

(2013) 11 BOM CK 0050
In the Bombay High Court
Case No : Writ Petition No. 1855 of 2012

Chief Executive Officer

APPELLANT

Vs

The Assistant Labour Commissioner and Controlling Authority
and Madhukar Dhondiram Nagargoje

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2014) 3 ALLMR 134 : (2014) 142 FLR 480 : (2014) 3 MhLj 639

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : S.S. Dambe, for the Appellant; N.B. Patil, A.G.P. for Respondent No. 1 and Mr. N.L. Dhobale H/f. Mr. B.R. Kawre, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.—Rule. Rule made returnable forthwith. Heard by consent of the parties. Admitted fact emerging from the petition is that the judgment and order dated 23/08/2011 passed by respondent No. 1 Assistant Labour Commissioner and Controlling Authority under the Payment of Gratuity Act, 1972 (Hereinafter referred to as "Gratuity Act"), Latur in P.G.A. No. 19/2010 has been challenged.

2. Short point that arises for my consideration is as to whether the provisions of Section 7(7) r/w. the proviso thereunder of the Gratuity Act can be by-passed to invoke the writ jurisdiction of this Court under Article 226 and 227 of The Constitution of India.

3. In early days, this scheme was introduced in those establishments only where the employers were so kind and generous to the workers or there was an agreement between the employers and the workers. This scheme was confined to the particular establishments and even within those establishments, to certain categories of staff. There was no general legislation for the payment of Gratuity to all industrial workers. In due course of time, it was felt that the workers

should get gratuity as a right in return of their long dedicated services to the industry. Industrial Tribunals and Supreme Courts dealt with the disputes on the subject and their awards and decisions brought revolutionary changes in Social Security Legislations in Indian industrial sector.

4. In the case of Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc., the Honourable Supreme Court has held that the object of providing a gratuity scheme is to provide a retiring benefit to the workman who has rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer. In the Working Journalists (Conditions of Service) & Miscellaneous Provisions Act, 1955, the provision to pay the gratuity to the working journalists was made.

5. After few years, the Government of Kerala enacted the Kerala Industrial Employees Payment of Gratuity Act, 1970 making gratuity a statutory right of the employees. West Bengal Government enacted the West Bengal Employees Payment of Gratuity Act, 1971 relating to the subject. The other states were also thinking to legislate such enactments. Thus, it was felt that there should be a uniform central legislation for the whole country instead of state legislations for each and every separate states. The whole matter was discussed in the Labour Ministers' Conference held on 24th August 1971 and thereafter in the Indian Labour Conference held on 22nd and 23rd October 1971 it was agreed that the central legislation on the payment of gratuity should be undertaken. Accordingly, the payments of Gratuity Act, 1972 was enacted, largely based on the West Bengal legislation, which came into force on 16th September, 1972.

6. The payment of Gratuity Act, 1972 is thus an enactment of the Parliament. It has a specific scheme providing for payment of gratuity to the employees engaged in different establishments/industries and to deal with matters connected therewith. Nevertheless, the Parliament has made provisions for dealing with several incidental issues, naturally for entertaining disputes as regards admissibility of gratuity, amount of gratuity and many others arising out of non payment of gratuity. The machinery to deal with such cases is in place and there is a mechanism provided for adjudicating upon such disputes.

7. Section 3 of the Gratuity Act defines the Controlling Authority. Section 4 of the Gratuity Act provides for the payment of gratuity after the determination of employment of an employee who has rendered not less than 5 years in continuous service. Similarly, section 7 determines the amount of gratuity and sub section 7 enables a party to prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf. Limitation period of 60 days is provided with a pre-condition of depositing the amount equal to the amount of gratuity as is determined.

8. Section 7(7) and its two proviso read 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;

[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 appellant authority such amount.]

9. The question therefore is when a specific act has been put in place to deal with all connected and incidental issues to payment of gratuity, whether it would be appropriate for any party, in order to avoid the pre-condition of deposit of entire amount while filing appeal, to by-pass the said provision and invoke the writ jurisdiction of this Court.

10. The payment of gratuity and its provisions is a part of social security legislation which not only has to be dealt with on a broader spectrum, but with a high degree of sensitivity.

11. I have therefore no hesitation in concluding that this writ petition, filed with an intent and object of avoiding deposit of the determined amount while preferring an appeal, is not maintainable before this Court, by by-passing the Appeal provision u/s. 7(7).

12. In the light of the above, the petition stands dismissed for being untenable. Nevertheless, this would not come in the way of the petitioner taking recourse to section 7 (7) of the Gratuity Act for preferring an appeal against the impugned order dated 23/08/2011 passed by the Controlling Authority.

13. All contentions/issues raised in this petition are kept open. In the event, the petitioner prefers such an appeal, the appropriate authority shall not be influenced by the observations made in this order since I have not decided this petition on its merits. It should proceed to deal with the Appeal and the petitions u/s. 7(7) of the Gratuity Act, strictly in accordance with Law.

14. Rule is accordingly discharged. In view of dismissal of this writ petition, civil application no. 2237/2013 does not survive, hence disposed of.