(2014) 02 DEL CK 0020

In the Delhi High Court

Case No : Writ Petition (C) 7397 of 2013

Indamer Company Pvt. Ltd. APPELLANT

Vs

Krishan Lal Chopra RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226 227
Limitation Act, 1963 — Section 5
Payment of Gratuity Act, 1972 — Section 4 4(4) 7 7(7)

Citation : (2014) 2 LLN 127

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Tanu Priya Gupta, for the Appellant;

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the order dated June 26, 2012 of the Controlling Authority under Payment of Gratuity Act, 1972 (''Act'' in short) and orders dated April 03, 2013 and August 30, 2013 of the Appellate Authority, by which the Controlling Authority has granted an amount of Rs. 5,99,279/- to the respondent together with simple interest @ 10% p.a. and the appeal and review of the appellate order were dismissed. The brief facts are that the respondent was appointed as a Retainer initially vide order dated July 31, 1996 which arrangement continued till April, 2011. In the month of May, 2012, the respondent submitted an application to the Controlling Authority making a claim for gratuity for the period of service put in by him from August 01, 1996 to April 21, 2011. The said application was allowed by the Controlling Authority on June 26, 2012 thereby granting to the respondent an amount of Rs. 5,99,279/- as gratuity with simple interest @ 10% p.a.

2. The petitioner filed an appeal before the Appellate Authority on March 20, 2013 which was beyond the period of limitation prescribed u/s 7(7) of the Act, which is reproduced as under:

(7) 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].

3. The Appellate Authority vide its order dated April 03, 2013 dismissed the appeal on the ground that the appeal filed by the petitioner is not eligible to be admitted because the appellant had failed to comply with the provisions of Section 7(7) of the Act, which required them to prefer an appeal to the Appellate Authority and Regional Labour Commissioner (Central) within the period of 60 days from the date of receipt of the order.

4. The petitioner filed a review application/recalling of order dated April 03, 2013 inter-alia on the ground that the Appellate Authority has not provided personal hearing and no reasonable opportunity of being heard has been provided to the petitioner before disposing the appeal. The said application for review/recalling of the order was decided by the Appellate Authority on August 30, 2013 whereby the Appellate Authority has concluded as under:

On the issue of delay on the part of the appellant in making the appeal within time, it is beyond the powers of the Appellate Authority to take cognizance of the appeal beyond a period of 120 days from the date of receipt of the order by appellate tinder the provisions of section 7(7) of the Act.

The Hon''ble Supreme Court in the case of Commissioner of Customs and Central Excise Vs. Hongo India (P) Ltd. and Another, has held that whenever statutory provision is made to file appeal within a particular period in an enactment, then in such cases provisions of Limitation Act is not made applicable. Further the M.P. High Court in case of Western Coalfields Ltd. Vs. Controlling Authority and Others, the Bombay High Court in case of Shri Gurudev Ayurved Mahavidyalaya Gurukul Ashram & another vs. V. Mahadev & others 1994 LLR 894 : 1994 1 LLN 552; the Calcutta High Court in case of Gloster Jute Mills Ltd. Vs. Deputy Secretary, Labour Department and Others, and Gujrat High Court in case of Indian Red-Cross Society Vs. Vidyaben H. Vyas, have conclusively held that the Appellate Authority cannot condone the delay beyond 120 days of the order of the Controlling Authority.

5. That apart I note that the Appellate Authority has while considering the

application for review/recall of order dated March 20, 2013 has also directed the petitioner to pay additional interest of 10% p.a. from the date of filing of the appeal till the date of realisation.

6. Learned counsel for the petitioner would urge that the respondent is not entitled to the gratuity as he was not an employee of the petitioner company. According to her, the terms of appointment were very clear and also included a specific clause that the respondent would not be covered by the Companies Provident Fund & Gratuity Schemes. She would further urge that the Appellate Authority while considering the petitioner''s application for review/recalling of order could not have granted further 10% interest on the awarded amount from the date of filing of the appeal till the date of realisation. She also submits that she has instructions from her client that the petitioner has received a notice dated November 28, 2013 seeking recovery of the amount so granted by the Competent Authority.

