
(2001) 02 KL CK 0027
In the High Court Of Kerala
Case No : O.P. No. 4458 of 2001

Neelakandan Namboothiri

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 09-02-2001

Acts Referred:

Payment of Gratuity (Central) Rules, 1972 — Rule 7
Payment of Gratuity Act, 1972 — Section 2, 3, 3, 7, 7(1)

Citation : (2001) 2 LLJ 520

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : R. Harikrishnan, C.A. Rajeev, N.C. Sajith and V.P. Remesh, for the Appellant; N. Reghuraj, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—The challenge in this Original Petition is against Ext. P7 order passed by the Appellate Authority under the Payment of Gratuity Act dated 4.11.2000. The Appellate Authority upheld the order of the Controlling Authority (District Labour Officer, Thodupuzha) whereunder it was ordered that the employee (4th respondent herein) is entitled to get Rs. 11,952/- as gratuity and interest at the rate of 10% from 1.4.1993. The petitioner, who is a reputed Ayurvedic Establishment, contends that the delay in filing the application by the employee, who was a salesman, has not been adverted to by the Appellate Authority, even though at the time of earlier demand, this Court had directed that this aspect also had to be taken notice of. The operative portion of the judgment in

"The management is at liberty to agitate the matter before the appellate authority on merits including the jurisdiction of the Controlling Authority under the Payment of Gratuity Act that the delay was not properly condoned."

2. The aspect of delay, as such is not seen specifically considered when the order was passed. Considering the circumstance that only a nominal balance amount is

payable by the petitioner-employer, I do not think that the matter is to be kept pending any more.

3. The Government Pleader points out the statute prescribes for deposit of gratuity payable to an employee if not claimed. It is therefore as much a duty on the part of the employer to pay gratuity to a retired employee, and he need not wait for an application to make a payment.

4. I may examine this position in the light of the submissions made. S. 7 of the Act deals with determination of gratuity. It of course refers to a formal application to be made, but S. 7(2) imposes a duty on the employer to determine the amount payable as gratuity and give notice thereof to the employee and the Controlling Authority. It is specifically stated that this duty is there, whether an application under S. 7(1) is made or not. S. 7(3) requires such payment to be made within the stipulated time. Interest for belated payment is statutorily fixed by S. 7(3-A) and if there is dispute, the amount as per his calculation at least has to be deposited.

5. As seen from the orders, there was no dispute about employment or length of service, of the employee, but the dispute was concerning the last down wages. S. 7(4)(b) provides that if there is a dispute as to the amount of gratuity payable, or in such like circumstance, an application to the controlling authority could be made.

6. R. 7 of the Gratuity Rules of course make reference to application to be filed, and within a prescribed time. But these cannot of course be taken as over reaching the provisions of S. 7(2) of the Act. Perhaps the impact of the Amending Acts (22 of 1987 with effect from 1.10.1987) and (25/1984 with effect from 1.7.1984) has not been taken notice of by the Rule making body. Whether or not an application is filed, now it is unambiguously laid down that an employer has a duty to pay gratuity. If he disputes it he has to advise the employee of his proposal. The delay can start to run from that point of time. In the aforesaid view, I do not think that the claim of the second respondent has to be rejected on the issue of limitation.

7. Being a beneficial piece of legislation, it has to get a liberal interpretation and the intention of the statute becomes highly relevant when an issue for rejection of a claim is pressed. Establishments which employ less than ten persons are normally outside the purview of the Act. The statute requires for calling of nominations from the serving employees, and by implication, maintenance of complete and proper records including wages that are payable from time to time, and also furnishing of yearly returns to the Inspectors appointed. These are indicative of the mandatory requirement to pay the dues admissible to an employee, who at time may not be aware of his rights. The right being statutory, cannot be equated to a debt, and principles of Limitation Act strictly are not applicable. As pointed out earlier, the liability can be seen only as an obligation which the employer has to obligatorily discharge. Therefore the delay in making

an application cannot be permitted to be capitalised. Further in the present case there was no claim that the employee was advised to a rejection of his application, and therefore in fact the question of delay did not arise. For the only reason that the enforcement authorities did not satisfactorily deal with the issue the matter need not be remitted back, since I have on examination found that delay was not permissible to be pleaded because of the default of the employer.

8. In the aforesaid background, I find no ground to interfere with the orders. The Original Petition is dismissed.