

(1973) 08 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Appeal No. 484 of 1973

Martin Burn Limited

APPELLANT

Vs

T.C. Moorjani and Others

RESPONDENT

Date of Decision : 09-08-1973

Acts Referred:

Citation : (1973) ILR Delhi 785 : (1974) LabIC 968

Hon'ble Judges : V.S. Deshpande, J;S. Ranganathan, J

Bench : Division Bench

Advocate : S.C. Dhanda, S.S. Chadha and B.S.C. Singh, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) On the termination of their employment with the petitioner. Respondents 2 and 3 applied to the petitioner for payment of gratuity u/s 7(1) of the Payment of Gratuity Act, 1972. The employer denied that Respondents 2 and 3 were its "employees" within the meaning of section 2(e) of the said Act. The dispute between them went to the Controlling Authority u/s 7(4)(a) of the Act. The Controlling Authority issued notices (Annexures Rill and Riv annexed to the written statement of Respondent No. 1) to the petitioner to appear before it on the 17th April, 1973 to answer the claim of Respondents 2 and 3 regarding gratuity. The petitioner was told that if it did not appear the dispute would be determined ex-parte. The petitioner took an adjournment from the Respondent No. 1 and filed this writ petition under Article 226 of the Constitution to quash the proceedings before the Controlling Authority. The main contention of the petitioner is that Respondents 2 and 3 are not "employees" within the meaning of section 2(e) of the Act. They are not, Therefore, entitled to gratuity. The petitioner further contends that the jurisdiction of the Controlling Authority u/s 7(4)(b) is confined to the determination of only "the amount of gratuity payable to an employee". The Authority has no jurisdiction to determine whether Respondents 2 and 3 are employees of the petitioner.

(2) This contention is not sufficient for us to quash the proceedings before the Controlling Authority. As observed by S. A. de Smith in his "Judicial Review of Administrative Action" second edition, page 98, "often it is reasonable to infer that Parliament has intended to. demarcate two areas of inquiry, the tribunal's findings within one area being conclusive and within the other area impeachable". This observation is in line with the well known distinction made by Lord Esher, M. R., in *Queen v. Special Commissioner of Income Tax* (1888) 21 Qbd 313 that quasi-judicial powers may be exercised by two kinds of administrative authorities or tribunals, namely, (1) by those whose jurisdiction depends on facts and preconditions, the existence of which is to be decided by the civil courts, and (2) those who are given the power to decide even the jurisdictional facts on the proof of which their jurisdiction depends. The jurisdiction of the Controlling Authority to determine the amount of gratuity depends on the pre-existence of the relationship of employer and employee between the petitioner and the Respondents 2 and 3. These jurisdictional conditions cannot be finally determined by the Controlling Authority. But this only means that the conclusion which the Controlling Authority may arrive at on this issue is impeachable by the aggrieved party in a civil court. (*Magiti Sasamal Vs. Pandab Bissoi*,). This does not mean, however, that the Controlling Authority cannot at all inquire into this issue or that the petitioner can disable the Controlling Authority from making an inquiry by merely denying that the Respondents 2 and 3 are its employees. On the contrary, the Legislature has intended that initially the Controlling Authority may find out whether the relationship of employer and employee exists. If he finds that it does not exist, then he would drop the proceedings. If he finds that it exists, he would continue the proceedings to determine the amount of gratuity. This is subject to the right of the aggrieved party to go to the civil court for a final determination of this issue which goes to the jurisdiction of the Controlling Authority. The various administrative authorities and tribunals established by the Legislature and falling within the first class of tribunals referred to in *Queen v. Special Commissioners of Income Tax* function in this way. They make a preliminary determination of the existence of the conditions on which their jurisdiction depends. They are not barred from doing so. They do not have to wait for the decision of a civil court before undertaking any inquiry. This would defeat the object of the statutes under which they function and make them a dead letter. For instance, under the *Delhi Rent Control Act, 1958*, the jurisdiction of the Controller to pass an order for eviction or to fix the standard rent depends on the pre-existence of the relationship of landlord and tenant between the parties. This does not mean that the Controller has to wait for a decision of the civil court as to the existence of such a relationship. A mere denial by the tenant of the existence of such relationship does not disable the Controller from holding the inquiry under that Act. (*Om Prakash Gupta Vs. Rattan Singh and Another*,). The same principle was applied to the proceedings before the Competent Authority under the *Slum Areas (Improvement and Clearance) Act, 1956* by a Division Bench of this Court in *C. R. Abrol v. Administrator under the Slums Act etc.* (1970) 1 Delhi 768 at

775. Similarly, under the Employees Provident Fund Act, 1952, the payment of contribution by the employer to the provident fund depends on the satisfaction of the jurisdictional condition that the factory of the employer is covered by the said Act. A mere denial by the employer as to the coverage of his factory under the Act does not, however, mean that the Central Provident Fund Commissioner is disabled from holding the inquiry. On the contrary, he must hold an inquiry though his finding regarding the coverage of the factory may be challengeable in a civil court. (Wire Netting Stores Vs. Regional Provident Funds Commissioner and Others, .

(3) Secondly, section 7(4)(b) provides a statutory remedy to the petitioner to satisfy the Controlling Authority that it is not liable to pay gratuity to Respondents 2 and 3. In case the order of the Controlling Authority is against the petitioner, the petitioner has a right to file an appeal against it u/s 7(7) It is the settled practice of this Court not to entertain a writ petition for quashing the proceedings before such authorities unless the petitioner satisfies this Court as to why these statutory remedies are not adequate. The petitioner has proceeded under the misconception that these authorities do not have power even to make a preliminary inquiry into the relationship between the employer and the employee. In thinking so. it was clearly in error for the reasons stated above. The petitioner, Therefore, must first avail itself of these statutory remedies before coming to this Court by way of a writ petition. It is only if the orders which may be passed by these authorities are shown to be challengeable by way of a writ petition that the petitioner can subsequently come to this Court to challenge these orders.

(4) Lastly, the petitioner says that the Controlling Authority has filed a reply to its writ petition thereby showing that the Controlling Authority had made up his mind against the writ petition. This contention is unfair. The petitioner has joined the Controlling Authority as a respondent and has forced him to defend himself. In doing so if the Controlling Authority denied the validity of the contentions of the petitioner, it cannot be said that the said Authority is prejudiced against the petitioner. On the other hand, the Authority has clearly stated that he has neither determined the amount of gratuity payable by the petitioner nor has he issued any directions under the Act against the petitioner. The Authority is still waiting for the petitioner to appear before him so that he could hold the inquiry as to whether the petitioner is liable to pay the gratuity and only thereafter would - determine the amount of gratuity.

(5) For the reasons stated above, the writ petition is dismissed after hearing both the parties and in the circumstances without any order as to costs.