
(1992) 10 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 10302 of 1992-B

Nataraja Pillai

APPELLANT

Vs

Regional Joint Labour Commissioner and Others

RESPONDENT

Date of Decision : 22-10-1992

Acts Referred:

Constitution of India, 1950 — Article 227
Payment of Gratuity (Central) Rules, 1972 — Rule 10
Payment of Gratuity Act, 1972 — Section 7, 7(7)

Citation : (1993) 1 LLJ 674

Hon'ble Judges : P.K. Shamsuddin, J

Bench : Single Bench

Advocate : R. Rajasekharan Pillai, for the Appellant; S. Siri Jagan, for Resondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Shamusuddin, J.—The petitioner was the employer of the third respondent. According to the third respondent, he was under the service of the petitioner for the period from February 1, 1984, to December 30, 1989. According to the petitioner, the third respondent was in his service only for the period from May 27, 1986, to December 8, 1989. It is also the case of the petitioner that without informing him, the third respondent absented from duly with effect from December 8, 1989, and, thereafter, nothing was heard about him and on enquiry, it was found that he is engaged as a Foreman in the Thankam Match Industries.

The petitioner was served with a copy of application submitted by the third respondent before the second respondent claiming gratuity to the tune of Rs. 7,200. Exhibit P-1 is the formal application. The petitioner submitted an objection, Exhibit P-2. Thereafter, the third respondent filed a replication. The third respondent was examined on August 8, 1992, He also filed the copy of application filed earlier to the controlling authority, which was not in the prescribed form. Exhibit R-3(a) is the said application. The case was posted to

January 4, 1991, for examination of the petitioner who was the opposite party. At the request of counsel for the petitioner (opposite party), the case was again adjourned to October 10, 1991, then to October 30, 1991, and finally to November 20, 1991. On November 20, 1991, also, the petitioner and his counsel were absent. Accordingly, the case was taken for orders and ultimately Exhibit P-3 order was passed on December 11, 1991. The petitioner filed an appeal before the appellate authority, but it was dismissed by proceedings, Exhibit P-8 dated June 30, 1992.

2. In this original petition, the petitioner challenges Exhibits P-3 and P-8. Learned counsel for the petitioner raised the following points; (1) The application was barred by operation of Rule 10 of the Payment of Gratuity (Central) Rules, 1972 (hereinafter referred to as "the Rules"), which prescribes a period of 90 days of the occurrence of the cause of action for submitting the application; (2) There is no dispute to prefer an application and as such the application is not maintainable; (3) There is no demand as provided in Section 7 of the Act and for this reason also the application is not maintainable; and (4) The petitioner was not given sufficient opportunity to contest the matter.

3. It is true that Rule 10 lays down that an application to the controlling authority should be presented within a period of 90 days of the occurrence of cause of action and proviso to the said rules states that any application under this sub-rule, on sufficient cause being shown by the applicant, the authority may accept the application after the expiry of the said period. In the instant case, a formal application was filed only on February 21, 1991, beyond the period of 90 days prescribed by the rule.

4. It is the case of the petitioner that there was no application to condone the delay giving sufficient reasons for the belated presentation of the application. Learned counsel appearing for the third respondent submitted that before making the formal application, Exhibit P-1, the third respondent had submitted an application which is marked as Exhibit P-3 (a) by the appellate authority. I went through Exhibit P-3(a) and found that the third respondent has given some reasons for not being able to present the application earlier. No doubt, Exhibit P-3 order does not disclose that it was specifically considered. Nothing has been stated in the order about the delay. A reading of the proviso to Rule 10 indicates that a separate petition to condone the delay is not mandatory and the only requirement is that the authority must be satisfied that there is sufficient cause for the delay in presenting the application. It is true that in the objection filed by the petitioner, specific point has been raised in regard to the delay in filing the representation. The very fact that the controlling authority accepted the application on file and chose to consider it on merits indicates that he was satisfied with the reasons stated by the petitioner in Exhibit P-3(a) to condone the delay. As a matter of fact, the controlling authority has referred to Exhibit P-3(a) (exhibit-Aa) in the order and it has to be legitimately presumed that he applied his mind to this aspect. The appellate authority also considered this

aspect and observed that it must be presumed that the controlling authority was satisfied with the reasons stated for the delay. In the circumstances, I do not think that there is any substance in this contention.

5. It is next contended that Sub-section (1) of Section 7 lays down that a person who is eligible for payment of gratuity shall send a written application to the employer in such form as may be prescribed for payment of such gratuity and that no such demand was made and that for this reason also application is not maintainable.

In Exhibit P-2, the objection filed by the petitioner, such an objection has not been taken. Further, Sub-section (2) of Section 7 states that 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. Clause (b) of Sub-section (4) of Section 7 states that 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. This would indicate what is required for entertaining an application is a dispute with regard to the amount of gratuity payable to an employee or as to the admissibility of any claim or as to the person entitled to receive the gratuity. Nowhere, it is stated that the sending of an application to the employer under Sub-section (7) is a prerequisite for exercising jurisdiction of the controlling authority to entertain an application. That there is a dispute between the parties cannot be disputed in view of the position taken by the petitioner that the petitioner had not the required service under him so as to attract payment of gratuity. Exhibit P-3(a) also indicates that the third respondent had approached the employer through Union and the Labour Officer for getting relief, but those attempts proved futile and it was only thereafter he approached the controlling authority. In the circumstances, I am of the view that there is no substance in the contention that the application is not maintainable.

6. It is next contended that the petitioner did not have the eligibility for gratuity, since the duration of his service is less than five years. Apart from a statement given in his objection, no evidence has been adduced by the employer to show that the third respondent did not have the required service. On the other hand, the employee-the third respondent-has adduced evidence to show that he was under the service of the petitioner from February 1, 1984, to December 30, 1989. In the circumstances, both the authorities concurrently found that the petitioner had the required service and I do not think that I will be justified in interfering with the concurrent finding of fact arrived at by the authorities below, in exercise of my supervisory jurisdiction under Article 227 of the Constitution.

7. It is lastly contended that the petitioner was not given sufficient opportunity to contest the matter. This aspect has been dealt with by the appellate authority in Exhibit P-8. It is seen that several adjournments were given to enable the

employer to give evidence and at last as a last chance, it was posted to November 20, 1991. On that day also, neither the petitioner nor his counsel entered appearance. In the circumstances, there is absolutely no substance in the contention that sufficient opportunity was not given to the petitioner to contest the matter.

8. The foregoing discussion would show that there is no merit in the original petition and it is accordingly dismissed.