(2016) 08 MP CK 0049

In the Madhya Pradesh High Court

Case No : W.P.No. 6851 of 2015

Grasim Industries Ltd. APPELLANT

Vs

Duley Singh RESPONDENT

Date of Decision : 10-08-2016

Acts Referred:

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

Citation : (2017) 2 CLR 372 : (2017) 152 FLR 582

Hon'ble Judges : Mr. S.C. Sharma, J.

Bench : Single Bench

Advocate : Sri. S. R. Bhargava, learned Counsel, for the Petitioner; Sri. Kamal Yadav, learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Sharma, J. - Regard being had to the similar controversy involved in above cases, they have been heard analogously together with the consent of the parties and a common order is being passed in the matter. Facts of W.P.No.6851/2015 are narrated as under:-

2. The petitioner before this Court, Grasim Industries Ltd., a company registered under Companies Act 1956 is aggrieved by the order dated 30/06/2015, Annexure P/1 passed by the Appellate authority under the provisions of Payment of Gratuity Act, 1972 in Gratuity Case No.198/2013.

3. The facts of the case reveal that an application was preferred by respondent No.1 Duley Singh before the competent authority under the Payment of Gratuity Act, 1972 and proceedings were held by the competent authority. The competent authority by an order dated 30.03.2013 has passed an order directing payment of gratuity to the workman to the tune of Rs.16214.00 along with interest @10% per annum within 30 days from the date of the order passed by the Controlling Authority. An appeal was preferred before the appellate authority (Labour Commissioner) and by an order dated 30.06.2015, the appellate authority has

dismissed the appeal preferred by the petitioner-Company, meaning thereby, the order passed by the Controlling Authority has been affirmed by the appellate authority directing the payment of gratuity.

4. Learned Counsel appearing on behalf of the petitioner has argued before this Court that at no point of time, the respondent No.1 was his employee and in fact he is an employee of the contractor, namely Rajendra and therefore, the application for payment of gratuity against the petitioner- Company, who was not the employer, was not maintainable, hence, the order passed by the Controlling Authority dated 30.03.2013 and the order passed by the appellate authority dated 30.06.2015 deserves to be quashed. It has also been stated that the interest awarded @10% is on the higher side.

5. Another ground has been raised that the Controlling authority in the first place should have directed the contractor to make the payment of gratuity to the workman and in case of failure on the part of the contractor, the present petitioner should have been directed to pay the gratuity to the workman.

6. On the other hand, learned Counsel appearing for the workman has argued before this Court that the workman has served at Grasim Industries Limited only and as he is an illeterate workman serving the establishment was not aware of the fact that whether he is an employee of the contractor or employee of Grasim Industries Ltd., He has stated that the workman has certainly worked with Grasim Industries Ltd., and therefore, it was the duty of the petitioner-Company to pay the gratuity and hence, the order passed by the Controlling Authority and the appellate authority do not warrant any interference.

7. He has also argued before this Court that while preferring an appeal, the petitioner-Company has not deposited the interest component and therefore, in light of Section 7(7) of the Payment of Gratuity Act, the appeal itself was not maintainable, hence, petition is also not maintainable and prays for dismissal of the same. He has placed reliance upon a judgment delivered by this Court in the case of National Textile Corporation Ltd., Indore and another v. Controlling Authority under Payment of Gratuity Act & Asst. Labour Commissioner and others in W.P.No.2891/2012 decided on 12/03/2013 and his contention is that in light of the aforesaid judgment, the petition deserves to be dismissed.

8. Learned Counsel for the petitioner has placed reliance upon a judgment delivered by the Apex Court in the case of Government of A.P and another v. B. Satyanaraya Rao and others reported in (2000)4 SCC 262.

9. Learned Counsel for the respondent has placed reliance upon a judgment delivered in the case of Parbhani Zilla Dekhrekh Sahakari Sanstha Ltd., v. State of Maharashtra through its Principal Secretary, Corporation and Textile Department, Mumbai and others reported in 2010 (1)LLJ-631(Bom) and his contention is that in case the gratuity amount along with interest is not deposited while preferring the appeal, the appeal is not maintainable in light of Section 7(7) of the Payment of Gratuity Act. He has also placed reliance upon another

judgment delivered on the same issue in the case of Christian Medical College and Hospital v.Deputy Commissioner of Labour (Appeals) and Others reported in LLJ 2003-III (260).

10. Lastly, a reliance has been placed upon a judgment delivered in the case of H.G. Gowda v. Karnataka Agro Industries Corporation Ltd., reported in LLJ 2003 (285) and his contention is that once the gratuity amount and the interest component is not deposited, the appeal is not maintainable and therefore the petition is also not maintainable.

