(2014) 09 CHH CK 0013

In the Chhattisgarh High Court

Case No : Writ Petition (227) No. 525 of 2014

Mahabir Shiksha Prasar Samiti — APPELLANT

Vs

S.K. Sawarkar and Others — RESPONDENT

Date of Decision : 03-09-2014

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

Citation : (2015) LabIC 1472

Hon'ble Judges : Navin Sinha, J;Inder Singh Uboweja, J.

Bench : Division Bench

Advocate : Amrito Das, for the Appellant; B. Gopa Kumar, Deputy Advocate General and N.K. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Navin Sinha, J.?A common question of law arises for consideration in this batch of writ petitions with regard to the interpretation of Section 7 of the Payment of Gratuity Act, 1972 (hereinafter referred to as ''the Act''). The Learned single Judge having doubted a Bench decision in WP (L) No. 6950 of 2006 (Mohan Jute Mills v. Smt. Sabila Khatun & Ors.) has made a reference to the Division Bench by order dated 06.12.2013 in W.P.(227) Nos. 877, 879 and 880 of 2013 and other writ petitions have then been made analogous.

2. Learned Counsel for the Petitioners submitted that according to statutory scheme under Section 7 of the Act, a person eligible for payment of gratuity may apply to the employer for payment. The employer may make a self-assessment under sub-section (4)(a) and deposit the amount with the controlling authority to the extent that he admits liability towards gratuity, If there was a dispute with regard to quantification of the gratuity, the controlling authority would decide it after an enquiry. If the controlling authority opines that the assessment made by the employer was correct, he shall order accordingly and in the event he finds the amount to be less, he shall give direction for deposit of the excess amount and then direct it to be paid to the person concerned. The person aggrieved by

the order under sub-section (4) may file an appeal before the appellate authority. The second proviso to sub-section (7) mandates that the appeal must be preceded by deposit of the amount directed to be deposited by the Controlling authority. The pre deposit has to be confined to the extent that the employer admits the liability under sub-section (4)(a) only and not the amount that may be directed to be deposited by the controlling authority under sub-section (4)(d). The word "deposit" has first been used in sub-section (4)(a) and no other meaning can be given to it. The use of the word "deposit" in clause (d) has to be read subject to the same insofar as the appeal is concerned.

3. Reliance was placed on the Bench decision in W.P.(L) No. 6950 of 2006 (Mohan Jute Mills Ltd. v. Smt. Sabila Khatun and others) referred to in the order of reference.

4. Learned counsel for the respondents have opposed the writ petitions submitting that the deposit required to be made before filing an appeal has necessarily to be as finally adjudicated and directed to be deposited under sub-section (4)(d). Unless the pre deposit is made the appeal is not maintainable.

5. We have considered the submissions on behalf of the parties.

6. In order to appreciate the controversy, it is necessary to set out the relevant statutory provisions of sub-sections (4) and (7) of Section 7 of the Act.

"7. Determination of the amount of gratuity.- (1) A person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

....

(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as 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 specified in this 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 amount of gratuity payable to an employee, and, if as a result of such inquiry any amount in excess of the amount deposited by the employer is found to be payable, 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.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit-

"(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the (nominee or, as the case may be, the guardian of such nominee) or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

....

(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.)

7. The Act is a beneficial piece of legislation. Any interpretation that deviates from the beneficial aspect stultifying the legislative mandate must be avoided. If the language of the statute is clear and carries only one meaning no other interpretation can be given.

8. A bare perusal of the scheme reveals that in the event of a dispute with the regard to the amount of gratuity payable to an employee or even the admissibility of any claim whatsoever towards gratuity, the employer cannot retain unto himself the final authority and decision in the matter. The adjudicatory authority is the controlling authority. If an appeal is to be preferred the amount determined by the controlling authority is required to be deposited as a pre-condition. If the argument made on behalf of the petitioners be accepted, the amount of pre-deposit has to be confined to the self assessed amount rendering the adjudication by the controlling authority irrelevant but yet subject to the appellate jurisdiction. The employer thus shall have the benefit of self assessment even after adjudication of liability continuing to deprive the employee for whose benefit the legislation was enacted. Such an interpretation in our opinion shall be doing complete violence to the statutory scheme. The use of the word "deposit" does not have a different meaning under sub-section (4)(a)

and (d). In the former, it talks of deposit on self-assessment. In the latter it is the amount deposited including excess amount after adjudication in excess of the self assessed amount by the controlling authority.

9. Any interpretation of a statutory provision, leading to absurdity must be avoided particularly when the statute is a beneficial legislation. To hold that the pre-deposit for appeal has to be determined on basis of the self assessment made by the employer against which no appeal lies, and that the order of the Controlling Authority upon the same against which appeal lies shall be irrelevant in part for the purpose of the appeal, is an absurd interpretation which has to be avoided.

10. In (2001) 3 LLN 692 (Mad), Christian Medical College and Hospital v. Commissioner of Labour (Appeals), it was held as follows:

"The contention that the second proviso to S. 7(7) of the Payment of Gratuity Act refers to sub-r. (4) which means that the admitted amount alone is required to be deposited under sub-sec. (4)(9) of S. 7 and not the disputed liability would have deserved acceptance provided the second proviso to sub-s. (7) of S. 7 had confined itself to cl. (a) of sub-s. (4), but the entire sub-s. (4) if S. 7 is included in the proviso. In other words, the admitted amount of the amount adjudicated or whatever the amount as may be directed to be deposited or ordered to be paid by the controlling authority is required to be deposited by the employer in terms of the second proviso to sub-s. (7) of S. 7. There is no justification or warrant to restrict the meaning of the second proviso to the admitted liability alone.

The Legislature intended to restrict the predeposit to cl. (a) of sub-s. (4) of S. 7, then it would have been provided that the required amount to be deposited under cl. (a) of sub-s. (4). This is not the statutory provision. Further, if such a contention is to be accepted, the object of legislation, which has provided for a mandatory provisions to deposit the amount, as determined by the controlling authority before filing an appeal, would be defeated. The intention and object of the legislation is also very clear and the second proviso has been introduced with the object of making predeposit of the amount determined by the controlling authority as prerequisite under sub-s. (7) of S. 7. Further, in terms of cl. (a) of sub-s. (4) of S. 7 the deposit is a voluntary deposit by the employer at the threshold, where the employer comes forward with a deposit. Such is not the contingency provided for in respect of other clauses in sub-s. (4) of S. 7 of the Act."

11. We find it to difficult to concur with the view taken in Mohan Jute Mills v. Smt. Sabila Khatun and others (W.P.(L) No. 6950 of 2006) that the employer is required to deposit only the amount as assessed by it. The order does not lay down the correct law and is overruled.

12. If the appellants deposits the amount as adjudicated by the controlling authority under sub-section (4)(c) within the time mentioned in sub-section (7)

from today the appeal shall be heard and disposed in accordance with law. The writ petitions are dismissed with the said observation.

