(2018) 07 CAL CK 0077

In the Calcutta High Court

Case No : F.M.A. No. 3595 of 2015, CAN 8760 of 2015

Ali Hossain APPELLANT

Vs

Budge Budge Co. Ltd. & Ors. RESPONDENT

Date of Decision : 13-07-2018

Acts Referred:

Payment of Gratuity Act, 1972 — Section 7(4), 7(7)
Constitution of India, 1950 — Article 226

Citation : (2018) 07 CAL CK 0077

Hon'ble Judges : DEBASISH KAR GUPTA, J;SHAMPA SARKAR, J

Bench : Division Bench

Advocate : Rananeesh Guha Thakurta, Balai Chandra Paul, Ruma Sarkar, Jahar lal De, Debarati Sen

Final Decision : Allowed

Judgement

Re : CAN 8760 of 2015

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This is an application aris-ing out of an appeal preferred against a judgment and order dated August 4, 2015 passed in the writ application. The subject

matter of challenge involved in the writ application was that the controlling authority under the Payment of Gratuity Act, 1972 (hereinafter referred to

as the said Act, 1972) failed to take into consideration the provisions of clause 25 of a memorandum settlement while disposing of the claim for

payment of gratuity of the appellantworkman on March 10, 2015. The learned Single Judge after hearing the writ petition passed an order granting

liber-ty to the respondentcompany to prefer an appeal before the statutory appellate authority within August 21, 2015 on depositing of 50% of the

amount ordered by the controlling authority in its impugned order dated March

10, 2015.

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It is submit-ted by Mr. Rananeesh Guha Thakurta, learned Advocate appearing on behalf of the appellant, that under the provisions of 2nd proviso to

subsection (7) of Section 7 of the said Act, 1972, 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 had deposited with him an amount equal to the amount of

gratuity required to be deposited under subsection (4) or deposits with the appellate authority -such amount. Therefore, granting liberty to the

respondentcompany to prefer an app-eal even beyond the period of limitation as specified in subsection (7) of Section 7 of the said Act, 1972 that too

upon depositing of 50% of the amount ordered by the controlling authority in its impugned order cannot be sustained in law.

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It is submitted by Mr. Balai Chandra Paul, learned Advocate appearing on behalf of the respondentcompany, that in compliance of the order passed

in the writ application, the respondentcompany already deposited 50% of the amount ordered by the controlling authority in its order dated March 10,

2015. We have heard the learned Counsel appearing for the respective parties and we have taken into consideration the facts and circumstances of

this case. In order to adjudicate the issue involved- in this matter the provisions of subsection (7) of Section 7 of the said Act, 1972 is quoted below:

â??7. Determination of the amount of gratuity. â?" â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦â?¦.

(7) Any person aggrieved by an order under subsection (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: Provid-ed 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, extended 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 subsection (4), or deposits

with the appellate authority such amount.â??

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In view of the provisions of 2nd proviso, there is a statutory provision enabling the person aggrieved by an order un-der subsection (4) of Section 7 of

the said Act, 1972 to prefer an appe-al to the appropriate Government or such authority as may be specified by the appropriate Government in its

behalf subject to production of 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 subsection (4) of Section 7 of the said Act, 1972, or deposits with the appellate authority such

amount. The time prescribed to prefer an appeal is 60 days from the date of receipt of the order passed under subsection (4) of Section 7 of the said

Act. According to 1st proviso to subsection (7) of Section 7 of the said Act, 1972, the appellate authority has the power to condone the delay of a

period of 60 days beyond the aforesaid period of limitation subject to its satisfaction. We are of the considered view that a Court sitting under Article

226 of the Constitution of India has no power to overreach a statutory provisio-n. Therefore, the statutory provision either to prefer an appeal beyond

the period prescribed in a Statute or relaxing the cond-ition for depositing of any amount is not permissible under law. In view of the above, the order

impugned to this appeal is not susta-inable in law on the following grounds:

(i) The order impugned to the writ application was a-n order passed under subsection (4) of Section 7 of the said Act, 1972 on March 10, 2015, the

leaned Single Judge granted liberty to the respondentcompany to prefer an appeal against that order within -August 21, 2015, i.e., beyond 120 days,

overreaching the provisions of subsection (7) of Section 7 of the said Act, 1972 as also 1st pr-oviso to the above provision;

(ii) The learned Single Judge allowed the respondentcompany to proceed with the appeal subject to depositing of 50% of the amount ordered by the

controlling authority in its order dated March 10, 2015, it was contrary to the provisions of 2nd proviso to subsection (7) of Section 7 of the said Act,

1972. Therefore, the above order cannot be sustained in law in view of the provisions of subsection (7) of Section 7 of the said Act, 1972. It will not be out of context to observe that in the event the period of limitation in initiating of a proceeding expires during the pendency of a writ proceeding

there is no scope to initiate a statutory proceeding or to prefer an appeal to condone such delay on the -ground of pendency of a lis before the Writ

Court. Reference may be made to the decision of City College, Calcutta vs. State of W.B. & Ors. reported in 1986(52) FLR 547 and operative

port-ions of the above judgment is quoted below:

â??7. In his impugned order of the Appellate Authority has rightly pointed out that in view of the subsection (7) of Section 7 of the Payment of

Gratuity Act, 1972, appeals must be filed within 60 days from the date of the receipt of the order by the Controlling Authority. Under proviso to

subsection (7) of- Section 7 of the said Act the Appellate Authority may extend the said period of 60 days by a further period of 60 days if he is

satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period of 60 days. In the above view, after expiry

of 120 days from the date of the receipt of the order passed by the Controlling Authority there could be no scope for further extending under Section 5

of the Limitation Act the period prescribed by the law for preferring an appeal under Section 7(7) of the Payment of Gratuity Act against the order

passed under subsection (4) of Section of the said Act.

8. For the foregoing reasons, we hold that the Appellate Authority did not commit any jurisdictional error by refusing to condone the delay beyond 120

days in preferring the appeal of the petitioner. The appeal provided under Section 7 of the Payment of Gratuity Act, 1972 is not before any Court. The

Act has vested an executive authority with juridical quasi judicial powers in order to enable it to act as the Appellate Authority. In view of the

decisions of the Supreme Court mentioned hereinbefore it is no longer open to us to consider whether or not by force of Section 29(2) of the

Limitation Act, 1963, the provisions of Sections 5 to 25 of the said Act have been made applicable only in case of appeal and applications under any

special presented to Courts of law and not to persoma designata or administrative authorities. We therefore dismiss this Revisional Application without

any order as to costs.â??

With the discussions and observations made hereinabove, the order impugned to this appeal stands quashed and set aside. Since no other issue is

involved in this appeal, this appeal is treated as on dayâ??s list with the consent of the parties and the same is also taken up for hearing. This appeal

stands allowed together with the above application. There will be, however, no order as to costs. Urgent photostat certified copy of this order, if

applied for, be given to the parties at an early date.