**(2011) 03 DEL CK 0017**

**In the Delhi High Court**

**Case No :** Writ Petition (Civil) No. 7146 of 2010

P.S. Gupta APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

**Date of Decision :** 16-03-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 1(3), 3, 4, 4(3), 5

**Citation :** (2011) 129 FLR 952 : (2011) 3 LLJ 839

**Hon'ble Judges :** Sudershan Kumar Misra, J

**Bench :** Single Bench

**Advocate :** A.K. Jain, for the Appellant; Neeraj Chaudhary and Mohit Auluck, for the Respondent

**Final Decision :** Dismissed

## Judgement

Sudershan Kumar Misra, J.—The Petitioner was employed by the State Farm Corporation of India Ltd. Admittedly, the requirements of Section 1(3) of the Payment of Gratuity Act, 1972 (for short, "the Act") are satisfied. Section 3 of the said Act enjoins the appropriate government to appoint any officer to be a controlling authority, who shall be responsible for the administration of that Act. Section 4 of the Act directs payment of gratuity to any employee provided the requirements of that Section are satisfied.

2. In this case also, it is the case of the Petitioner that the requirements of this Act are satisfied. The only thing being that according to the Petitioner, by virtue of a memorandam and orders, his entitlement to gratuity is much more than what has been released to him by the Respondent on his retirement. He pegs his total entitlement at Rs. 10 lakhs. According to him, since he has already received Rs. 3.5 lakhs, he is, therefore, entitled to further amount of Rs. 6.5 lakhs.

3. Section 7(4)(a), (b),(c) and (d) provide as follows:

(4)(a) - If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the 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.

(b) Where there is a dispute with regard to any matter or matters specified in Clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

4. Counsel for the Petitioner contends that at the time when the Petitioner retired from service under the relevant rules, the Petitioner''s entitlement was Rs. 3.5 lacs. Furthermore, Section 4(3) of the Act, as it stood at that time, also contemplated that the amount of gratuity payable to an employee shall not exceed Rs. 3.5 lakhs. However, by an office memorandum of 26.11.2008, it was directed that the gratuity of officers, such as the Petitioner, would stand raised to Rs. 10 lakhs, with retrospective effect, from 1.1.2007. It is the Petitioner''s case that if this is given its natural effect, then the Petitioner''s entitlement to gratuity of Rs. 10 lacs came into effect retrospectively from 1.1.2007 when the Petitioner was admittedly in service and was yet to retire on 31.12.2007. He submits that as on the date of his actual retirement, as per Section 4(3) of the Act, the amount of gratuity payable to an employee could not exceed Rs. 3.5 lakhs and, therefore, notwithstanding the fact that Section 4(3) has since been amended and the amount of gratuity payable to an employee can now be up to Rs. 10 lakhs, the controlling authority, which is the appropriate authority u/s 7 of the Act, would have no power or jurisdiction to examine this dispute.

5. To my mind, Section 4(3) does not relate to the jurisdiction to be exercised by the controlling authority. It merely places a ceiling on the gratuity payable to an employee. It does not limit the jurisdiction of the controlling authority to examine the dispute.

6. Admittedly, the claim of the Petitioner is under the Statute. The controlling authority which has been appointed in terms of Section 3 of the Act, is responsible for the administration of the Act. Significantly, in addition to the provision of Section 4(3), Section 5 of the Act also contemplates the right of employees to receive better terms of gratuity from an employer. I, therefore, do not see how the controlling authority appointed under the Payment of Gratuity Act, 1972 would lack jurisdiction to examine this dispute. The Petitioner has

 

shown me no precedent or authority that might persuade me to hold otherwise.

7. In view of the above, and since an adequate alternative remedy is available to the Petitioner under the Payment of Gratuity Act, 1972, this Court is not inclined to exercise its extra ordinary jurisdiction under Article 226 of the Constitution, leaving it open to the Petitioner to approach the appropriate authority, as per law.

8. It is made clear that no opinion is being expressed on the merits of the case of either side, and further, an opportunity is granted to the Petitioner to pursue his claim, if any, before the appropriate authority under the Act. Provided any such claim is moved within four weeks from today, the time spent by the Petitioner before this Court shall be excluded for the purposes of limitation.

9. The petition is dismissed in the above terms.

10. Dasti to counsel for the parties.