
(2006) 05 MP CK 0046
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6511 of 2002

A.T. Dani

APPELLANT

Vs

M.P. State Cooperative Marketing Federation

RESPONDENT

Date of Decision : 09-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Payment of Gratuity Act, 1972 — Section 5(1), 7

Citation : (2006) 05 MP CK 0046

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : P.C. Chandak, for the Appellant; Abhijit Bhowmik, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.—By this petition under Articles 226 and 227 of the Constitution of India, the petition is seeking issuance of mandamus directing the respondents to make payment of gratuity along with interest at the rate of 24% per annum from the date of retirement till its realisation.

2. As per the case of petitioner, the petitioner was employed by M.P. Rajya Adivasi Sahakari Vikas Sangh Maryadit, Bhopal which has ceased its function therefore, its properties and employees were absorbed by order 12/9/1980 by respondent No. 1. The petitioner attaining the age of superannuation was superannuated by order dated 8/10/1996 (Annexure-P/3) w.e.f. 28/2/1997. The contention of Shri Chandak, learned Counsel for petitioner is that the petitioner being an employee as envisaged under Payment of Gratuity Act, 1972 (in short "the Act) has worked continuously for more than five years w.e.f.1/9/1973 to 28/2/1997, applied for grant of gratuity u/s 5(1) of the Act. Copy of the application dated 4/7/2000 is Annexure-P/4. The respondents computed the amount of gratuity payable to the petitioner and found that a sum of Rs. 43,721 is payable to him. Copy of the computation sheet of respondents is Annexure-P/5. It has been further contended by learned Counsel that salary of the

employees were revised by M.P. Vetan Punrikshan Niyam, 1998. The basic pay of the petitioner Was Rs. 1330/- and, therefore, as per the revision of pay his gross Salary comes to Rs. 4110/-.

3. It has been further contended by Shri Chandak, learned Counsel for petitioner that respondents failed to make payment of amount of gratuity to the petitioner as a result of which, he submitted an application u/s 7 of the Act before the Controlling Authority appointed under the Act (Annexure-P/7). The reply of the said application was submitted by respondent No. 1 and in the reply it has been pleaded that the petitioner has committee misconduct, therefore, he was kept aloof from service and for this reason he is not entitled to get any amount of gratuity and the amount payable as gratuity for Rs. 43,721/- has been retained, by them. Copy of the reply has been filed as Annexure-P/8. Respondent No. 1 has also submitted copy of the order dated 23/3/1997 by which services of the petitioner were dismissed after holding departmental enquiry. Copy of the said order is Annexure-P/9.

4. The Controlling Authority after scanning the evidence placed on record directed to pay the gratuity amount of Rs. 94,095/-. Copy of the said order dated 7/7/2001 is Annexure-P/10. An appeal was preferred to the appellate authority under the Act which has been allowed and the application filed u/s 7 of the Act by petitioner has been dismissed. Hence this petition has been filed.

5. Apart from the merit of the case, it has been contended by Shri Chandak, learned Counsel for the petitioner, that order Annexure-P/10 was passed by the Controlling Authority under the Act on 7/7/2001 and the appeal was filed on 13/11/2001. The prescribed period of limitation to file appeal is 60 days and, therefore, the appeal is barred by prescribed period of limitation. Though an application for condonation of delay was filed but in that regard no order was passed by the appellate authority condoning the delay and, therefore, the order impugned passed by the appellate authority under the Act Annexure-P/12 is without jurisdiction.

6. I have heard learned Counsel for the parties and perused the record. Having heard learned Counsel for petitioner, I am of the view that this petition deserves to be allowed and the matter is required to be sent back to the appellate authority.

7. The Controlling Authority constituted under the Act passed the order on 7/7/2001. u/s 7 of the Act the appeal was filed by respondent No. 1 before the appellate authority but the same was not filed within 60 days. On going through Annexure-P/11 which is compilation of the notice sent by appellate authority, memorandum of appeal, application for stay and application for condonation of delay, it is gathered that the application to condone the delay was filed but on bare perusal of order Annexure-P/12 passed by appellate authority, no where it is found that the delay was condoned. In the return also nothing has been mentioned in this regard. Indeed in the return there is no reply of Ground-V

raised in the memorandum of petition. In Ground number-V an objection has been raised by the petitioner that appellate authority did not condone the delay.

8. In this view of the matter, order dated 31/7/2002 (Annexure-P/12) passed by appellate authority under the Act is hereby set aside and the matter is sent back to the said authority to pass necessary order in accordance to the law on the application filed by respondent No. 1 to condone the delay.

9. This petition is allowed to the extent indicated hereinabove with no order as to costs.