courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 18/08/2026

(2007) 03 BOM CK 0118

In the Bombay High Court

Case No : Writ Petition No. 2850 of 2006

R.P. Dhanda APPELLANT

Vs

Regional Manager, UCO Bank and Another RESPONDENT

Date of Decision : 05-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity (Central) Rules, 1972 — Rule 10, 10(1), 11, 12, 13
Payment of Gratuity Act, 1972 — Section 10(1), 4, 7, 7(2), 7(3)

Citation : (2007) 6 ALLMR 54 : (2007) 4 BomCR 321 : (2007) 113 FLR 1080 : (2007) 3 LLJ 106 : (2007) 4 MhLj 267

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : Jaiprakash Sawant, for the Appellant; Pushkar Baware, instructed by D.H. Law Associates, for the Respondent

Final Decision : Allowed

Judgement

V.C. Daga, J.—Rule, returnable forthwith.

2. Mr. Baware waives service for respondent No. 1. Respondent No. 2 is a formal party, hence service to respondent No. 2 is dispensed with. Heard finally by consent of parties.

3. This petition is directed against the order dated 28th August, 2006 (Exh."L") passed by respondent No. 2, the Appellate Authority under Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central), Mumbai ("Appellate Authority" for short) thereby reversing the order dated 23rd February, 2006 passed by the Controlling Authority under the Payment of Gratuity Act and the Assistant Labour Commissioner (Central), Mumbai ("Controlling Authority" for short) directing respondent No. 1 to pay to the petitioner the gratuity amounting to Rs. 3,50,000/- along with interest at the rate of 10% per annum from 31st May, 2000 till the date of payment within thirty days from the date of receipt of the order.

The Facts:

4. The facts leading to the present writ petition are that the petitioner was in continuous service for about 36 years with respondent No. 1-UCO Bank in Mumbai. He retired from the service with effect from 31st May, 2000. On the same day, petitioner made application to respondent No. 1 requesting to make payment of gratuity. However, no claim of gratuity was settled. No amount of gratuity was paid to the petitioner. The petitioner appears to have contacted various bank authorities but he could not get the amount of gratuity in spite of repeated requests made in that behalf.

5. It appears that the petitioner filed Consumer Complaint No. 407/2002 before the Consumer Disputes Redressal Commission, Maharashtra State, Mumbai which came to be rejected for want of jurisdiction.

6. The petitioner, ultimately, moved an application dated 12th July, 2005 to the Controlling Authority as required under Sections 4 and 7 of the Payment of Gratuity Act, 1972 ("Act" for short) read with Rule 10 of the Payment of Gratuity (Central) Rules, 1972 framed under the Act ("Rules" for short) and prayed for direction against respondent No. 1 for payment of gratuity as claimed in the application. On the same day, petitioner also filed application for condonation of delay in making the application dated 17th July, 2005.

7. The Controlling Authority after hearing parties to the application, was pleased to pass the order dated 23rd February, 2006 and thereunder directed respondent No. 1 to pay to the petitioner the amount of gratuity with interest as stated in the opening para of this judgment.

8. Being aggrieved by the aforesaid order dated 23rd February, 2006, respondent No. 1 preferred appeal dated 7th April, 2006 before the Appellate Authority. The Appellate Authority, vide its order dated 28th August, 2006, was pleased to allow the appeal holding that the application made by the petitioner before the Controlling Authority was barred by limitation and thereby reversed the order dated 23rd February, 2006 passed by the Controlling Authority.

9. Being aggrieved by the aforesaid order of the Appellate Authority, the petitioner has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to set aside the impugned order dated 28th August, 2006 and also to seek restoration of the order 23rd February, 2006 passed by the Controlling Authority directing payment of gratuity with interest thereon.

Submissions:

10. The learned Counsel for the petitioner submits that the impugned order suffers from an error apparent on the face of record as the application of the petitioner could not have been rejected by the Appellate Authority holding it to be barred by limitation. He placed reliance on the judgment of the learned single Judge of this Court in the case of Gurunath Vithal Tamse v. National Textile

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rp-dhanda-appellant-hash-regional-…

Corporation (N.M.) 2002 (1) CLR 809 to contend that the legislature has not specified any particular period of limitation for moving the Controlling Authority to seek amount of gratuity due and outstanding to an employee. He, thus, urged that the issue of limitation itself could not have been applied by the Appellate Authority to the application moved before the Controlling Authority. Alternatively, he submits that in the application seeking condonation of delay; sufficient cause for condonation of delay in submitting application dated 12th July, 2005 was demonstrated before the Controlling Authority. According to him, considering the cause shown, the Appellate Authority could not have held that the application made by the petitioner to claim amount of gratuity was barred by limitation. He, thus, submits that the impugned order is liable to be quashed and set aside and the order of the Controlling Authority is liable to be restored.

