
(2023) 08 SHI CK 0095

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 5367 Of 2023

SD Senior Secondary School, Ganj Baza

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 18-08-2023

Acts Referred:

Citation : (2023) 08 SHI CK 0095

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : M.L. Sharma, Rajan Kahol, Vishal Panwar, B.C. Verma, Rahul Thakur, Ravi Chauhan, Twinkle Verma, Vishal Singh Thakur, Arun Kaushal

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Being aggrieved and dissatisfied with order dated 20.4.2023 (Annexure P -7), whereby Deputy Labour Commissioner-cum-Appellate Authority, Shimla dismissed the appeal filed by petitioner under S.7(7) of the Payment of Gratuity Act 1972 (hereinafter, 'Act') on account of non-deposit of amount of gratuity determined by the Controlling Authority, the petitioner has approached this Court, in the instant proceedings filed under Art. 226 of the Constitution of India, praying therein to quash and set aside the aforesaid order.

2. Precisely, the grouse of the petitioner as highlighted in the petition and further canvassed by Mr. M.L. Sharma, learned counsel for the petitioner is that despite there being specific direction contained in order dated 20.1.2023, passed by this court in CWP No. 389 of 2023 and connected matters, whereby a direction was issued to the Deputy Labour Officer-cum-Appellate Authority to decide the appeal filed by the petitioner afresh after affording opportunity of hearing, appellate authority again proceeded to dismiss the appeal on the ground that the petitioner herein has not deposited the amount of gratuity determined by Controlling Authority.

3. Record reveals that prior to filing of the petition at hand, petitioner alongwith other similarly situate persons had approached this court by way of CWP No. 389 of 2023 alongwith connected writ petitions i.e. CWP No. 390-416 of 2023, on the ground that Appellate Authority is not permitting the petitioner herein to furnish bank guarantee qua the amount ordered to be deposited by Controlling Authority on account of payment of gratuity.

4. Vide order dated 20.1.2023, this Court quashed the order dated 20. 12.2022 and remanded the cases back to the Deputy Labour Officer-cum-Appellate Authority, with a direction to decide the same afresh within one month.

5. Though pursuant to aforesaid order, the Deputy Labour Officer-cum-Appellate Authority decided the matter afresh but again rejected the appeal on the ground of non-deposit of amount of gratuity determined by Controlling Authority.

6. Though, Mr. B.C. Verma, learned Additional Advocate General representing respondents No.1 to 3 vehemently argued that perusal of impugned order clearly reveals that appeal having been filed by petitioner herein was not dismissed solely on ground of non-deposit of amount but on other grounds also, but having perused the order impugned in the instant proceedings, in its entirety, this court finds no force in the submission of learned Additional Advocate General.

7. Bare perusal of order impugned in the instant proceedings clearly reveals that on account of non-compliance of mandatory provision of depositing of amount by the petitioner herein, appellate authority refused to entertain the appeal filed by the petitioner

8. Admittedly, in the case at hand, amount determined by Controlling Authority has not been deposited by the petitioner (employer) but since it had offered to furnish bank guarantee, equal to amount determined by the Controlling Authority, appellate authority ought not have dismissed the appeal on account of non-deposit of amount, rather, while permitting the petitioner to furnish bank guarantee, it ought to have decided the appeal on merit.

9. Otherwise also, record reveals that in similar writ petition i.e. CWP No. 4754 of 2023, filed by the petitioner herein, laying challenge to order of appellate authority, this Court has directed the petitioner herein to deposit award determined by Controlling Authority alongwith upto-date interest in the Registry of this court or furnish bank guarantee equivalent to the assessed/determined amount, within six weeks.

10. Very purpose of calling upon the employer to deposit amount determined by Controlling Authority at the time of appeal is to ensure that after decision of appeal, claimant is not made to run from pillar to post to get his admissible amount on account of gratuity. Since in the case at hand, petitioner herein being employer is ready and willing to furnish Bank Guarantee equivalent to amount determined by Controlling Authority, no prejudice if any, shall be caused to the claimant because, in the event of dismissal of appeal, interest of claimant shall

remain secured on account of furnishing bank guarantee of equal amount by the petitioner.

11. Apart from above, this court finds that no other grounds as raised by the petitioner i.e. limitation, liability of state to the extent of 95% and effect of Contributory Pension-cum-Provident Fund Scheme 2008 has been taken into consideration by Deputy Labour Officer-cum-Appellate Authority, while passing impugned order.

12. In view of above, present petition is allowed and order dated 20. 4.2023 (Annexure P-7), passed by Deputy Labour Officer-cum-Appellate Authority, Shimla is quashed and set aside. Appeal is remanded back to Deputy Labour Officer-cum-Appellate Authority with direction to decide the same afresh, subject to furnishing bank guarantee equivalent to amount determined by Controlling Authority alongwith a certificate in terms of Second Proviso to S.7(7) of the Act *ibid*, which 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 subsection (4), or deposits with the appellate authority such amount" by petitioner within a period of six weeks from today.

Petition stands disposed of in the afore terms alongwith all pending applications.