

(2013) 07 MP CK 0015

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 3579, 3562, 3580-3590 of 2009

National Textile Corporation Ltd. and Another

APPELLANT

Vs

Dy. Labour Commissioner Appellate Authority (P.G. Act) and
Others

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Citation : (2013) 139 FLR 1101 : (2014) 1 LLN 199 : (2014) LLR 71

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : G.S. Patwardhan, for the Appellant; Sanjay Karanjawala, for the Respondent

Judgement

S.C. Sharma, J.—Regard being had to the similar controversy involved in these cases, they have been heard analogously together with the consent of the parties and a common order is being passed in the matter. Facts of Writ Petition No. 3579/2009 are narrated as under:-- The petitioners before this Court have filed this present petition being aggrieved by the order dated 22.10.2008 passed in Appeal No. 322/2006 by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "Act of 1972"). In the present case, record of the case reveals that the respondent No. 3 was an employee serving under the Burhanpur Tapti Mills a unit of National Textile Corporation Ltd. The services of the respondent No. 3 were discontinued and at the relevant point of time the unit was exclusively under the National Textile Corporation (M.P.) Ltd. and later on the National Textile Corporation (MP) Ltd. was merged with National Textile Corporation Ltd., a Company having branches and control all over the India. However, the fact remains that at the time the workers were discontinued they were the employees of a unit having branches in the State of Madhya Pradesh only. The Controlling Authority after granting an opportunity of hearing to the petitioners as well as to the respondents has passed a detailed and exhaustive order on 25.7.2006 directing the petitioners to release the gratuity and the petitioners being aggrieved by the order of the Controlling Authority

under the Act of 1972 have preferred an appeal and the same has been dismissed on 22.10.2008, as the appeal was filed without complying the statutory provisions as contained u/s 7(7) of the Act of 1972.

Learned Counsel appearing for the petitioners has placed reliance upon a judgment of Calcutta High Court in the case of Gloster Jute Mills Ltd. Vs. Deputy Secretary, Labour Department and Others, , and his contention is that employer is required to deposit only the admitted amount enabling the authority to decide the appeal.

2. This Court has carefully gone through the aforesaid judgment as well as another judgment delivered by this Court in the case of National Textile Corporation Ltd., and another v. Controlling Authority and others, in W.P. No. 10259/2011 (s) and paragraphs 5, 6, 7 and 8 of the said judgment reads as under:--

5. Learned Sr. Counsel has placed heavy reliance upon a judgment delivered by the Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, His contention is that in light of the aforesaid judgment as the order passed by the Controlling Authority is without jurisdiction, this Court does have jurisdiction to decide the writ petition, inspite of the fact that an alternative remedy is available.

6. This Court has carefully gone through the aforesaid judgment and it is not a case where the petitioners have straightaway approached this Court, without availing the alternative remedy. The petitioners have filed an appeal against the impugned order and as the statutory provisions provide for filing of a certificate of the Controlling Authority to the effect that the appellants have deposited with them an amount equal to the amount of gratuity required, the petitioners have approached this Court because they were required to deposit the amount of gratuity with the Controlling Authority.

7. This Court is of the considered opinion that the present writ petition is nothing, but an attempt to circumvent the provisions of appeal as provided u/s 7(7) of the Act of 1972. Only because the appellants were required to deposit the amount of gratuity they have rushed this Court and have challenged the order dated 28.9.2011. Section 7(7) of the Payment of Gratuity Act, 1972 reads as under:--

7. Determination of 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

8. In light of the aforesaid statutory provisions of law, this Court is of the considered opinion that the petitioners have rightly preferred an appeal before the appellate authority and they are required to fulfill the requisite conditions as mentioned under the aforesaid statutory provisions of law, in case they wish their appeal to be decided on merits.

3. The aforesaid paragraphs make it very clear that the petitioners were required to deposit the amount of gratuity as provided u/s 7(7) of the Act of 1972 and as they have not complied the statutory provisions as contained under the Act of 1972, their appeal has rightly been dismissed. This Court is of the considered opinion that the appeal preferred by the petitioners has rightly been dismissed due to non-compliance of the aforesaid statutory provisions.

4. Resultantly, no case for interference is made out in the matter. The writ petition is dismissed, however a liberty is granted to the petitioners to approach the appellate authority afresh within a period of 30 days by depositing the amount as required u/s 7(7) of the Act of 1972 and in case such an amount is deposited and an appeal is preferred afresh within a period of 30 days, the appellate authority shall decide the appeal as expeditiously as possible preferably within a period of 60 days from the date of filing of the appeal. With the aforesaid, the connected writ petitions are also disposed of. No order as to costs.