
(2013) 03 MP CK 0001

In the Madhya Pradesh High Court

Case No : Writ Appeal Nos. 548, 549 and 550 of 2013

National Textile Corporation Ltd.

APPELLANT

Vs

Controlling Authority Under Payment of Gratuity Act

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Citation : (2014) 141 FLR 1067

Hon'ble Judges : Shantanu Kemkar, J;P.K. Jaiswal, J

Bench : Division Bench

Judgement

P.K. Jaiswal and Shantanu Kemkar, JJ.

Shri R.C. Mehra, learned Counsel for the respondents No. 3 to 8.

Heard.

1. These bunch of writ appeals is being disposed of by a common order as the controversy raised therein is identical. These above three writ appeals are filed by the appellants u/s 2(1) of M.P. Uchha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhniyam, 2005 against the order dated 12.3.2013 passed by the learned Writ Court in" W.P. No. 2891/2012, W.P. No. 10259/2011 and WP. No. 2893/2012 respectively.

2. Brief facts of Writ Appeal No. 549/2013 are narrated as under:--

The appellants before this Court have filed this writ appeal being aggrieved by the order dated 23.9.2011, passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (in short "the Act of 1972") upholding the claim of the workers who were engaged as Badli workers from time to time by the Mill management based on the exigency of work. The Mill was closed on 31.5.2002 and the management had not paid the workmen their dues as permanent or badli workers as per rule/recruitment.

3. The appellant No. 1 had several subsidiaries including the National Textile

Corporation (Madhya Pradesh) Ltd. wherein the respondent/employees Nos. 3 to 24 were employed as badli workers in the Kalyanmal-Mills (in short "Mill").

4. That 170 badli workers had filed cases against the Mill before the Controlling Authority and Asst. Labour Commissioner under the Payment of Gratuity Act of the State of Madhya Pradesh, claiming payment of gratuity. The case was contested by the Mill and a reply was filed along with leave record sheets and other records of badli worker in support of its defence.

5. The appellants in their reply have stated that the Mill was closed in pursuant to the order of the appropriate Government, Ministry of the Labour and Employment dated 5.9.2002. One of the stand of the appellants before the authority that the respondents/employees had not worked for 240 days in any calendar year and, therefore, was ineligible to receive gratuity.

6. The learned Controlling Authority has passed an order dated 28.9.2011 against the Mill directing payment of gratuity with interest from 2002 to the workers. The learned Controlling Authority after considering the evidence of the parties and documents filed in the matter allowed the application and directed for payment of gratuity.

7. The appellants challenged the said order by filing statutory appeal u/s 7(7) of the Act of 1972 before the Appellate Authority. They simultaneously challenged the order by filing W.P. No. 2891/2012, W.P. No. 10259/2012 and W.P. No. 2893/2012 under Article 226/227 of the Constitution of India and prayed therein for quashment of order dated 28.9.2011 passed by the Controlling Authority (respondent No. 1.). When the writ petitions were listed for hearing, learned Writ Court find that statutory appeal is already pending and appellants have filed the writ petitions because they have not deposited the amount in compliance to section 7(7) of the Act of 1972 which 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, they have approached the learned Writ Court because they were required to deposit the amount of gratuity with the Controlling Authority.

8. The learned Writ Court after hearing the arguments of the learned Counsel for the parties came to the conclusion that the 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 the Writ Court and have challenged the order dated 28.9.2011 which is also subject-matter in statutory appeal filed by them.

9. Considering the aforesaid, learned Writ Court dismissed all the three writ petitions with a liberty to the appellants to prosecute their appeal, which is pending before the Appellate Authority by order dated 12.3.2013.

10. It is submitted by the learned Counsel for the appellants that the order dated 28.9.2011, passed by the Controlling Authority is without jurisdiction. He

submitted that after formation of State of Chhattisgarh, the appellant No. 1 is having branches in more than one State and, therefore, by reasons of the provisions of section 2(a) of the Act of 1972, the appropriate Government would be the "Central. Government", the impugned order, passed by the Controlling Authority appointed by the State of Madhya Pradesh under the Act of 1972, is wholly without jurisdiction.

11. During the course of arguments, when we ask the learned Counsel for the appellants whether these objections were taken before the Controlling Authority in their reply or any evidence or any documents to this effect was filed before the Controlling Authority, he very fairly submitted that these objections were never taken before the Controlling Authority. He also submitted that the order passed by the Controlling Authority is without jurisdiction and in view of the law laid down by the Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, the Writ Court had jurisdiction to decide the writ petition inspite of the fact that an alternative remedy is available, learned Writ Court committed a legal error in dismissing the writ petition.

