
(2012) 10 KAR CK 0072

In the Karnataka High Court

Case No : Writ Petition No. 14726 of 2012 (L-PG)

Atalanta Applied Dynamics Indian Private Ltd.

APPELLANT

Vs

Assistant Labour Commissioner and Controlling Authority,
Bangalore and Others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Citation : (2013) 1 LLJ 77

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : Kasturi Associates, for the Appellant; Jagadeesh Mundargi and S.V. Shastri, for the Respondent

Final Decision : Allowed

Judgement

Subhash B. Adi, J.—Petition partly allowed. This writ petition is filed by the Management questioning the order dated December 15, 2010, produced at Annexure-A, passed by Respondent No. 1 confirmed in order in appeal dated April 10, 2012 passed by Respondent No. 2 produced at Annexure-B and recovery notice produced at Annexure-C dated May 9, 2011. The facts leading to this case are that, Respondent No. 3 had filed a claim petition under the provisions of the Payment of Gratuity Act (in short referred to as "the Act") inter alia alleging that she had worked in the petitioner-Company from June 8, 1992 to March 7, 2009, the date on which she has tendered her resignation. She had put in 17 years of continuous service and is entitled for payment of gratuity to the tune of Rs. 3,06,891/-. Before the Controlling Authority, the petitioner herein was placed ex-parte. On the basis of the claim petition and materials produced by Respondent No. 3, the Controlling Authority held that she is entitled for a sum of Rs. 3,03,942/- along with 10% interest from May 9, 2009.

2. Petitioner received a demand notice as per Annexure-C. As against the order of recovery notice, petitioner filed an appeal before the Appellate Authority. During the pendency of the said appeal, the petitioner had also filed a writ

petition before this Court in W.P. No. 28638/2011 and the said writ petition was disposed of by this Court by order dated August 2, 2011 inter alia recording the submission of the learned Government Advocate and directed the Appellate Authority to dispose of the appeal on merits and pass orders in accordance with law.

3. The Appellate Authority, after the order of this Court, dismissed the appeal on the ground that the appeal is filed beyond the period of 120 days. As against the said order and the order of Controlling Authority and recovery notice, the petitioner is before this Court.

4. Sri. Kasturi, learned Senior counsel appearing for the petitioner submitted that, Respondent No. 3 had not worked for 17 years, she had worked only for a period of 3 years 8 months. Further, there was no notice from the Controlling Authority. Petitioner came to know of the passing of the order by the Controlling Authority only when the petitioner was served with the recovery notice and immediately an appeal has been filed on June 16, 2011 which was within the limitation. He relied on the provisions of Section 7(7) of the Act and Rule 11(4) of the Rules made thereunder and submitted that, limitation has to be counted from the date of service of order of the Controlling Authority and also notice of demand for payment of gratuity. There is no record to show that said order has been served on the petitioner nor there is any record to show that the demand notice was issued to the petitioner. As such, the Appellate Authority was not justified in holding that the appeal is barred by limitation.

5. He also contended that, before the Controlling Authority petitioner had no notice. Notice, which was sent by registered post, was returned unserved. Hand summons taken by Respondent No. 3, was also not served. On filing of the memo, the Controlling Authority held that the service of notice is completed. The procedure adopted by the Controlling Authority is contrary to Order 5 Rule 5(A) of the CPC (Karnataka amendment).

6. On that other hand, learned counsel appearing for Respondent No. 3 submitted that, before the Controlling Authority the notice is sent by registered post, to the correct address, the said address was the same address, which now furnished and also letter head produced before the Controlling Authority. Despite address being the same, the petitioner herein had refused to accept the notice and for said reason, the notice was affixed on the premises of the petitioner and accordingly, the memo was filed. Learned counsel for Respondent No. 3 also submitted that, there is absolutely no error in service of notice. He further submitted that, the appeal has to be filed within 120 days from the date of the order and admittedly, the appeal is filed beyond 120 days. There is no provision u/s 7(7) of the Act to extend the limitation. Originally limitation is 60 days and extendable only by 60 days, as such, the appeal is not maintainable.

7. Learned Government Advocate submitted that Appellate Authority should have taken into consideration the provision of Section 7(7) of the Act while considering

the delay.

8. Admittedly, the appeal is not dismissed on merit but it is dismissed on the ground of limitation. Section 7(7) of the Act reads as under:

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:

1 (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.)

9. u/s 7(7) of the Act the limitation of 60 days is provided for filing the appeal and proviso to Section 7(7) of the Act, provides for extension of limitation by 60 days. The Appellate Authority has no jurisdiction to condone the delay beyond the same.

10. In view of the above, the point that arise for consideration is:

As to from what date the limitation starts?

11. u/s 7(7) of the Act, the limitation starts from the date of receipt of the order. This provision mandates the service of order of the Controlling Authority on the appellant and after the order is served, from the date of service of such order 60 days has to be counted, and the same is extendable by another 60 days. Learned Government Advocate does not dispute that the order of Controlling Authority was not served on the petitioner herein. Rule 11(4) also requires a demand notice to be issued served on the petitioner, even there is no such notice served on the petitioner. Hence, the Appellate Court could not have construed the limitation from the date of the order till the date of filing of the appeal. Appellate Authority has to determine, whether the appeal is within the limitation or not from the date of service of the order of the Controlling Authority. However, the Appellate Authority neither has referred to the order of this Court in W.P. No. 28638/2011, nor has referred to the provisions of Section 7(7) of the Act and Rules made thereunder and mechanically has passed an order holding that the appeal is beyond period of limitation. Hence, the order of the Appellate Authority requires reconsideration.

Accordingly, the writ petition is partly allowed. The impugned order dated April 10, 2012 produced at Annexure-B passed by Respondent No. 2 is set aside.

Appellate Authority is directed to consider the appeal including the ground of limitation strictly in consonance with the provisions of Section 7(7) of the Act read with Rules 11(4) of the Rules made thereunder as early as possible but not later than three months from the date of receipt of copy of this order.

Both the counsel submit that date may be fixed for appearance before the Appellate Authority.

Parties are directed to appear before the Appellate Authority on October 30, 2012.