind Perusal)

To,

1. One CC to Sri A.Hariprasad Reddy, Advocate [OPUC]
2. Two CCs to G.P. for Labour, High Court of Andhra Pradesh [OUT]
3. 9 L.R. Copies.
4. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
5. The Secretary, Advocates' Association Library, High Court Buildings, Amaravathi.
6. Two CD Copies.

PSB

One CC to Sri. M. Ravindra, Advocate (OPUC)
Gf

HIGH COURT

DATED:09/04/2019

OC
2/5/19

ORDER

WP.No.34560 of 2017

Received
2/5/19

Rs 9 = 00

(6)

DISMISSING THE W.P.
WITHOUT COSTS

17
50/1
30/4/19

LP