11. Per contra, learned Counsel for respondent No. 1- Bank submits that no order was passed by the Controlling Authority condoning delay in moving application under Sections 4 and 7 of the Act. He further submits that the Controlling Authority had no jurisdiction to decide the application for gratuity unless the delay was condoned after hearing both parties. In his submission, in absence of any specific order condoning delay, the order of the Controlling Authority was without jurisdiction and, therefore, the Appellate Authority was perfectly justified in reversing the said order.

12. Learned Counsel for respondent No. 1 also brought to my notice that the petitioner is occupying residential accommodation owned and possessed by respondent No. 1- Bank. The Bank did not release amount of gratuity because the petitioner employee refused to vacate the accommodation allotted to him while he was in service. He further submits that the cheque for gratuity amount, though ready, was not released in favour of the petitioner-employee for the said reason. He further urged that the Bank has no objection to pay the amount of gratuity in the sum of Rs. 3,50,000/- to the petitioner without any interest, subject to the petitioner-employee vacating the Bank''s premises allotted to him, while he was in service.

13. In rejoinder, learned Counsel for the petitioner urged that, at any rate, if the Appellate Authority was of the opinion that there was no order passed by the Controlling Authority condoning delay, in that event, the proceedings ought to have been remitted back to the Controlling Authority for considering the question of delay.

14. The learned Counsel for the petitioner also relied upon two judgments of this Court; (i) Ramilal v. M/s Elphinstone Spg. and Wvg. Mill Co. Ltd. 1984 L I.C. 1703 and (ii) Air India Ltd. v. Appellate Authority Payment of Gratuity and Ors. 1999 (I) Mh.L.J. 755 : 1999 (1) CLR 291 to contend that the claim of gratuity cannot be denied to the employee on the ground that the employee is not surrendering the possession of the premises given to him. Learned Counsel also placed reliance on the judgment of the Apex Court in the case of Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, to contend that

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rp-dhanda-appellant-hash-regional-…

the retire mental benefits cannot be adjusted or appropriated for satisfaction of any dues outstanding against the retired employee. Without prejudice to the above submissions, learned Counsel further submits that if respondent No. 1-Bank pays the amount of gratuity to the petitioner along with interest thereon as ordered by the Controlling Authority, the petitioner would be willing to vacate the premises of the Bank which is in his possession.

15. In reply to the above, learned Counsel for respondent No. 1 placing reliance on the recent judgment in the case of Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warrier, contends that as per the Apex Court judgment the employer is allowed to withhold the amount of gratuity by deducting amount found due to it and payable by the employee towards penal charges for unauthorised occupation of the quarter. He also brought to my notice that the Apex Court while taking this view has considered the case of Gorakhpur University (supra) and distinguished the same. As such, in his submission, action of respondent No. 1- Bank is perfectly legal and valid. He, thus, submits that the Controlling Authority could not have directed payment of interest on the amount of gratuity. He, thus, submits that the order of the Controlling Authority being illegal cannot be restored by this Court under its extra ordinary writ jurisdiction.

Event before this Court:

16. During the course of hearing, learned Counsel for respondent No. 1-Bank tendered Pay Order of Rs. 3,50,000/- drawn in favour of the Prothonotary and Senior Master, High Court, Mumbai for being paid to the petitioner, subject to his vacating the accommodation of the Bank occupied by him.

17. This Court after receiving the aforesaid amount tried to persuade the petitioner to vacate the premises leaving the question of interest open for being decided by this Court. However, learned Counsel for the petitioner, on instruction of his client, who was present in the Court, expressed his inability to accept the suggestion made by the Court and also refused to vacate the premises of the Bank occupied by the petitioner unless amount determined by the Controlling Authority is paid in full and final.

Consideration:

18. Having heard rival parties, it is not in dispute that the petitioner has retired from service on 31st May, 2000. It is also not in dispute that he is entitled to receive amount of gratuity under the Act. With this, if one turns to the provisions of the Act and the scheme engrafted therein, it would be clear that the employer is under statutory duty to pay the gratuity due and payable to the employee, inter alia, on his attaining the age of superannuation. Sub-section (2) of Section 7 of the Act, in fact, creates an obligation, that the employer shall, as soon as gratuity becomes payable, whether an application has been made or not, determine the amount of gratuity and give a notice in writing to the employee and the Controlling Authority specifying the amount of gratuity so determined. Under Sub-section (3) of Section 7, the employer has to arrange to pay the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rp-dhanda-appellant-hash-regional-…

amount of gratuity within 30 days from the date it becomes payable. Sub-section (4) contemplates that an application can be made to the Controlling Authority where a dispute arises, inter alia; in relation to a claim for the payment of gratuity.

