
(1993) 02 AHC CK 0025
In the Allahabad High Court
Case No : C.M.W.P. No. 4438 of 1989

Sahkari Ganna Vikas Samiti Ltd.

APPELLANT

Vs

Controlling Authority under Payment of Wages Act

RESPONDENT

Date of Decision : 03-02-1993

Acts Referred:

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

Citation : (1993) AWC 1254 : (1993) 2 LLJ 1108 : (1994) 1 UPLBEC 480

Hon'ble Judges : D.S. Sinha, J

Bench : Single Bench

Advocate : Shashi Nandan, for the Appellant; H.S.N. Tripathi, S.C., for the Respondent

Judgement

D.S. Sinha, J.—Heard Sri Shashi Nandan, learned counsel appearing for M/s. Sahkari Ganna Vikas Samiti Ltd., Baitalpur, Deoria, the petitioner, and Sri. H.S.N. Tripathi, learned counsel representing the contesting respondent No. 3 in each writ petition, at length and in detail.

2. Exercising powers under Sub-section (4) of Section 7 of the Payment of Gratuity Act, 1972 (hereinafter called the Act) the Controlling Authority passed orders dated March 30, 1988 directing the petitioning Samiti to pay certain amount to the contesting respondent No. 3 by way of gratuity. Aggrieved by the orders of the Controlling Authority Samiti has preferred appeals under Sub-section (7) of Section 7 of the Act before the Appellate Authority. Noticing non-compliance of the provisions of the second proviso to Sub-section (7) of Section 7 of the Act, the Appellate Authority passed orders dated February 13, 1989 holding the appeals of the Samiti to be not in accordance with law and directing the appeals to be consigned. The orders of the Appellate Authority are under challenge in these writ petitions under Article 226 of the Constitution of India.

3. Sub-section (7) of Section 7 of the Act entitles a person aggrieved by an order under Sub-section (4) of Section 7 of the Act to prefer an appeal to the appropriate Government or such other authority as may be specified by the

appropriate Government in this behalf within 60 days of the receipt of order. First proviso to Sub-section (7) of Section 7 of the Act empowers the appropriate Government or the Appellate Authority to extend the period of 60 days fixed for preferring the appeal, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period of 60 days. Second proviso to Sub-section (7) of Section 7 of the Act provides that no appeal by an employer shall be admitted unless 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) of Section 7 of the Act, or deposits with the Appellate Authority such amount.

4. It is not disputed that the appeal was preferred by the petitioning Samiti within 60 days from the date of the receipt of the order, as stipulated by Sub-section (7) of Section 7 of the Act. The cause of trouble is non-compliance of the condition with regard to production of certificate of the Controlling Authority evidencing deposit with him of the amount of gratuity required to be paid under Sub-section (4) of deposit there of with the Appellate Authority. In Sub-section (7) of Section 7 of the Act two stages are contemplated; one is preferring of an appeal within a period of 60 days from the date of receipt of the order passed under Sub-section (4), and the other is admittance or acceptability of the appeal. Second proviso to Sub-section (7) of Section 7 of the Act prohibits admission or acceptance of the appeal unless either of the twin conditions, namely, the production of certificate of the Controlling Authority showing the requisite deposit under Sub-section (4) of Section 7 of the Act or deposit of such amount with the Appellate Authority is satisfied. It is not in dispute that the petitioner has not complied with the requirement of second proviso of Sub-section (7) of Section 7 of the Act. The view of the Appellate Authority that the appeal of the petitioner was not in accordance with law cannot, therefore, be assailed. At the same time the impugned orders of the Appellate Authority cannot be taken to mean dismissal of the appeals as, evidently, the appeals have been directed to be consigned only.

5. Sri Shashi Nandan, learned counsel for the petitioner, states that the petitioner has been and is still willing to deposit with the Appellate Authority the amount of gratuity directed to be paid by the petitioner under the orders of the Controlling Authority dated March 30, 1988. He prays that this Court may permit the petitioner to make the requisite deposit so that the appeals of the petitioner may be admitted and decided on merits.

6. The purpose of the second proviso to Sub-section (7) of Section 7 of the Act is to secure and ensure payment of the gratuity payable to the employee by the employer. The Court, therefore, considers it expedient in the interest of justice to permit the petitioner to deposit with the Appellate Authority the amount directed to be paid by it to the contesting respondent No.3 by way of gratuity under Sub-section (4) of Section 7 of the Act, and the petitioner is so permitted. The deposit

shall be made with the Appellate Authority within a period of 60 days from the date of receipt of a certified copy of this order and judgment by the petitioner. If the petitioner makes the requisite deposit, as directed herein, its appeals shall be admitted and decided on merits by the Appellate Authority as expeditiously as possible but not later than 60 days of the date of the admission of the appeal. On its failure to make the requisite deposit the appeals of the petitioner shall stand dismissed. The petitions stand disposed of accordingly.