(2006) 12 CHH CK 0031

In the Chhattisgarh High Court

Case No : Writ Petition No. 6950 of 2006

Mohan Jute Mills Ltd. APPELLANT

Vs

Smt. Sabila Khatun and Others RESPONDENT

Date of Decision : 14-12-2006

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

Citation : (2008) 1 MPJR 64

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Pradeep Saksena, for the Appellant;

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.

The indisputable facts in this case are that the husband of Respondent No. 1, namely, Allahuddin, retired on 20-9-1998 on attaining the age of superannuation from the Petitioner - Jute Mill. Respondent No. 1 filed an application claiming gratuity to the tune of Rs. 36,702/- before the Controlling Authority under the Payment of Gratuity Act, 1972 (henceforth "the Act, 1972") at Raigarh. The question before the Controlling Authority, as raised by the present Petitioner, was as to whether the employee, i.e., the husband of Respondent No. 1 was entitled to gratuity for the period which Respondent No. 1 has claimed after a lapse of almost 1 1/2 years. The Controlling Authority, rejecting the objection of the Petitioner, directed the Petitioner herein to pay a sum of Rs. 36,702/- as gratuity to the widow of the employee, i.e., Respondent No. 1 herein, within a period of 30 days, vide order dated 27-6-2005 (Annexure P-III).

Being aggrieved, the Petitioner - Jute Mill filed an appeal before the Appellate Authority u/s 7 of the Act, 1972, wherein the Petitioner specifically raised the dispute in ground No. 2 of the appeal.

Second proviso to Sub-section (7) of Section 7 of the Act, 1972 provides for deposit of an amount equal to the amount of gratuity required to be deposited under Sub-section (4) of Section 7 of the Act, 1972. Sub-section (4) of Section 7 of the Act, 1972 provides that in case of any dispute with regard the amount of gratuity, the employer shall deposit with the Controlling Authority such amount as the employer admits to be payable by it as gratuity. Sub-section (4) and Sub-section (7) of Section 7 of the Act, 1972 read as under:

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

A bare reading of the above provisions makes it clear that if the amount of gratuity payable is in dispute, the employer is required to deposit such amount as the employer admits to be payable by it as gratuity. In the facts of the case, the Petitioner herein, i.e., the employer has already disputed the gratuity amount and has paid the amount which the Petitioner admits to be payable by it as gratuity on 26-12-1998.

In view of the clear provisions of law and the facts of the case, the appeal of the Petitioner Jute Mill should not have been dismissed by the Appellate Authority on the ground of non-deposit of the required amount as per Sub-section (7) of Section 7 of the Act, 1972.

Thus, the order dated 31-10-2005 passed by the Appellate Authority is quashed and the Appellate Authority is directed to decide the matter in accordance with law, if the Petitioner has deposited the amount as prescribed under Sub-section (4) of Section 7 read with second proviso to Sub-section (7) of Section 7 of the Act, 1972.

The petition is accordingly allowed. The matter is remitted to the Appellate Authority for fresh disposal in accordance with law without being influenced by an observation, if any made hereinabove. No order as to costs.