

(1990) 10 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 481 of 1984

Mohanlal

APPELLANT

Vs

Appellate Authority Under Payment of Gratuity Act and
Others

RESPONDENT

Date of Decision : 23-10-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 106 , 107, 108, 109, 110
Payment of Gratuity (Madhya Pradesh) Rules, 1973 — Rule 7, 7(1), 7(5)
Payment of Gratuity Act, 1972 — Section 7, 7(1)

Citation : (1995) 3 LLJ 413 : (1991) 36 MPLJ 355 : (1991) MPLJ 355

Hon'ble Judges : T.N. Singh, J; Shacheendra Dwivedi, J

Bench : Division Bench

Advocate : K.K. Lahoti, for the Appellant; G.K. Gupta, for P.L. Dubey, for the Respondent

Final Decision : Allowed

Judgement

T.N. Singh, J.

The order passed in appeal u/s 7(7) of the Payment of the Gratuity Act, 1972, for short the Act, on 14.9.1982, is challenged by the employee whose application made u/s 7(4) of the Act to the "Controlling Authority", on 30.7.1976, stood rejected under the impugned order passed in appeal preferred by the employer.

By the impugned order the Appellate Authority has set aside the order passed on 2.7.1981 by the Controlling Authority holding the petitioner entitled to payment of gratuity in the sum of Rs. 10,836/- reckoning 40 years" service for the purpose of computation of the gratuity. In the appeal two new grounds were urged successfully resulting in the application of the petitioner being held in appeal as untenable in law. However, appellant/employer having made a deposit of a sum of Rs. 4,641/- with the "Controlling Authority" care was taken to hold that on the basis of admitted liability the petitioner/respondent could be entitled

to payment of that sum. It was held in appeal, firstly, that under provisions of the Rules framed by the State Government under the Act the employee was required to make an application to claim gratuity within a period of 30 days of its becoming payable. But, he himself admitted that he had filed several applications on 13.3.1976, 11.6.1976 and 22.7.1976 and all of them were time barred. Secondly, when the employee complained on 13.3.1976 to the Controlling Authority against refusal of the employer to pay him gratuity pursuant to his application, he did not file along with his said claim petition (complaint) annexures as contemplated under the relevant Rules. The Controlling Authority had, therefore, no jurisdiction to entertain his claim petition and deal therewith in any manner despite the fact that default had been made up belatedly on 7.10.1978.

Section 4 of the Act creates liability of the employer for payment of gratuity of the employee, who had rendered not less than 5 years continuous services and that is made payable on his superannuation or retirement/resignation or his death or disablement due to accident or disease. Sub-section (2) contemplates that for every completed year of service or part thereof in excess of six months" gratuity to an employee shall be at the rate of fifteen days" wages based on the rate of wages last drawn by the employee. Sub-section (3) provides the ceiling of 20 months" wages. However, we extract below the relevant parts of Section 7 of material significance to the controversy agitated:

""7. Determination of the amount of gratuity - (I) A person who is eligible for payment of gratuity under this Act or any person authorised, 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.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in Sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity, within such time as may be prescribed, to the person to whom the gratuity is payable.

(4)(a) If there is any dispute as 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.

Explanation.-Where there is a dispute with regard to any matter specified in this clause the employee may make an application to the Controlling Authority for taking such action as is specified in Clause (b).

(b) 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 as is in excess of the amount deposited by him.

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

According to Section 8 gratuity payable under the Act if not paid by the employer within the prescribed time to the person entitled thereto is made recoverable as arrears of land revenue on certificate being issued by the Controlling Authority when application is made in that regard. Section 9 makes it an offence if false statement or false representation is made by any person for the purpose of avoiding any payment to be made under this Act. The employer who contravenes any provisions of the Act or of any Rule made thereunder is also made liable to suffer punishment, in both cases for a term extending to one year.

Relevant portion of relevant Rules, which are known as Payment of Gratuity (Madhya Pradesh) Rules, 1973, are also extracted:

Application for gratuity.-(1) An employee who is eligible for payment of gratuity under the Act, or any person authorised, in writing, to act on his behalf, shall apply ordinarily within thirty days" from the date the gratuity became payable, in Form "I" to the employer:

Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days, of the date of superannuation or retirement.

(2) A nominee of an employee who is eligible for payment of gratuity under the second proviso to Sub-section (1) of Section 4 shall apply ordinarily within thirty days from the date gratuity became payable to him, in form "J" to the employer:

Provided that an application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso to Sub-section (1) of Section 4 shall apply, ordinarily within one year from the date the gratuity became payable to him, in Form "K" to the employer.

(4) Where gratuity becomes payable under the Act, before the commencement of these rules, the period of limitation specified in Sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such commencement.

(5) An application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and no claim for

gratuity under the Act, shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the Controlling Authority of the area for his decision."

5-A. We have considered it unnecessary to extract Rule 10 and to deal with contention of Shri Dubey, who appears for respondent No. 3 employer, that there being conflict between the English and Hindi versions in view of Section 3 of the M.P. Official Language Act, 1957 the Hindi version shall prevail. Shortly put, Shri Dubey contended that according to Hindi version Limitation of 90 days is prescribed for making an application before the Controlling Authority and only on sufficient cause being shown delay is made condonable. Thus, he contended, Appellate Authority has rightly held the default of employee in non-furnishing annexures along with the claim-petition to be fatal as those were filed after two years. We have seen no merit in Shri Dubey's contention for the short reason that the Controlling Authority having the jurisdiction to condone delay by accepting the annexures beyond time it shall be deemed to have exercised its powers in that regard. In any case, in the impugned order passed by the Appellate Authority no reasons are given to find fault with the exercise of his discretionary powers by the Controlling Authority. Merely because belated filing was objected to, the jurisdiction of the Controlling Authority was not affected; and its power to condone the delay was not taken away. It is wrongly held in the impugned order that Controlling Authority has no jurisdiction to accept belated filing of the annexures as that holding ignores vesting by the relevant Rule itself jurisdiction in Controlling Authority to act to the contrary and accept a belated application or for that matter belated filing of annexures to complete an application filed within time.

