

(2001) 09 MAD CK 0083

In the Madras High Court

Case No : Writ Petition No. 19587 of 1994

Jagannathan R.

APPELLANT

Vs

Deputy Commissioner of Labour (Appellate Authority under
the Payment of Gratuity Act) and Others

RESPONDENT

Date of Decision : 04-09-2001

Acts Referred:

Payment of Gratuity (Central) Rules, 1972 — Rule 10
Payment of Gratuity Act, 1972 — Section 7(4), 7(7)

Citation : (2001) 91 FLR 574 : (2002) 1 LLJ 305

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : W. Frederick Castro Walter, for the Appellant;

Final Decision : Allowed

Judgement

D. Murugesan, J.—The petitioner was the employee of the 3rd respondent in the writ petition. He filed an application u/s 7(4) of the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act") before the Authority claiming arrears for difference of gratuity due to the petitioner. The said application was dismissed by the Controlling Authority viz., the 2nd respondent on the ground of delay. Aggrieved by the said order, the petitioner preferred an appeal before the Appellate Authority, the 1st respondent u/s 7(7) of "the Act". The said appeal was rejected by the Appellate Authority on the ground that as against the order of the Controlling Authority on the preliminary issue, no appeal is maintainable u/s 7(7) of "the Act". The said order is challenged in this writ petition.

2. Learned counsel for the petitioner would submit that after serving 29 years with the 3rd respondent, the petitioner resigned on May 9 1980. Due to some unavoidable circumstances, he filed an application to the Controlling Authority only during the year 1989 after a delay of 3389 days. The Controlling Authority before going to the merits of the claim considered the application filed by the petitioner for condoning the delay and held that the delay was not properly

explained and consequently dismissed the said application for condonation of delay. The appeal preferred by the petitioner as against the said order was dismissed erroneously by the Appellate Authority on the ground that the Appellate Authority had no jurisdiction to entertain an appeal as against the order of the Controlling Authority on preliminary issue. The learned counsel in fact submitted, as per Section 7(4) of "the Act", the Controlling Authority is empowered to hold an inquiry in regard to the amount of gratuity payable to an employee under "the Act" or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity etc. The application for condonation of delay has to be considered as a dispute as to the admissibility of the claim and therefore, the order passed by the Controlling Authority shall be considered as an order u/s 7(4)(a) of "the Act". If that be so, the petitioner is entitled to file an appeal u/s 7(7) of "the Act" since the said provision empowers a person aggrieved by the order of the Controlling Authority passed u/s 7(4) of "the Act". Hence, the , learned counsel submitted that the order of the Appellate Authority rejecting the application on the ground that the appeal is not entertainable is liable to be set aside.

3. None appeared on behalf of the 3rd respondent.

4. The petitioner's application u/s 7(4) of "the Act" was filed with a delay of 3389 days and for condonation of the said delay, the petitioner admittedly has filed I. A. before the Controlling Authority. The Controlling Authority before going into the merits of the case resorted to decide the interim application for condonation of delay and finally rejected the same. The provisions of "the Act" relevant for the disposal of the writ petition may be extracted as follows:

"Section 7(4)(a): If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in Clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The Controlling Authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(7) Any person aggrieved by an order under Sub-section (4), may, within sixty 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 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."

There is no specific provision u/s 7(4)(a) of "the Act" prescribing any limitation for filing an application under the said Section. On the contrary, there is a specific provision u/s 7(7) of "the Act" wherein it has been stipulated that the appeal shall be filed within sixty days from the date of receipt of the order. However, the application for payment of gratuity shall ordinarily be filed by an employee within thirty days from the date on which the gratuity became payable in Form 1 of "the Act". The said term that "ordinarily" cannot be construed as any specific period of limitation prescribed under "the Act". However, under Rule 10 of the Central Rules framed by the Central Government by virtue of the powers conferred u/s 35(1) of "the Act" prescribes a period of limitation of 90 days for making an application before the Controlling Authority. The said Rule reads as under:

""Application to Controlling Authority for direction. (1) If an employer -

(i) refused to accept a nomination or to entertain an application sought to be filed under Rule 7; or

(ii) issues a notice under Sub-rule (1) of Rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity; or

(iii) having received an application under Rule 7 fails to issue any notice as required under Rule 8 within the time specified therein, the claimant employee; nominee or legal heir, as the case may be, may within ninety days of the occurrence of the cause for the application, apply in Form N to the Controlling Authority having jurisdiction over the area for issuing a direction under Sub-section (4) of Section 7 with as many extra copies as there are opposite parties:

Provided that the Controlling Authority may accept any application under the sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period."

The validity of the said Rule came up for consideration before a learned single Judge of Karnataka High Court in the judgment reported in Binny Limited, Bangalore v. M.K. Madiah and Ors. 1986(2) L.L.N. 530 and has been upheld. By the said Rule, a period of 90 days from the date of occurrence of the cause of action for filing application in Form N to the Controlling Authority has been

prescribed. However, in the proviso to the said Rule, the power has been conferred on the Controlling Authority to accept any application on sufficient cause being shown by the applicant, after the expiry of the prescribed period. Therefore, in order to avoid any belated and stale claims, the Authorities can also go into the question of genuineness of the claims, if filed belatedly. Such order is an order passed only by virtue of the powers conferred u/s 7(4) read with Rule 10 of "the Rules" must be related to a dispute as to any claim and the Controlling Authority shall hold an inquiry after giving the parties to the dispute a reasonable opportunity of being heard and determine the matter. Therefore, the order of the Controlling Authority should be construed as an order passed u/s 7(4) of "the Act" more particularly, the decision as to the limitation shall be also covered u/s 7(4)(b) of "the Act". Once the said conclusion is arrived, any person aggrieved like the petitioner can prefer an appeal within a period of sixty days from the date of receipt of the order to the Appellate Authority u/s 7(7) of "the Act". Therefore, the Appellate Authority has to necessarily entertain the appeal and to consider and decide the same on merits. It is relevant to note that even the Appellate Authority has got power to condone the delay in preferring the appeal also. Therefore, in my considered view, the order in refusing to con-done the delay in preferring the petition u/s 7(4) of "the Act" is appealable u/s 7(7) of "the Act". In view of the same, the order of the Appellate Authority in refusing to entertain the appeal preferred by the petitioner cannot be sustained. Accordingly, the same is set aside and the matter is remitted back to the Appellate Authority namely the 1st respondent for considering the same on merits and the 1st respondent is directed to dispose the appeal preferred by the petitioner within a period of three months from the date of receipt of a copy of this order after giving opportunity to the writ petitioner. With the above direction, this writ petition is allowed. No costs.