
(2016) 02 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Writ Petition No. 152 of 2016

Rajasthan Rajya Sahakari Sangh

APPELLANT

Vs

Deen Dayal Sharma and another

RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4, 7

Citation : (2016) 149 FLR 194 : (2016) LabLR 639

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.N. Bhandari, J. - By this petition, a challenge is made to the order dated 23rd February, 2015 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 so as the order dated 3rd November, 2015, passed by the Appellate Authority.

2. Learned counsel submits that the controlling authority under Payment of Gratuity Act, 1972 had no jurisdiction to accept the application as the petitioner is a cooperate society governed by the Rajasthan Cooperate Societies Act, 2001 (in short "the Act of 2001"). The remedy is provided under the Act of 2001 itself thus impugned orders passed by the controlling authority so as appellate authority are without jurisdiction.

3. It is further submitted that during pendency of the application before the controlling authority, the due amount of gratuity was paid to the employee yet interest @10% has been imposed on the delayed period. It is in ignorance of the financial condition of the society. It runs on "no profit no loss" basis thus at times, it becomes difficult to make due amount in time thus the interest should not have been imposed on the society. In view of aforesaid, impugned orders deserve to be set aside.

4. I have considered the submission made by learned counsel for petitioner and perused the record.

5. The first ground to challenge the order is about the jurisdiction of the authority. As per the Payment of Gratuity Act, 1972 (in short "the Act of 1972"), jurisdiction lies with the controlling authority if there is delay in making payment of gratuity. The exercise of jurisdiction is in the light of provisions of the Act of 1972 itself. The Act of 2001 is State legislation and does not override the provisions of the Central Act, 1972.

6. The Act of 1972 otherwise provides statutory remedy in case of non-payment of gratuity thus is a special legislation. The exercise of jurisdiction by the controlling authority is thus as per the Act of 1972 and not barred by the Act of 2001. An employee may have been remedy under the Act of 2001 as well but it cannot take away his/her right to seek remedy under the Act of 1972. The first argument about maintainability of the claim before the controlling authority under the Act of 1972 cannot be accepted.

7. The other issue is regarding payment of interest. The financial condition of the society is reflected to justify the delay. The petitioner society is under an obligation to make payment of gratuity in time and liability does not come all of sudden but on a retirement of the employee, which can be noticed well in time. In view of above, the only justification given to challenge the imposition of interest, that too, @10% p.a., as per the Act of 1972, is not tenable. On account of poor financial condition of the society, an employee cannot be made to suffer rather retiral benefits are considered to be property of the employee, hence delay attracts interest, that too, when a provision for it exists under the Act of 1972. The State Government has issued a Notification on 1st October, 1987 to determine rate of interest on delayed payment. It is 10% per annum and has been imposed by the authority concerned.

8. In view of discussion made above, I do not find any ground to interfere in the impugned orders. The writ petition so as stay applications are accordingly dismissed.