

(2005) 11 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 23578 of 2005

Process Pumps (Private) Limited	Vs	APPELLANT
The Deputy Labour Commissioner, Region I and Another		RESPONDENT

Date of Decision : 21-11-2005

Acts Referred:

Payment of Gratuity Act, 1972 — Section 7, 7 (4), 7 (7)

Citation : (2006) 110 FLR 520 : (2006) 1 KarLJ 414 : (2006) 1 KCCR 308

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Shoba Bhavitatti, for the Appellant; S.Z.A. Khureshi, A.G.A., for the Respondent

Judgement

R. Gururajan, J.—Petitioner-Process Pumps Private Limited, is before me challenging the endorsement dated 26-8-2005 issued by the Appellate Authority under the Payment of Gratuity Act. Respondent 2 jointed services of M/s. All Casts Industries in the year 1992. The said establishment was taken over by the petitioner-company. The second respondent resigned from services and thereafter he approached the Controlling Authority by way of a petition stating that he joined All Cast Industries in the year 1982 and not in the year 1992 and hence he should be paid gratuity for additional period of 10 years. Second respondent failed to produce any document in support of his claim. The Controlling Authority after hearing has passed an award for a sum of Rs. 89,239/- on 11-2-2005. Petitioner filed an appeal before the first respondent. While filing the appeal the petitioner did not produce any certificate evidencing the deposit of the amount ordered by the Controlling Authority. In these circumstances, an endorsement has been issued closing the case of the petitioner. This endorsement is challenged in this petition.

2. Learned Counsel for the petitioner would argue that the Act does not provide for any deposit in terms of Section 7 of the Act. Learned Counsel would say that the petitioner had paid in full the admitted gratuity amount and that therefore

nothing need be deposited in terms of the Act. He says that the insistence by the first respondent is atrocious.

3. After hearing, I have carefully perused the material on record.

4. Payment of Gratuity Act is a welfare legislation. It provides for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. An adjudicatory body is provided under the Act. An application is available claiming for gratuity before the Controlling Authority. The Controlling Authority has to pass an order after hearing the parties. The subsequent appeal is provided against the order of the Controlling Authority. Section 7 of the Act deals with deposit. In the case on hand, we are concerned with proviso to Section 7(7) of the Act. The said proviso provides 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.

5. Section 7(4) of the Act would provide that if there is any dispute as to the amount of gratuity payable to an employee under this Act or as to admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity.

6. The argument of the petitioner is that in the light of Section 7(4) what is required to be deposited is only the admitted liability. I am afraid that this argument would be destructive in character. Section 7(4) provides for deposit of admitted gratuity. That admitted gratuity is referable to a dispute with regard entitlement to receive gratuity of read carefully. That cannot be understood as of no deposit as sought to be argued by the petitioner. In fact the said proviso has been inserted by Act No. 24 of 1984. This very question has been considered by a catena of decisions.

7. The Madras High Court in Special Officer, Kanniyakumari District Co-operative Printing Works Ltd. Vs. Appellate Authority under Payment of Gratuity Act and Others, , has chosen to hold that depositing the amount is a mandatory requirement under the Act.

8. In Sahkari Ganna Vikas Samiti Ltd. Vs. Controlling Authority under Payment of Wages Act, , the Allahabad High Court has ruled that the purpose of the second proviso to Sub-section (7) of Section 7 of the Act is to ensure payment of gratuity payable to the employee by the employer.

9. In 1989 II LLJ 673, Court has chosen to hold that payment of disputed amount in cash is a statutory requirement when appeal is filed against the order passed by the Controlling Authority. Recently the Kerala High Court in Paduppu

Ksheerulpadaka Sahakarana Sangham Limited v. C. Varghese 2004 I LLJ 388, has ruled that the deposit as contemplated under second proviso to Sub-section (7) of Section 7 is in respect of the amount of gratuity ordered to be paid or deposited by the employer. Such deposit would relate only to the balance amount of gratuity if the admitted amount of gratuity had already been deposited under Clause (a) of Sub-section (4) of Section 7. The statute prescribed only the deposit of the gratuity amount and not the interest thereon.

10. From these decisions what is clear to this Court is that the appellant has to deposit the balance amount in the interest of the workman as otherwise workman would be deprived of their rightful share of gratuity in such matters. Gratuity is held to be a payment for meritorious service rendered by workmen. Meritorious service has to be protected by the statute. Taking into consideration the statutory welfare object and also taking into consideration an overall view of various Courts, I am clear in my mind that the appellant has to deposit the entire amount after deducting the amount if any already made over to the second respondent in terms of Section 7(4) of the Act. In the case on hand, since the petitioner has failed to do so, the Appellate Authority is justified in issuing the endorsement. However, in the interest of justice, I deem it proper to provide one more opportunity to the petitioner by way of four weeks time to deposit the amount before the Appellate Authority. If the petitioner deposits in terms of this order, then the Appellate Authority is directed to consider the case on merits despite the impugned order in accordance with law.

Ordered accordingly. No costs.