

(1993) 07 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1585 of 1991 (R)

Bharat Coking Coal Ltd.

APPELLANT

Vs

The Appellate Authority under the Payment of Gratuity Act,
1972-cum Regional Labour Commissioner (Central), Dhanbad
and Others

RESPONDENT

Date of Decision : 09-07-1993

Acts Referred:

Limitation Act, 1963 — Section 5

Payment of Gratuity Act, 1972 — Section 7, 7(4)(b), 7(7)

Citation : (1993) 2 PLJR 516

Hon'ble Judges : B.K. Roy, J;Amir Das, J

Bench : Division Bench

Advocate : M.M. Banerjee, for the Appellant;

Final Decision : Allowed

Judgement

Binod Kumar Roy, J.—The petitioner, it Government Company, prays to quash an order dated 4.3.1991 (as contained in Annexure 7) passed by the Regional Labour Commissioner (Central), Dhanbad?the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act) (Respondent No. 1), dismissing its P.G. Appeal No. (2)/91 being barred by limitation and the Order dated 12.11.1990 (as contained in Annexure 5) passed by the Assistant Labour Commissioner (Central), Dhanbad - the Controlling Authority under the Act (Respondent no. 2) in case No. 36/13/89/E-5 allowing the application filed by Md. Luqman, Ex-Senior Overman of Bararee Colliery, District Dhanbad (Respondent no. 3) by grant of a writ of Certiorari and issuance of a writ in the nature of Mandamus commanding the Respondents to forbear from giving effect to or acting pursuant to or in furtherance of the aforementioned orders. 2. this Court, while issuing notice for disposal of this writ application, took note of the fact that the appeal filed by the petitioner was dismissed on the ground of limitation and since this was the sole question urged before us, relevant facts in this regard are in a narrow compass. An application filed by Respondent no. 3 u/

s 7(4)(b) of the Act was allowed by Respondent no. 2 after condoning delay. Pursuant to the said order, a direction was made by Respondent no. 2 on 19.11.1990 and communicated to the petitioner. The petitioner preferred an appeal dated 25.2.1991 u/s 7(7) of the Act (a copy of the memorandum of appeal has been appended as Annexure 6) before Respondent no. 1 enclosing the original copy of the decision of Respondent no. 2, a cheque for Rs. 67,024.90 dated 23.2.1991 and a copy per registered post with acknowledgement due to Respondent no. 3 as well as copy to Respondent no. 2, along with some other documents praying to extend period for Tiling appeal as per the first proviso to sub-section (7) of section 7 of the Act. In this regard the Petitioner alleged to the effect that it was prevented from filing this appeal due to misplacing of some papers out of voluminous papers which its various Officers were handling; that the impugned decision/finding of Respondent no. 2 was also misplaced; that there was a situation beyond its control; that the missing papers could be located only a few days ago; and that it will be seriously prejudiced if the appeal is not accepted/admitted and cause grave miscarriage of justice to it. The petitioner also asserted that as required by Rule 18 of the Payment of Gratuity (Central) Rules, 1972 (hereinafter referred to as the Rules), certified copy of the impugned decision/finding/direction of Respondent no. 2 is being attached. The petitioner further asserted of sending simultaneously a copy of the appeal to Respondents no. 2 and 3 each. Respondent no. 1, however, dismissed the appeal of the petitioner as being barred by limitation and refused to entertain it on two grounds namely that it has not mentioned sufficient reasons for the delay and the reason that the decision/finding/direction of the Controlling Authority was misplaced is not convincing as it was not beyond the control of the appellant to obtain certified copy of the decision/direction of the Controlling Authority within one-two days.

2. Mr. M.M. Banerjee, Learned Counsel for the petitioner, in support of the Rule had submitted as follows :

(i) Respondent no. 1 had erred in dismissing the appeal of the petitioner without giving any reasonable opportunity of hearing.

(ii) Respondent no. 1 had committed an error in overlooking the patent fact that delay was sought to be condoned on the ground of misplacement of some papers out of the voluminous papers by the officers of the petitioner in the process of handling of the case, which was a sufficient cause

(iii) The fact of misplacement of the impugned decision/finding of Respondent no. 2 was not disbelieved by Respondent no. 2, which itself constituted sufficient cause. Respondent no. 1 had committed an error in drawing an adverse inference against the petitioner for not obtaining the certified copy of the order/finding of Respondent no. 2 within one-two days.

3. No one had entered appearance despite service of notice on behalf of the other side.

4. In my view the following questions crop up for our adjudication :

(i) Whether it was obligatory on the part of the appellate authority under the Act to hear an appellant before it proceeds to adjudicate a prayer made on behalf of an appellant to condone the delay?

(ii) Whether in the peculiar facts and circumstances of this case the finding of the appellate authority is vitiated on account of any error of law?

(iii) Whether in the peculiar facts and circumstances of the case, this Court should quash the orders of the authorities (as contained in Annexures 5 and 7, respectively) as prayed for by the petitioner?

5. I take up the first question.

6. Sub-section (7) of section 7 of the Act runs as follows :

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 appellate authority such amount.

7. The first proviso to sub-section (7) of section 7 of the Act confers jurisdiction in the appropriate Government or the appellate authority to extend the period of limitation of sixty days by a further period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from not preferring the appeal within the period of sixty days from the date of receipt of the order of the Controlling Authority. The second proviso puts a further bar in admitting an appeal of an employer 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 the Controlling Authority an amount equal to the amount of gratuity required to be deposited under sub-section (4) of section 7 of the Act or deposits such amount with the Appellate authority.