11. Heard learned Counsel for the parties and perused the record.

12. In the present case, it is an undisputed fact that the workman in question namely Duley Singh has worked with Grasim Industries Ltd., though the stand of the petitioner- Company is that he was engaged through Shri Rajendra who was the contractor. It is also an undisputed fact that the workman in question, as gratuity was not paid to him, has approached the Controlling Authority under the Payment of Gratuity Act, 1972 by filing an application and the competent authority has passed a detailed order on 30/03/2013. The competent authority has taken into account the I.D. card issued by Employee State Insurance Corporation which establishes that the workman was working at Grasim Industries Ltd., The period of time during which he has worked has also been established and in those circumstances, the controlling authority has directed payment of gratuity to the tune of Rs. 16,214.00 along with interest @10% within 30 days. The Order passed by the controlling authority has been affirmed by the appellate authority and the appellate authority has taken into account all the grounds raised by the petitioner-Company.

13. In the present case, it has been argued before this Court by the learned Counsel for the petitioner that authorities have erred in law and facts in directing the payment to the petitioner and at the first instance, direction should have been given to the contractor namely Rajendra for making a payment and in case payment is not done by Rajendra, then only such a direction should have been given to the petitioner-Company for paying the gratuity. It is also true that it has been argued that the company is not liable to pay gratuity and the amount in question was to be paid to the employee by the contractor. The Payment of Gratuity Act was enacted by the parliament with an aim and object to provide for a scheme for payment of gratuity to the employees engaged in factories, oil field, plantation etc., and it was enacted to ensure the welfare of the workmen working in the country. It is a beneficial piece of legislation for the workmen working through out the country.

14. Similarly, the Employees Provident Fund Miscellaneous Provisions Act 1952 was enacted by the parliament to provide institution of provident funds and deposit linked schemes for the employees working in factories and establishment. It is again a beneficial piece of legislation to ensure that the employees get provident fund after the retirement. Under the Provident Fund Act

1952, it is the duty of the Principal employer even if a person is engaged through a contractor to ensure payment of provident fund in respect of workman in question. Though there is no specific provision under the payment of Gratuity Act regarding payment by the Principal employer, but at the same time, it is the duty of the principal employer, if an employee is working day and night for him, to ensure payment of gratuity and to ensure payment of wages to the workman who has worked for him.

15. A similar view has taken by Madras High Court in the case of Superintending Engineer, Mettur Thermal Power Station, Mettur v. Appellate Authority, Joint Commissioner of Labour, Coimbatore & Anr. reported in 2012 LLR 1160.

16. In the aforesaid case, the employee therein has worked at the power station between 1988 to 1999 as a contract employee and for some period he has worked with Mettur Thermal Power Station through a contractor. The issue regarding payment of gratuity came up before the Madras High Court and the Madras High Court has held that for the entire period, the principal employer is required to pay gratuity to contractual employees.

17. In the considered opinion of this Court, the Controlling Authority as well as appellate authority were justified in passing the orders which are under challenge.

18. The another important aspect of the case is whether the appeal was maintainable without payment of interest or not? The Bombay High Court in the case of Prabhani Zilla Dekhrekh Sahakari Sanstha Ltd., (Supra) in paragraph 5, 6,7,8 and 9 has held as under:

"5. The learned Counsel appearing for the respondents raised preliminary objection to adjudicate of this matter on merits in view of the fact that Sub Section 7 of Section 7 of the Act mandates that whenever Appeal is filed challenging the order of the controlling authority, the entire amount with interest as directed by the authority required to be deposited and to that effect the appellant is required to produce the certificate of the controlling authority that the appellant has deposited with him amount equal to the amount of gratuity required to be deposited under Sub Section 4 or deposits with the appellant authority such amount. The learned counsel, therefore, submitted that since the petitioners, who are the original appellants have failed to deposit the amount in view of 2nd proviso to sub Section (7) of Section 7, no Appeal by an employer can be admitted and, therefore, the appellate authority rightly refused to register the Appeal and there was no adjudication of the Appeal on merits and, therefore, there is no any impugned order passed by the appellate authority on merits challenged before this Court. According to learned counsel, in Writ jurisdiction when the order assailed is not adjudicated on merits, nothing required to be decided and, therefore, Writ Petition deserves to be dismissed summarily. The learned counsel further submitted that on account of various documents submitted by the group secretaries and their association, the Govt. referred the dispute to the Industrial Tribunal by Reference (IT) No. 427 of 1975. The issues regarding the fixation of wages and further service benefits such as D.A., Bonus, promotion was extensively considered and decided by the Industrial Tribunal, Pune by Award dated 23.11.1998. The petitioner - Society has accepted the Award dated 23.11.1998 and agreed to pay the amount of gratuity to the retired Secretaries as per the order of the Court.

