

(2016) 03 KL CK 0077
In the High Court Of Kerala
Case No : W.P. (C) No. 9291 of 2011

Kuruvithadam Associates Private Ltd.	APPELLANT
Vs	
Controlling Authority under the Payment of Gratuity Act	RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:

Payment of Gratuity (Central) Rules, 1972 — Rule 11(5)

Citation : (2016) 151 FLR 490 : (2016) 3 KHC 643 : (2016) 3 KLT 415 : (2016) LabLR 1089

Hon'ble Judges : Mr. K. Harilal, J.

Bench : Single Bench

Advocate : P. Ramakrishnan and T.C. Krishna, Advocates, for the Petitioner; Reji Joseph, Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

K. Harilal, J.—The petitioner is a company incorporated under the provisions of the Companies Act. It is engaged in the retail business of electronic goods and bank security products and the 2nd respondent was an employee under the petitioner establishment. The 2nd respondent had moved the 1st respondent Controlling Authority under the Payment of Gratuity Act, 1972 claiming gratuity. By Ext.P1, an ex parte order was passed by the 1st respondent. The petitioner had filed Ext.P2 application for setting aside the ex parte order; but, no orders have been passed in the same. In the meantime, Ext.P3 show cause notice was issued against the petitioner for recovery. The petitioner submitted Ext.P4 reply pointing out that Ext.P2 application for setting aside the ex parte order is pending. However, now the petitioner is served with Ext.P5 stating that recovery steps were initiated as Ext.P2 application for setting aside the ex parte order was filed after 30 days from the date of receipt of Ext.P1 order and thereby, it cannot be considered. According to the petitioner, Ext.P2 was filed within time. This is the grievance highlighted by the petitioner in this Writ Petition and it is with these averments, the petitioner prayed for issuing a

writ of certiorari calling for the records and quash Ext.P5 and to direct the 1st respondent to consider Ext.P2 on merits.

2. Heard the learned counsel for the petitioner.

3. The crux of the arguments advanced by the learned counsel for the petitioner is that even if the application to set aside the ex parte order was passed beyond the period of limitation, the 1st respondent ought to have accepted the application on the files and considered the question of limitation i.e., the delay in filing the application. But, in the instant case, the 1st respondent has not taken Ext.P2 on the files and thereby the petitioner is deprived of his right to contend that it was filed within time.

4. Per contra, the learned counsel for the 1st respondent advanced arguments to justify the rejection of the application to set aside the ex parte order without taking the same on the files.

5. In view of the rival contentions made at the Bar, the question to be considered is whether the 1st respondent is justified in rejecting the application without taking the same on the files stating that the application was filed after the period of one month from the date of the ex parte order. The question, in controversy, centres around sub-rule (5) of Rule 11 of the Payment of Gratuity (Central) Rules, 1972.

6. Going by the proviso to sub-rule (5) of Rule 11 of the Payment of Gratuity (Central) Rules, 1972, the statutory mandate is that an ex parte order under the sub-rule may, on good cause being shown within thirty days of the said order, be reviewed and the application re-heard after giving not less than fourteen days' notice to the opposite party of the date fixed for re-hearing of the application. In other words, it can be interpreted in such a way that an ex parte order be reviewed if the application for setting aside the ex parte order is filed within thirty days of the said order. The proviso does not mean that if the application for setting aside the ex parte order is filed after thirty days, it shall be rejected at the threshold without taking the same on the files. In my view, no way the proviso can be interpreted in such a way as to negate a valuable statutory right of review. That apart, the question of delay may also be a disputed fact, as in the instant case, and the Office of the Appellate Authority is not the proper forum to determine the question of limitation in filing the application. Therefore, an opportunity must be given to the appellant, who filed the application to review the ex parte order to contend before the Appellate Authority that his application is not barred by limitation. The Office of the Appellate Authority is obliged to accept the application on the files, and the Appellate Authority itself must consider the question of delay, if any; but an ex parte order be reviewed, if the application is filed within thirty days from the date of ex parte order. If the application is not liable to be reviewed due to delay, that application also deserves dismissal with reasoning. If the application is rejected at the threshold without accepting the same on the files, the applicant will be deprived of his

valuable right to challenge the question of delay as well as the merits of the impugned order. This view is supported by the principles of equity and interest of justice also.

7. In the above view of the matter, Ext.P5 will stand set aside and the 1st respondent is directed to accept Ext.P2 application on the files and consider the question of delay at first on merits with notice to the parties. It is made clear that after hearing the petitioner, if the 1st respondent is satisfied of the fact that the application was filed after 30 days, the 1st respondent is at liberty to pass orders in accordance with the proviso to sub-rule (5) of Rule 11 of the Payment of Gratuity (Central) Rules, 1972. It is made clear that all further proceedings under Ext.P3 will stand stayed till the disposal of Ext.P2.

8. This Writ Petition is disposed of accordingly.