

(2015) 02 GUJ CK 0077
In the Gujarat High Court
Case No : Special Civil Application No. 70 of 2015

Principal	Vs	APPELLANT
Jayantilal Ramanlal Jaiswal and Others		RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Payment of Gratuity Act, 1972 — Section 7

Citation : (2015) 146 FLR 543

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Advocate : Yogi K. Gadhia, for the Appellant; Asmita Patel, Learned AGP, Advocates for the Respondent

Judgement

N.V. Anjaria, J—Present petition is directed against order dated 3rd November, 2014 passed by Appellate Authority, Payment of Gratuity Act, 1972 in Appeal No. 81 of 2014, whereby the said Authority rejected the Appeal on the ground that the same was not filed within 60 days period contemplated under sub-section (7) of section 7 of the Payment of Gratuity Act, 1972. Notice was issued for final disposal on 22nd January, 2015. Since none appeared on behalf of respondent No. 1, Rule came to be issued on 12th February, 2015 making it returnable with observations that on the returnable date the matter shall be proceeded for final consideration even if respondent No. 1 does not appear.

2. Heard learned advocate Mr. Yogi K. Gadhia for the petitioner and learned Assistant Government Pleader Ms. Asmita Patel for respondent Nos. 2 and 3. As stated above, none appeared for respondent No. 1 though served with the Rule of this Court.

3. In this case the Controlling Authority passed order on Application of respondent No. 1 on 19th February, 2014, against which the petitioner preferred Appeal which was not entertained on the ground of delay as stated above.

4. Appeal against the Controlling Authority's order is provided under section 7 of

the Payment of Gratuity Act, 1972. Sub-section (7) of section 7 reads as under.

"7(7) Any person aggrieved by an order under sub-section 94) (sic (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."

4.1. From the above provision it is manifest that Appeal could be preferred within 60 days from the date of order of the Controlling Authority and it could be entertained by the Appellate Authority within 60 further days, on being satisfied that there existed sufficient cause. In this case it is not in dispute that Appeal was delayed by 26 days beyond initial period of 60 days. The total period of limitation available for preferring Appeal is thus 120 days. The Appeal was admittedly filed within the said total period.

5. In condoning delay, a liberal approach is always advocated. And in the instant case the Appellate Authority has apparently acted out of ignorance of statutory provisions holding that the Appeal was beyond 60 days, and therefore delayed. The delay was of 26 days, beyond initial period of 60 days. Further 60 days were allowable in the total 120 days period of limitation. The Appeal was preferred within the said permissible period. The delay ought to have been condoned.

6. In the facts and circumstances of the case and considering the length of delay of 26 days, delay is condoned. The order of the Appellate Authority in not condoning the delay and on that ground alone not entertaining the Appeal is hereby set aside.

7. The Appellate Authority is directed to proceed with the hearing of Appeal No. 81 of 2014 in accordance with law and on merits. The Appellate Authority shall decide the Appeal expeditiously, preferably within six months from the date of receipt of certified copy of this order. Rule is made absolute.