We revert to the other ground which prevailed with the Appellate Authority in holding that the claim petition was not maintainable because application filed with the employer by the employee under Rule 7(1) was time barred. That has a short and also a long answer. Sub-rule (5) of Rule 7 effectively rebuffs that contention. It provides that on the sole ground that gratuity was claimed late and application was not made within specified period to the employer the claim shall not be treated invalid. However, the same provision also contemplates that if there is any dispute and if there is any controversy in regard to belated application that shall be resolved by the Controlling Authority. Evidently, for the first time in appeal, the ground was urged to deprive the Controlling Authority of its jurisdiction envisaged under Rule 7(5) to deal and decide the controversy. That apart, it has been rightly urged by Shri Lahoti, appearing for the petitioner/employee, that neither Section 7(1) nor Rule 7(1) is mandatory. That is made clear not only by Sub-rule (5) of Rule 7, but by the other parts of the parent provisions contained in Section 7. Sub-section (2) makes it employer's duty to determine the amount of gratuity and to give notice in writing to the employee of the gratuity payable "whether an application referred to in Sub-section (1) has been made or not". Sub-section (3) obligates the employer to arrange payment of the gratuity within the time prescribed and by Sub-rule (4) he is required to

deposit with the Controlling Authority such amount as he admits to be payable by him against gratuity. It is noteworthy that neither Clause (a) of Sub-section (4) nor the explanation appended to it prescribes any period of limitation for making application to the Controlling Authority for deciding dispute of non-payment of gratuity.

For the reasons aforesaid we are of the view that the two new grounds which were urged in appeal were themselves untenable in law and, therefore, the Appellate Authority acted without jurisdiction in setting aside the order passed by the Controlling Authority on these grounds holding the claim petition filed on 30.7.1976 by the petitioner/employee to be not maintainable and time barred.

On merits also, unfortunately, the Appellate Authority reached at a cryptic finding in reversing that of the Controlling Authority to hold that gratuity was not payable to the petitioner/employee for 40 years" continuous service. Shri Lahoti has cited Sarju Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and Others, to draw our attention to the settled law in regard to the duty of the Appellate Court in reappreciating the evidence to reach its own findings. It was held that the Appellate Court is required "to see whether the evidence taken as a whole reasonably justified the conclusion which Trial Court arrived at or where there is element of improbability arising from proved circumstances, which, in the opinion of the Court, outweighs the findings." We have not an iota of doubt that the Appellate Authority has not tested the different conclusions reached, on the basis of different pieces of proved circumstances, by the Controlling Authority, and has wrongly taken the view that the employee failed to prove that he had joined in 1931 and continued upto 1974. Although Shri Dubey submitted that in taking that view Appellate Authority has given cogent reasons, in our opinion, the fault lies elsewhere. According to us, it was the bounden duty of the Appellate Authority to rehearse the entire gamut of entire evidence and test each and every conclusion reached by the Controlling Authority but that has not been done in reversing his findings.

8-A. Mohd. Yunus Vs. Mohd. Mustaqim and Others, Shri Dubey strongly urged that pur interference is not warranted with the impugned order. But, we are not reviewing and reweighing the evidence, which their Lordships have interdicted. On the other hand, we are enforcing their mandate that under Article 227 of the Constitution the High Court is required to see that "an inferior Court or Tribunal functions within the limit of "authority". We have pointed out the manner and extent of transgression of its jurisdiction by the Appellate Authority. However, we may also note that in State of U.P. Vs. District Judge, Unnao and Others, it has been held that supervisory jurisdiction envisaged under Article 227 of the Constitution is meant to ensure that any injustice caused by any order passed by any inferior Court or tribunal is duly redressed. That apart, in the exercise of our certiorari jurisdiction, acting under Article 226 of the Constitution, we are bound to set aside the impugned order which suffers from the serious errors of law apparent on the face of the record.

Shri Dubey also relied on Lallappa Lingappa (1981) 1 Lab LJ 308 to assail the finding of the Controlling Authority in regard to "continuous service" of the petitioner-employee. He also cited in that connection Ramarati Koer AIR 1967 SC I 134, but we do not propose to hazard a fresh conclusion in regard to the finding assailed. Indeed, we are prohibited to do on the writ side. Suffice it to say this much that the finding and conclusion on merit reached by the Controlling Authority do not suffer any infirmity of law or facts and that the findings are not perverse. If adverse inference is drawn against the employer for withholding his records for service rendered by the petitioner-employee between 1931 and 1974, legal authority in that is exercised under Sections 106 and 114 of the Evidence Act. If the Controlling Authority believed petitioner's own evidence and the evidence of his witness (Rajaram), who was competent to depose in regard to service rendered by him between 1931 and 1974, that was also lawful exercise of his jurisdiction. Indeed, to believe or disbelieve a witness or any piece of evidence is the province really and mainly of the Trial Court.

Our conclusion, therefore, is the impugned order passed on 14.9.1983 in Appeal No. 7/82 by the Appellate Authority in the appeal referred u/s 7(7) of the Act, is without jurisdiction. That is accordingly set aside. The order passed on 30.7.1976 by the Controlling Authority in the Gratuity Case No. 37 of 1976 is restored, the petition is allowed. There shall however be no order as to costs.

Petition allowed.