12. In support of his arguments, on the question of alternative remedy, learned Counsel for the appellants placed reliance on the Division Bench decision in the case of ILR (1974) MP 572 wherein it has been held that the provision for an appeal does not take away the jurisdiction of the Court to interfere under Article 226 of the Constitution. Para 6 of the aforesaid judgment is relevant which reads as under:--

6. The learned Counsel for the Department strongly contended that the petitioner has filed an appeal and it should given any relief under Article 226 of the Constitution. It is true that the petitioner had filed an appeal but to prosecute that appeal and for getting it admitted, it will have to deposit a substantial portion of tax and the penalty assessed on it. In such a situation the remedy of appeal is an onerous remedy. It is well settled that the provision for an appeal does not take away the jurisdiction of the Court to interfere under Article 226 of the Constitution. The order of the Sales Tax Officer is in excess of jurisdiction, for he has taxed transactions and sales which were not liable to be taxed at all. We, therefore, find that this is a fit case where interference should be made under Article 226 inspite of the fact that the petitioner has not exhausted the alternative remedy of appeal provided under the Act.

13. The aforesaid view of the Division Bench decision has been upheld by the Apex Court in the case of Sales Tax Officer v. Timber and Fuel Corporation. 1974 MPLJ Note No. 13 In the case of Timber & Fuel Corporation, Orchha and others (supra), the dealer purchased goods in an auction from the Forest Department. At the time of the purchase, the sales made by the Forest Department were not exempted u/s 12 of the M.P. General Sales Tax, 1958. Later by a notification u/s 12, the sales made by the Forest Department were exempted from sales tax. The tax was payable on the first point sale. The Sales Tax Officer, in view of the later notification held the sales made by the assessee to be first point sales, as the

sales by the Forest Department was exempted from sales tax. The High Court held that that by a subsequent notification issued u/s 12, no liability for payment of tax can be retrospectively fastened on the petitioner therein. In the light of the aforesaid, the Court also held that the earlier assessment made by the Assistant Sales Tax Officer was without jurisdiction and a nullity.

14. In the case in hand, the facts are quite different. The question which has been raised in the writ petition was that after reorganization and formation of the State of Chhattisgarh, the Controlling Authority for deciding the dispute between, the parties is of Central Government and not by the Controlling Authority of the State Government. This question is debatable and the same can be decided after appreciating the material evidence on the basis of documents filed by the parties and the same cannot be decided right way in the writ petition. Even otherwise, the said question has been raised by the appellants in the appeal which is pending before the Appellate Authority. The aforesaid question is mixed question of law and fact and, therefore, it would be appropriate and proper for the appellants to raise these questions before the Appellate Authority and this is a good ground to assail the order of the Controlling Authority by filing an appeal before the Appellate Authority.

15. The appellants are avoiding to deposit the amount of gratuity and, therefore, they have rushed the High Court and have challenged the order dated 28.9.2011, without availing the statutory remedy of appeal. The said appeal has been filed without depositing the amount of gratuity nor they attached the certificate of the Controlling Authority to the effect that they have deposited the amount of gratuity.

16. Law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution of India, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

17. In the present case, an enquiry into the question whether Controlling Authority of the State Government or Central Government is the appropriate authority to decide the issue is involved in the present case and the same cannot be decided in writ proceedings and the appellants had already raised this question in the appeal which is pending before the Appellate Authority and, thus, we are of the view that the learned Single Judge has not committed any legal error in holding that the appellants have rightly preferred an appeal before the Appellate Authority and they are required to fulfil the requisite conditions as mentioned u/s 7(7) of the Act of 1972, in case they wish their appeal to be decided on merits, the learned Writ Court rightly, declined to interfere with the order dated 28.9.2011. The decision cited by the learned Counsel for the appellants in the case of Timber & Fuel Corporation Orchha and others (supra), will not be applicable in the present facts and circumstances of the case. The writ Court rightly exercised its discretion by granting liberty to the appellants to

prosecute their appeal which is pending before the Appellate Authority and dismissed the writ petition.

18. For the afore-noted reasons, we are of the view that the no case for interference with the order passed by the Writ Court as prayed by the learned Counsel for the appellants is made out in this intra-Court appeal. The writ appeal filed by the appellants has no merit and is, accordingly, dismissed.