7. On the other hand, respondent who appeared in person would state that he has received the complete amount of Rs. 7,19,279/- as on March 20, 2013. He would concede to the fact that the Appellate Authority could not have granted further interest of 10% p.a., as has been done by the said authority vide its order dated April 03, 2013.

8. Having heard the counsel for the petitioner and respondent in person, I am of the view that the Appellate Authority was right in dismissing the appeal, being beyond limitation. The issue is no more res-integra. This Court on identical facts with regard to same provisions of Payment of Gratuity Act in W.P. (C) 350/2014 decided on January 20, 2014 had held that the Authority has no power to condone the delay over and above 60 days after the expiry of initial 60 days i.e. after the expiry of 120 days in total. I reproduce hereunder the conclusion of this Court in writ petition referred above.

5. I have considered the submissions of the learned counsel for the petitioner. The issue is no more res integra. A Single Judge of this court in the case Prudential Spinners Ltd. Vs. The Employees P.F. Appellate Tribunal, , while dealing with a similar provision under Employees Provident Fund and Miscellaneous Provisions Act, 1952 wherein an appeal is required to be filed in the similar manner as has been provided in Section 7(7) of the Act, has held as under:

12. Having gone through the records and given my thoughtful consideration to the submissions made by the learned Counsel for the parties, this Court cannot but arrive at the conclusion that there is no error, infirmity or perversity in the impugned order dated 13th November, 2006 passed by the tribunal. The tribunal has rightly adopted and applied the law as laid down by a Division Bench of this Court in the case of Assistant Provident Fund Commissioner, Meerut (supra), which holds the field as on date. In view of a specific provision contained in Rule 7(2) of the Rules, the tribunal could not have condoned the delay beyond a

maximum period of 120 days as sought to be contended by the petitioner. There is no force in the plea of the petitioner that the aforesaid judgment rendered by the Division Bench is in "jeopardy" and has lost its binding force as a precedent merely because leave to appeal has been granted by the Supreme Court in a SLP pending before it, as admittedly, there is no stay operating against the order impugned in the aforesaid Special Leave Petition. In this view of the matter, this Court is bound to follow the judgment rendered by a Division Bench of this Court referred to hereinabove, and also followed by two single Judges in the cases of Manu Tea Valley Company and Megacity Cement Pvt. Ltd., referred to hereinabove. Reliance placed by the learned Counsel for the petitioner on the judgments of the Supreme Court in the cases of N. Balakrishnan (supra) and Smt. Rani Kusum (supra) is also misconceived for the reason that the general observations with regard to extension/enlargement of time in condoning the delay, cannot be imported into statutes which not only prescribe a specific period of limitation but also further goes on to prescribe a period for condoning the delay, if any, in preferring the appeal. It may also be noted that in the case of N. Balakrishnan (supra), the observations of the court were in the context of condensation of delay u/s 5 of the Limitation Act which provision has been held by the Division Bench in the case of Assistant Provident Fund Commissioner, Meerut (supra) to be expressly excluded in considering an application made under the provisions of the Act and Rules, in view of existence of a specific provision of Rule 7(2) made in the Rules, for limitation.

13. In view of the fact that limitation is prescribed by a specific Rule, and condensation has also to be considered within the purview of that Rule alone and the provisions of the Limitation Act cannot be imported into Act and Rules, the inevitable conclusion is that the tribunal did not have the powers to condone the delay beyond a maximum period of 120 days as stipulated in Rule 7(2) of the Rules.