6. It is further argued that the petitioner - Society fixed the pay scale of group secretaries on the basis of the Award passed by the Industrial Tribunal, Pune. The petitioner Society has paid gratuity to number of employees after calculating the last pay and D.A. on the basis of the Award passed by the Industrial Tribunal, Pune. According to learned counsel, the Respondent no. 4 was not paid the amount of gratuity on the basis of the Award dated 23.11.1998. They filed application to the controlling authority for the payment of gratuity and interest. The controlling authority after deducting the amount received by the employees, directed to pay amount as mentioned in column 9 of annexure " A " along with simple interest @ 6.25 % within the period of 90 days from the date of receipt of Order. According to the learned counsel, the Writ Petition filed by the petitioner is not tenable. The Appeal filed by the petitioner was dismissed on the ground of fulfilment of the provisions under Section 7 (7), which is mandatory and condition precedent for registration of the Appeal. The learned counsel further submitted that even as on today, the amount is not disputed by the petitioners and, therefore, allowing the petitioners to contest the matter on merit, would amount to bypass and mandatory requirement of deposit of amount.

Learned counsel further argued that the amount of gratuity is required to be paid on the basis of the last drawn salary plus D.A. calculating as per the Award dated 23.11.1998, which was accepted and implemented by the petitioner Society.

Learned counsel invited my attention to the fact that the Appeal filed by the petitioner before the Appellate authority was time barred. The Judgment and Order of the controlling authority is dated 10.5.2006 and the Appeals were preferred on 12.9.2006 without application for condonation of delay. The learned counsel further submitted that in view of Section 4 (5) of the Act, a right of an employee to receive better terms of gratuity under any Award. Therefore, the right of the respondents to make the gratuity on the basis of Award of Industrial Tribunal, is just, legal and proper. Learned counsel further submitted that as per Section 8 of the Act, after issuance of revenue record and recovery certificate, the Collector shall recover the amount of gratuity together with compound interest thereon, at such rate as the Central Government may by notification specify from the date of expiry of the prescribed time. The Central Govt. specify the 15 % interest per annum as the rate of compound interest, recoverable by the Collector along with amount of gratuity and payable to the person entitled thereof. Learned counsel, therefore, would submit that the Writ Petitions are devoid of any merit and same deserves to be dismissed.

8. I have heard learned counsel appearing for the petitioner, learned A.G.P. for the State and learned counsel for Respondent no. 4 and I am of the considered

view that the Writ Petitions deserve to be dismissed. The orders impugned in these petitions are the orders passed by the controlling authority, Nanded under the Act in Application No. 4 of 2004 and Order dated 7.8.2007 passed by the Dy. Commissioner of Labour and appellate authority under the Act in Appeal No. PGA No. 15 of 2006. In fact, the Order of the controlling authority dated 10.5.2006 was the subject matter before the appellate authority and, therefore, the Order of the Controlling authority in substance has merged in the Order passed by the appellate authority on August 7, 2007.

Perusal of the Judgment and Order passed by the controlling authority/Assistant Labour Commissioner, Nanded under the Act would show that the concerned authority has passed reasoned order keeping in mind the Judgment and Order dated 23.11.1998 passed by the Industrial Tribunal, Pune. The controlling authority has gone into exercise of the calculation of the gratuity amount after hearing respective parties and then the authority has arrived to the conclusion that the original applicants/Respondent no. 4 herein are eligible for payment of gratuity amount, mentioned in the annexure '' A '' and the petitioner was directed to pay gratuity amount mentioned in the annexure '' A '' and further petitioner was directed to pay interest on said amount @ 6.25 % (simple interest).

The order of the controlling authority was the subject matter before the appellate authority. The appellate authority observed that the mandatory provision to deposit the gratuity amount as directed by the authority before filing Appeal, is not fulfilled by the petitioner herein. It appears from the perusal of the Judgment of the appellate authority that the authority has considered number of judgments and after perusal of the relevant record, reached to the definite conclusion that the mandate of 2nd proviso to sub section (7) of Section 7 of the Act indicates that,

"No appeal by an employer shall be admitted unless at the time of preferring Appeal, the appellants either produces a certificate of the controlling authority to the effect that the appellant has deposited with him the amount equal to the amount of gratuity required to be deposited under Sub Section (4) or deposits with the appellate authority such amount."

