(2015) 02 KL CK 0009

In the High Court Of Kerala

Case No : Writ Petition(C) No. 13781 of 2013

Kerala State Co-operative Coir Marketing Federation Ltd.	APPELLANT
Vs	
Regional Labour Commissioner (Central)	RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:
Payment of Gratuity Act, 1972 — Section 7

Citation : (2015) 145 FLR 731 : (2015) 2 KLJ 37 : (2015) 1 KLT 844 : (2015) LLR 768 : (2015) 4 SCT 13

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : A.N. Rajan Babu and P. Gopala Krishnan (MVA), for the Appellant; C. Unnikrishnan, N. Nagaresh, P. Parameswaran Nair, Asst. Solicitor Generals of India and Biju Meenattoor, Sr. Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—The issue raised in the aforesaid case is as to whether the pre-deposit indicated in the Payment of Gratuity Act, 1972 (for short "Act of 1972") by the second proviso to sub-section (7) of S. 7 is of the amount admitted by the employer or the amount due as per the order under challenge. The facts in brief are that the 3rd respondent, who was an employee of the petitioner, retired on superannuation and was also paid the gratuity amounts. There was a dispute with respect to the gratuity payable, i.e., as to the years of service he had with the Organisation. While the management paid gratuity computing the same for 25 years of service, the employee claimed 29 years of service. The employee raised a claim before the Controlling Authority under the Act of 1972, which was allowed by Exhibit P1 award, directing payment of Rs. 33,369/-; after the deduction of the gratuity already paid.

2. Within the time provided under the Act of 1972, the petitioner was before the Appellate Authority. The aforesaid appeal was rejected as per Exhibit P4 dated 13.05.2013 on the ground that the pre-deposit as mandated under the second

proviso to sub-section (7) of S. 7 of the Act had not been made.

3. The petitioner raises a contention that since the admitted amounts have already been paid, there is no requirement of any pre-deposit. The said argument is advanced on the ground that the admitted amount as per sub-clause (a) of sub-section (4) of S. 7 is only that admitted by the employer. This Court had specifically considered that issue in W.P.(C). No. 21488 of 2013 dated 07.02.2014, on the basis of the binding precedent in Standard Stonewares and Tiles Vs. Appellate Authority, .

4. It was found that the second proviso to sub-section (7) of S. 7 specifically provided that the deposit to be made for maintaining an appeal is an amount equal to the amount of gratuity required to be deposited under sub-section (4). Sub-clause (a) of sub-section (4) was found to take into account only me amounts payable at the time when the claim was filed. That was a provision entitling the employer to make the deposit and absolve itself from the interest. In the present case, such an issue does not arise, because the gratuity admitted by the employer has already been paid. However, when an appeal is sought to be filed against an order of the Controlling Authority, what this Court has found was that clause (c) of sub-section (4) of Section 7 would be applicable. It was held so:

"5. When the Controlling Authority has decided on the issue, sub-clause (c) of sub-section (4) comes into place. As per sub-clause (c) of sub-section (4) after adjudicating the dispute and determining the amount of gratuity payable; the Controlling Authority has the power to "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". On an order being passed after adjudication of the dispute and a direction being issued in terms of the above provision, necessarily, the amount required to be deposited under sub-section (4) would be the amount adjudicated upon with interest thereon. The order declining waiver of deposit of amounts adjudicated upon is upheld". In such circumstance, the contentions of the petitioner is found to be devoid of merit.

However, the petitioner has raised the contention on the basis of a legal ground urged. Hence, it is only proper that the appeal be considered on merits on the petitioner making deposit of the entire amounts granted by Exhibit P1, within one month, i.e., the difference of gratuity payable, being Rs. 33,369/- with 10% simple interest from 1.11.2011 till date of payment. On such payment being made, Exhibit P4 shall stand set aside and the Appellate Authority shall restore the appeal to its files and decide the same within three months from the date of such payment. The revenue recovery proceedings at Exhibit P5 shall be kept in abeyance for one month and shall be revived only on further orders of the Appellate Authority. The parties shall appear before the Appellate Authority on 25.03.2015.

The Writ Petition is allowed on the above terms.