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15. This Court shall, however, refrain from examining the relative merits/ demerits of the sufficiency of cause offered by the petitioner for seeking condonation of delay, as discussed in the impugned order, and sought to be supported by the learned Counsel for the respondent, for the reason that once it has been held that the appeals were ex facie barred by limitation and could not have been entertained by the tribunal and were rightly rejected on the ground of limitation, there arises no occasion to delve further in the matter by examining the explanation furnished by the petitioner juxtaposed against the arguments offered by the RPFC to puncture holes in the said explanation. It is suffice to hold that no power vested with the tribunal to condone the delay in filing the appeals preferred by the petitioner, after expiry of a total of 120 days from the date of the order passed by the Assistant Provident Fund, Commissioner, Hyderabad, Andhra Pradesh.

6. It is noted that the same very provision i.e. Section 7(7) of the Act under

similar circumstances came up for consideration before the Madras High Court in W.P. No. 14533 of 2001 decided on June 08, 2010 titled ''The Commissioner, Udumalaipet Municipality Vs. Rajammal and Ors. '', wherein the Appellate Authority under the Act rejected the application for condonation of delay filed by the Municipality by holding that the appellate authority had no power to condone the delay of 60 days. I also note that a similar issue had come up for consideration before the High Court of Gujarat at Ahmedabad in the case of ''Surendranagar Dudhrej Nagar Palika Vs. Motiben Danabhai'', Special Civil Application Nos. 9335, 9344, 8577, 8578 and 8579 of 2002 decided on May 01, 2003, wherein the Nagar Palika could not file the appeal before the Appellate Authority on the ground that period of limitation of 120 days had expired. The Nagar Palika invoked the jurisdiction of the High Court challenging the order of the Controlling Authority. The High Court in Para 13 considered the issue, whether an application u/s 5 of the Limitation Act, 1963 to condone the delay of more than 120 days in preferring the appeal, is applicable. The High Court was of the following view:

13. As per Section 7 of the Gratuity Act, 1972 any person aggrieved by an order u/s 4 may within 60 days from the date of 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 60 days, extend the said period of further period of 60 days. The further provision is that appeal is required to be filed after depositing the amount as determined by the Controlling Authority u/s 4(4) of the Gratuity Act, 1972. The law on this point is very clear to the effect that once the Limitation is prescribed under the statutory provision, then appellate authority is not entitled to invoke Section 5 of the Limitation Act, 1963 to condone the delay of more than 120 days in preferring the appeal that view has been taken by the Calcutta High Court Division Bench in case of City College Vs. State of West Bengal and Others, and recently also, Bombay High Court has also taken the same view in case of Shri Gurudeo Ayurved Mahavidyalaya and Another Vs. Madhav Narayan Mahakode and Others, and it is decided that u/s 7(7), Proviso-Appeal-Limitation-Appeal filed beyond prescribed period of 120 days-Delay cannot be condoned-Section 5 of Limitation Act, not applicable. Therefore, once limitation is prescribed by the statutory provision and appeal is not filed within that time limit, then petitioner is not entitled to challenge the said order before this Court. When alternative effective statutory remedy of appeal is available and petitioner fails to avail the said remedy, then direct petition under Article 226/227 of the Constitution of India cannot be entertained and maintainable.

7. In view of the aforesaid position, I do not see any infirmity in the order of the Appellate Authority in rejecting the appeal of the petitioner.

9. I do not see any merit insofar as the submission of learned counsel for the

petitioner in this regard. Insofar as the grant of interest of 10% p.a. by the Appellate Authority from the filing of the appeal till realization is concerned, the same is without jurisdiction. The Appellate Authority on an appeal filed by the petitioner, while dismissing the appeal, could not have granted interest to the respondent. This aspect having been conceded by the respondent to be erroneous, I set aside the same.

10. The respondent having received the complete awarded amount, it is clear that the order of the Controlling Authority under the Act has been complied with. No coercive steps could be taken by any authority for non-compliance of the same. If any coercive action is being taken by any authority then the same shall stands withdrawn.

11. I make it clear that the writ petition is only considered on limited aspect of filing of the appeal beyond the period of limitation. This Court has not adverted on the merit of the case. The writ petition is disposed of in terms of the above. No costs.

C.M. No. 15868/2013

Dismissed as infructuous.