8. The Rules in regard to preference and hearing of an appeal preferred under sub-section (7) of section 7 of the Act runs as follows :

18. Appeal.- (1) The Memorandum of Appeal under sub-section (7) of section 7 of the Act shall be submitted to the appellate authority with a copy thereof to the

opposite party and the controlling authority either through delivery in person or under registered post acknowledgement due.

(2) The Memorandum of Appeal shall contain the facts of the case, the decision of the controlling authority, the grounds of appeal and the relief sought.

(3) There shall be appended to the Memorandum of Appeal, the certified copy of the finding of the controlling authority and direction for payment of gratuity.

(4) On receipt of the copy of Memorandum of Appeal, the controlling authority shall forward records of the case to the appellate authority.

(5) Within fourteen days of the receipt of the copy of the Memorandum of Appeal, the opposite party shall submit his comments on each paragraph of the memorandum with additional pleas, if any, to the appellate authority with a copy to the appellant.

(6) The appellate authority shall record its decision after giving the parties to the appeal a reasonable opportunity of being heard. A copy of the decision shall be given to the parties to the appeal and a copy thereof shall be sent to the controlling authority returning his records of the case.

(7) The controlling authority shall, on receipt of the decision of the appellate authority, make necessary entry in the records of the case maintained in Form "Q" under sub-rule (1) of rule 6.

(8) On receipt of the decision of the appellate authority, the controlling authority shall, if required under that decision, modify his direction for payment of gratuity and issue a notice to the employer concerned in Form "S" specifying the modified amount payable and directing payment thereof to the applicant, under intimation to the controlling authority within fifteen days of the receipt of the notice by the employer. A copy of the notice shall be endorsed to the applicant employee, nominee or legal heir, as the case may be and to the appellate authority.

9. Sub-rule (4) requires the Controlling Authority to forward the records of the case to the appellate authority. Sub-rule (5) requires the Opposite Party to the appeal to submit his comments on each paragraph of the memorandum of appeal with additional pleas, if any, to the appellate authority with a copy to the appellant. Sub-rule (6) requires of giving parties to the appeal a reasonable opportunity of being heard before recording of any decision by the appellate authority.

10. It is true that no specific provision has been made either in the Act or in the Rules aforementioned as to whether the appellate authority is required to give a reasonable opportunity of hearing to the parties before it proceeds to take a decision, one way or the other, with regard to a prayer for extending the period of sixty days as prescribed under sub-section (7) of section 7 of the Act by a further period of sixty days but I am of the view that sub-rule (6) of Rule 18 mandates the appellate authority to give a reasonable opportunity of hearing to parties to

the appeal before recording its decision on the question of extension or non-extension also.

12. I am of the view that the doctrine of Audi Alteram Partem - Natural Justice requires the appellate authority to give such an opportunity to both parties, namely, the employer as well as the employee who will be vitally interested in opposing the prayer of extension of the employer. The object underlying the fulfilment of the rule of natural justice is to prevent miscarriage of justice and secure fair play in action. The horizons of the principle of natural justice have expanded and have been expanding though they are not embodied rules. The extent of their application has not been excluded even at the time of determination of the question of extension of the period of limitation either in the Act or in the Rules framed thereunder. I am also not prepared to accept that even by way of necessary implication, the Act and the Rules framed thereunder excludes non-hearing of the parties by the appellate authority at the time of adjudication of such a question. The fact that the appellate authority had passed its order without giving any opportunity of hearing to the petitioner has not been countered.

12. For the reasons aforementioned, I am of the view that the impugned order, as contained in Annexure 7 is vitiated.

13. Now, I proceed to consider the second question.

14. Perusal of the memorandum of appeal (a copy of which has been appended as Annexure 5) shows that the delay was sought to be condoned also on the ground of misplacing of some papers out of voluminous papers which the various officers of the petitioners were dealing and which could be located only a few days ago. Unfortunately, this aspect of the matter has not at all been considered by the Appellate Authority. It is a settled law that a jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a court, tribunal or an authority, which is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. It is equally well-settled that mistake of fact in relation to jurisdiction is an error of jurisdictional fact. It is also equally well-settled law that error of jurisdictional fact renders the order ultra vires and bad. The non-consideration of the claim of the petitioner of misplacement of some papers out of the voluminous paper by its officers renders the appellate order vitiated on account of jurisdictional error. The claim of the petitioner of having misplaced the finding/direction of the Controlling Authority was also not expressly disbelieved. The words "Sufficient Cause" occurring in section 5 of the Limitation Act, 1963, have been subject matter of repeated interpretation by the Supreme Court. In Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , it was laid down as follows :

The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the

institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay? the doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a nondeliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according stepmotherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant turn grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause." So also the same approach has to be evidenced in its application in matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.

I give the same meaning to these words used under the Act. Unfortunately

Respondent No. 1 lost sight of this aspect and proceeded to draw an adverse inference against the petitioner erroneously.

15. Now, I revert to the third question.

16. The Learned Counsel for the petitioner addressed us only on the question of invalidity of the appellate order. No opportunity of hearing was afforded by the appellate authority either to the petitioner or to Respondent No. 3. In this view of the matter, the writ application cannot be allowed in terms as prayed for by the petitioner, who, in view of findings recorded as above, is entitled only of a limited relief.

17. For the reasons aforementioned, the appellate order, as contained in Annexure 7 is quashed and Respondent no. 1 is directed to reconsider the question of extension as prayed for by the petitioner after giving a reasonable opportunity of hearing to it as well as the employee-Respondent no. 3. This writ application is allowed in part to the extent indicated above, but in the peculiar facts and circumstances, I make no order as to cost. Let a writ of certiorari issue accordingly.

Amir Das, J.

I agree.