
(2009) 09 JH CK 0077
In the Jharkhand High Court

Jagdish Bhuinya

APPELLANT

Vs

Bharat Coking Coal Ltd. and Others

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Payment of Gratuity (Jharkhand) Rules — Rule 11
Payment of Gratuity Act, 1972 — Section 7(7)

Citation : (2009) 123 FLR 1113 : (2010) 2 LLJ 508

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard counsel for the petitioner and the counsel for the respondent BCCL.

2. Challenge in this writ application is to the order dated March 3, 2005 passed in P.O. Appeal No. 75 of 2004 by the Regional Labour Commissioner, Central, Dhanbad (respondent No. 4), whereby the appeal preferred by the petitioner/appellant against the order dated May 6, 2004 passed by the Assistant. Labour Commissioner, Central-cw/w-Controlling Authority, Dhanbad, was dismissed.

3. The petitioner had preferred an application under the Payment of Gratuity Act against the respondent BCCL, before the Controlling Authority. It appears that though, he had filed the application, but the same was dismissed on default on May 6, 2004 by the Controlling Authority. It further appears that more than 120 days alter the passing of the order by the Competent Authority, the petitioner had filed an appeal before the Appellate Authority namely, the Regional Labour Commissioner, Central, Dhanbad along with a petition for condoning the delay.

By the impugned order dated March 3, 2005, the Appellate Authority dismissed the appeal, on the ground that the same was barred by limitation and there was no possibility of condoning the delay beyond the period of 120 days.

4. Learned counsel for the petitioner would explain, by reference to Rule 11(4) of

the Payment of Gratuity (Jharkhand Rules), 2001, that as per the mandatory provisions, a copy of the finding recorded by the Controlling Authority, had to be given to each of the parties. In the present case, though the order of dismissal on default was passed by the Controlling Authority on May 6, 2004 and that too, apparently without the petitioner's knowledge but neither the copy of the order was communicated, nor served to him. It was only in the month of December 2004 that the petitioner had received the copy of the order which was forwarded to him by post. Nevertheless, the petitioner having obtained the earlier information, though after lapse of more than 120 days of date of order, had filed his appeal before the Appellate Authority, stating the " reason for the delay and also filing a petition for condoning the delay, if any. Learned counsel adds further that as a matter of fact, there was no delay whatsoever in filing the appeal since, the ; period of limitation has to be computed only from the date of service of the order and not from the date of the order which was passed without the knowledge of the petitioner.

5. Counsel for the respondents, on the other hand, while inviting attention to the provisions of Sub-section (7) of Section 7 of the Payment of Gratuity Act, submits that the period of limitation has been stipulated as 60 days from the date if the order for preferring an appeal and if the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from filing appeal within the period of 60 days, he could extend the period for further 60 days. Since in the present case, the appeal was filed more than 120 days from the date of the order of the Controlling Authority, the Appellate-Authority had no power to extend the period of limitation any further. Learned counsel refers in this context to a judgment passed by Kerala High Court in the case of The Commanding Officer Vs. The Appellate Authority Under The Payment of Gratuity Act, .

6. As it appears from the facts of the present case, the petitioner had demonstrated total lack of seriousness in pursuing his claim before the concerned authority. His claim for payment of gratuity amount payable in the account of his deceased mother, was dismissed for default by the Controlling Authority. As would appear, he did not bother to verify the status of his case before the Controlling Authority. An appeal was admittedly filed by the petitioner after 120 days from the date of the order passed by the Controlling Authority, though along with a prayer for condoning the delay. The appeal was dismissed on the ground that the Appellate Authority did not have the competence under the provisions of the Act to extend the period of limitation beyond 120 days.

7. The Appellate Authority is certainly correct in holding that he did not have power to extend the period of limitation beyond 120 days. But before taking such a decision, on the prayer of the petitioner, it was incumbent upon the Appellate Authority to assess as to the date from which the delay should be computed.

As it appears in the instant case, though the order by the Controlling Authority on the petitioner's application under the Payment of Gratuity Act, was passed on May 6, 2004 and, as informed by the learned counsel for the respondents, copy

of the order was forwarded at the petitioner's address by Registered Post, yet, communication was only made to the petitioner long after the lapse of more than 120 days, as per the petitioner's claim stated on affidavit. Technically speaking therefore, since as per the provisions of Rule 11 of the Payment of Gratuity (Jharkhand Rules), it was incumbent upon the Controlling Authority to serve a copy of the order upon the parties and such service having not been effectively made within the period of limitation, the petitioner cannot be faulted for the purported delay in filing the appeal.

8. In the light of the above facts and circumstances, the impugned order dated March 3, 2005, as passed by the Appellate Authority in P.G. Appeal No. 75/2004, is hereby quashed and the matter is remitted back to the Appellate Authority namely, the Regional Labour Commissioner, Central, Dhanbad (respondent No. 4) for considering the appeal on merits and pass appropriate orders after giving adequate opportunity to both the parties of being heard.

9. Since by the petitioner's own conduct, and by virtue of his own lapse, he has occasioned the delay, it would be appropriate that he should be saddled with cost. Accordingly, this application is allowed, subject to the petitioner's payment of cost of Rs. 1,000/- which shall be deposited in the Welfare Fund of the Advocate's Association, Jharkhand High Court, within 15 days from the date of this order. The petitioner shall file a copy of the receipt granted by the Association in respect of the amount deposited, before the Regional Labour Commissioner, Central, Dhanbad (respondent No. 4).

With these observations, this writ application is disposed of.

Let a copy of this order be given to the learned counsel for the respondent.