(2001) 06 BOM CK 0051

In the Bombay High Court

Case No : O.O.C.J. W.P. No. 851 of 2001

Gurunath Vithal Tamse APPELLANT

Vs

National Textile Corporation (N.M.) RESPONDENT

Date of Decision : 06-06-2001

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 7

Citation : (2002) 93 FLR 742 : (2002) 2 LLJ 270

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : N.M. Ganguli, for the Appellant; Prakash Ganwani, instructed by Banatwala and Co., for the Respondent

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—Rule. Returnable forthwith. The learned counsel for the Respondent waives service.

2. The Petitioner worked in the India United Mills since April 9, 1963. The Mill was nationalised and taken over by the Respondent in 1974. The Petitioner was dismissed from service and the dispute between the parties ultimately culminated in an order dated July 7, 1992, passed by this Court in Writ Petition Nos. 4898 of 1984 and 840 of 1985 by which the Respondent was directed to pay the back wages to the Petitioner from April 1, 1974 until June 30, 1991 when he attained the age of 60 years. The dispute in the present case arises out of an application filed by the Petitioner before the Controlling Authority under the Payment of Gratuity Act, 1972 for the payment of gratuity. That application was dismissed by the Controlling Authority by an order dated April 26, 1999. the Controlling Authority held that as a matter of fact, the gratuity amount of Rs. 27,487/- had not been paid to the Petitioner. It is sought to be urged on behalf of the Respondent that the amount of gratuity had been paid but the Controlling Authority has found that this was not in fact the case. However, the application of the Petitioner for the payment of gratuity was rejected on the ground of

limitation as the Controlling Authority has held that the application which has been filed on August 5, 1994 was beyond the period of three years computed from June 30, 1991. The order of the Controlling Authority was sustained in appeal on September 2, 2000, the Appellate Authority inter alia holding that the appeal itself had been filed beyond the period of limitation of 60 days.

3. Having heard the learned counsel for the Petitioner and the Respondent, I am of the view that the impugned orders cannot be sustained. The admitted position is that the dispute relating to termination of service of the Petitioner was pending in this Court in Writ. Petition Nos. 4898 of 1984 and 840 of 1985. These Writ Petitions which were filed respectively by the National Textile Corporation and the Petitioner against the order of the Industrial Court were disposed of on July, 7, 1992 by a learned single Judge of this Court. While disposing of the writ petitions, the learned single Judge directed that the Petitioner be paid his back wages until June 30, 1991 which was the date on which he attained the age of superannuation, together with all consequential benefits. The application which was filed before the Controlling Authority was admittedly preferred on August 5, 1994. Indeed, while passing orders on the pending Writ Petitions, the learned single Judge was of the view that the Petitioner should be treated as having retired with effect from July 1, 1991 on which date, he would attain the age of superannuation of 60 years although under the Standing Orders, he could have worked, if physically fit, until the age of 63 years.

4. In these circumstances, it was clearly the obligation and duty of the Respondent to pay the gratuity due and outstanding to the Petitioner. u/s 4 of the Payment of Gratuity Act, 1972, the employer is under a statutory duty to pay the gratuity due and payable to the employee, inter alia, on his attaining the age of superannuation Sub-section (2) of Section 7 of the Act in fact, posits that the employer shall as soon as gratuity becomes payable, whether an application has been made or not, determine the amount of gratuity and give a notice in writing to the employee and to the controlling authority specifying the amount of gratuity so determined. Under Sub-section (3) the employer is to arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Sub-section (4) of Section 7 contemplates that an application can be made to the Controlling Authority where a dispute arises inter alia in relation to a claim for the payment of gratuity. Significantly, the Legislature has not advisedly specified any particular period of limitation for moving the Controlling Authority. In contradistinction Sub-section (7) prescribes a period of limitation of 60 days for filing an appeal against an order of the Controlling Authority under Sub-section (4). The delay, if any, in filing an appeal beyond the period of 60 days can be condoned for sufficient cause.

5. The Controlling Authority in the present case clearly exceeded its jurisdiction and erred in holding that the application for payment of gratuity was liable to be rejected on the ground that it was preferred beyond the period of 3 years from the date of superannuation. No such conclusion could have been drawn having

regard to the provisions of Sections 4 and 7 of the Payment of Gratuity Act, 1972. In any event, having regard to the fact that the pending Writ Petitions were disposed of by this Court on July 7, 1992, it cannot be said that there was any unreasonable delay on the part of the employee for moving the authority for an adjudication of his claim to the payment of gratuity.

6. The learned counsel appearing on behalf of the Respondent urged that all the dues of the Petitioner including those by way of gratuity have, in fact, been paid. However, this is not clearly borne out by the findings of the Controlling Authority itself which in para 11 of its order has rejected the contention of the employer that the gratuity due and payable to the Petitioner had been paid. However, having regard to the fact that the application made by the Petitioner has been rejected on the ground of limitation, a ground which has been held by me not to be sustainable in the present case, it would be only appropriate and proper to direct the Controlling Authority to reconsider the claim made by the Petitioner afresh and to decide the application within a period of 8 weeks from today. All the rights and contentions of the parties are kept open and it is expressly clarified that it would be open to the Respondent to demonstrate before the Controlling Authority that the claim for payment of gratuity has been duly met by paying all the outstanding dues of the Petitioner.

7. Accordingly, the Writ Petition is allowed. The impugned orders dated April 26, 1999 of the Controlling Authority and September 2, 2000 of the Appellate Authority are quashed and set aside. The Controlling Authority and 6th Labour Court shall reconsider the application filed by the Petitioner for payment of gratuity afresh and pass a fresh order on merits of the application after giving an opportunity of hearing to the Petitioner and the Respondent within a period of 8 weeks from today. The parties shall appear before the Controlling Authority and 6th Labour Court on June 25, 2001 for obtaining directions with regard to fixing the date for the hearing of the application.

8. Rule made absolute in the above terms. There shall be no order as to costs.