19. With the above, if one turns to the rules framed under the Act, Rule 7 provides that an employee, who is eligible for payment of gratuity under the Act, or any person authorised, in writing, to act on his behalf, can apply, ordinarily, within thirty days from the date the gratuity became payable, in Form T to the employer.

20. Rule 10 prescribes for application to the Controlling Authority for direction. Sub-rule (1) of Rule 10 prescribes that if the employer amongst other, having received an application under Rule 7 of the Rules, fails to issue any notice as required under Rule 8 within the time specified therein; then the claimant employee, nominee or legal heir, as the case may be, may, within ninety days of the occurrence of the cause for application, apply in Form ''N'' to the Controlling authority for issuing a direction under Sub-section (4) of Section 7 with as many extra copies as are the opposite parties. The Controlling Authority can accept any application under this sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period therein. Rule 11 deals with the procedure for dealing with such application, whereas Rules 12 to 16 deal with procedural aspects of the matter. Rule 17 deals with the decision on the application.

21. Sub-section (7) of Section 7 also prescribes period of limitation of sixty days for filing appeal against the order of the Controlling Authority. It is provided therein that the delay, if any, beyond sixty days can be condoned by the authority on satisfaction of sufficient cause. Rule 18 provides for procedure with regard to filing of appeal as provided under Sub-section (7) of Section 7 of the Act.

22. Having taken survey of the provisions of the Act and Rules, it is clear that the period of limitation is provided for moving an application to the Controlling Authority, to claim the amount of gratuity. The rule governing the limitation appears not to have been brought to the notice of the learned single Judge when the case of Gurunath Vithal Tamse (supra) was heard and decided, as such ratio of the said judgment cannot be accepted as an authority to hold that no period of limitation is prescribed to move an application to the Controlling Authority under the Act and Rules framed thereunder.

23. In the above backdrop, turning to the case on hand, after receipt of application u/s 7 along with application for condonation of delay, the Controlling Authority ought to have taken up the application for hearing only upon condonation of delay in preferring application u/s 7 of the Act as per the law laid down by the Apex Court in the case of Gagandeep Pratishthan Pvt. Ltd. and Others Vs. Mechano and Another, . The petitioner did make an application for condonation of delay. However, the Controlling Authority failed to consider the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rp-dhanda-appellant-hash-regional-…

same. Consequently, the said authority failed to condone delay in preferring the application u/s 7. In absence of condonation of delay, it was not open to the Controlling Authority to deal with the application on merits, rather it had no jurisdiction to consider the same in view of the law laid down by the Division Bench of this Court in Mathuradas Mohta College of Science v. R.T. Borkar 1997 (2) Mh.L.J. 168.

24. In the above view of the matter, the Appellate Authority was perfectly justified in reversing the order of the Controlling Authority and allowing the appeal holding that the application u/s 7(4)(b) read with Section 10(1)(iii) was not maintainable since it was filed beyond the period of limitation prescribed under the Rules.

25. The Appellate Authority having reversed the order of the Controlling Authority was not expected to stop by merely allowing the appeal but it ought to have remitted the matter back to the Controlling Authority for consideration of the application for condonation of delay, which was made by the petitioner and not considered by the Controlling Authority. It was a lapse on the part of the Controlling Authority in not considering the application for condonation of delay. The petitioner cannot be made to suffer because of the lapse on the part of the Controlling Authority, who had failed to consider prayer for condonation of delay in preferring application to claim amount of gratuity.

26. The impugned order is, thus, liable to be set aside. The proceedings are liable to be remitted back to the Controlling Authority with direction to consider the application for condonation of delay; and, after condonation of delay; to decide the application seeking to claim amount of gratuity on its own merits; following principles of natural justice; by a reasoned order; taking into account the law laid down by the Apex Court in the case of Secretary, ONGC Ltd. v. V.U. Warner (supra).

27. The Prothonotary and Senior Master of this Court is directed to remit the amount of Rs. 3,50,000/-, deposited by respondent No. 1- Bank in this Court, to the Controlling Authority. The Controlling Authority is directed to hold this amount in fixed deposits and deal with the same subject to the result of the application.

28. It is needless to mention that pending consideration of the substantive application the Controlling Authority shall permit withdrawal of the amount to the petitioner- employee, subject to his vacating bank premises allotted to him for his residence when he was in service. In the event petitioner- employee refuses to vacate the premises, then, this factor should be taken into account at the time of final disposal of the application so as to adjust equities between the parties. All rival contentions on merits are kept open. Order accordingly.

29. In the result, petition is allowed. Rule is made absolute in terms of this order with no order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/rp-dhanda-appellant-hash-regional-…