Therefore, the appellate authority dismissed Appeal holding that since the condition precedent set out in 2nd proviso to Sub Section (7) of Section 7 of the Payment of Gratuity Act 1972 is not satisfied by the employer petitioner.

9. In substance, the order which is under challenge in these Writ Petitions, is not the order which is passed on merits but then the appellate authority has refused to entertain the appeal by dismissing the same for non compliance of Sub Section (7) of Section 7 of the Act. At this juncture, it would be relevant to refer to the reported Judgment of this Court in case of Metal Box, Ltd. v. B.R. Rangari, Asstt. Commissioner of Labour and Ors. Reported in 2006 II CLR 572 , in which this Court has taken a view that the provisions of Section 5 of the Limitation Act

are not applicable in case the payment is ordered U/s 7 (7) of the Act has not been deposited at the time of preferring Appeal and the appellate authority is right in holding that the appeal was barred by limitation. This Court has interpreted second proviso to Section 7 in paragraph 17 of the said Judgment. This Court has observed that at p. 692 of LLJ:

"17 .... If the appeal can not be even registered without depositing the amount, the question of the said appeal being filed and the period of limitation stops running can not and does not arise."

The plain reading of second proviso to Sub Section (7) of Section 7 of the Act would clearly show that the Appeal filed by the employer can not be admitted unless employer produces a certificate of the controlling authority to the effect that the appellant has deposited the amount equal to the amount of gratuity required to be deposited under Sub Section (4) of Section 7 of the Act. In the instant case, it is not in dispute that the petitioners did not deposit the amount which was required to be deposited under second proviso to sub Section (7) of Section 7 of the Act and, therefore, there was no hearing of the appeal on merits. Hence, in the present Writ petitions , there is no order on merits by the appellate authority and, therefore, in my considered view, no interference is called for under Writ jurisdiction.

9-A. Even on merits of the case, the petitioner has accepted the Award dated 23.11.1998 passed by the Industrial Tribunal in Reference (IT) No. 427 of 1975 and paid gratuity amount to other similarly situated persons and, therefore, it is not open for the employer/petitioner to contend that the Order passed by the controlling authority relying on said Award, is not correct. It is not in dispute that Respondent no. 4 is entitled for the gratuity amount, but the controversy which is raised by the petitioner through out is about arithmetic calculations of the amount and, therefore, such controversy raising disputed question of facts, can not be gone into in writ jurisdiction.

Admittedly, even as on today, the petitioners have not deposited the amount towards gratuity and, therefore, I am not inclined to interfere in the impugned Judgment and order under writ jurisdiction.

So far amount of interest to be paid on delayed payment of gratuity, the Supreme Court in case of H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd. AIR 2003 SC 1256 : (2003) 3 SCC 40 : 2003 (1) LLJ 1119, has held at p. 1121 of LLJ :

"6. Payment of gratuity with or without interest, as the case may be does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation can not be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest."

10. Viewed from any angle, the Judgment and Order passed by the controlling authority and order of the appellate authority dismissing the appeal of the petitioners can not be faulted and same is perfectly justified in law. Hence, no interference is called for. The Writ Petitions are devoid of any merits and same are dismissed. The Civil Applications pending in all these Writ Petitions stand disposed of in view of disposal of main Writ Petitions."

19. The Bombay High Court in the aforesaid case has held that the amount of gratuity ordered by the controlling authority along with interest has to be deposited before the appellate authority keeping in view 7 (7) of the Payment of Gratuity Act.

20. In the present case, admittedly the amount of interest has not been deposited till date. Learned Counsel for the petitioner has placed reliance upon a judgement delivered by the Hon''ble Supreme Court in the case of Government of A.P and another v.. B. Satyanarayana Rao and others reported in (2000)4 SCC 262 and his contention is that the orders passed by the controlling authority is per incuriam as the authority has not considered the law applicable in respect of payment of gratuity.

21. This Court has carefully gone through the order passed by the controlling authority as well as by the appellate authority and is of the considered opinion that it was the duty of the principal employer once the workmen have worked with the principal employer day and night, to ensure payment of gratuity. It has been stated by the learned Counsel for the petitioner that the employees were engaged through the contractor, however, the same will not certainly absolve the principal employer i.e., the petitioner from making payment of gratuity to the respondent No.1.

22. Resultantly, this Court does not find any reason to interfere with the order passed by the controlling authority nor with the appellate authority and therefore, the admission is declined.

23. Certified copy as per rules.

