(2000) 11 MAD CK 0048

In the Madras High Court

Case No : Writ Petition No. 19504 of 1994

Special Officer, Kanniyakumari District Co-operative Printing Works Ltd.	APPELLANT
Vs	
Appellate Authority under Payment of Gratuity Act and Others	RESPONDENT

Date of Decision : 03-11-2000

Acts Referred:
Payment of Gratuity Act, 1972 — Section 7(7)

Citation : (2001) 89 FLR 538 : (2001) 1 LLJ 1078 : (2001) 1 MLJ 459

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : John Sunderlal Suresh, for S.P. Peppin Fernando, for the Appellant; S. Rajendran, for Respondent Nos. 1 and 2, L.O.M. Magesh, for R. Anthony Xavier, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—This writ petition has been preferred against the order of the first respondent Appellate Authority constituted

under the provisions of the Payment of Gratuity Act, 1972 holding that the petitioner did not prefer the appeal within the stipulated period, that the

appeal preferred by the petitioner after one year and seven months cannot be entertained by virtue of the provisions contained in Section 7(7) of

the Payment of Gratuity Act, 1972. According to the petitioner after receipt of the order dated August 28, 1992 of the Controlling Authority, on

September 5, 1992 the petitioner filed the appeal on September 30, 1992 and that the same was returned on October 17, 1992 on the ground

that the appeal was not properly filed in compliance with Section 7(7) of the Act. The petitioner claimed that the appeal which was returned on

October 17, 1992 was re-submitted on October 24, 1992, that thereafter nothing was heard till January 27, 1993 when certain particulars were

called for by the first respondent. According to the petitioner, after the petitioner''s reply dated February 15, 1993 to the first respondent''s

communication dated January 27, 1993, there was no further communication from the first respondent till the petitioner made a representation on

September 25, 1993 about the fate of the appeal filed by the petitioner. It is also claimed that only thereafter on finding that the papers filed by the

petitioner could not be traced, a duplicate copy of the proceedings were filed on March 11, 1994 along with an amount of Rs. 7,849 ordered by

the second respondent. It was in those circumstances, the first respondent passed the impugned order holding that admittedly the deposit of the

amount ordered by the second respondent was made beyond the period prescribed under Sub-section (7) of Section 7 of the Act and therefore,

the appeal cannot be treated to have been filed within the stipulated time.

2. After hearing learned counsel for both sides, I am of the view that the writ petition deserves to be dismissed for the reasons stated hereunder.

Second proviso to Sub-section (7) of Section 7 of the Act reads as under:

Any person aggrieved by an order under Sub-section (4) may, within sixty days from the date of receipt of order, prefer an appeal to the

appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by

sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal......

A reading of the second proviso makes it clear that in order to entertain an appeal by an employer under the said provision, the deposit of the

amount ordered by the Controlling Authority is mandatory. Sub-section (7) stipulates that any person aggrieved by an order made u/s 4 can prefer

the appeal within 60 days and the first proviso to Sub-section (7) provides for further period of 60 days within which if the appeal had been filed

with sufficient explanation for not preferring the appeal within the first period of 60 days, the appeal could be entertained. But in either case, if the

deposit of the amount ordered by the Controlling Authority is not made as provided under the second proviso to Sub-section (7) or the first

proviso to the sub-section, there would be no scope for the first respondent to entertain the appeal. Admittedly, the petitioner has not deposited

the amount ordered by the Controlling Authority within the said period of 120 days as provided under Sub-section (7). On the other hand, it is

established beyond doubt that the deposit was made nearly one year and seven months after the date of receipt of the order of the Controlling

Authority. The first respondent therefore rightly rejected the appeal on that sole ground that the appeal had been filed beyond the period

prescribed under the provisions of the Act. When the appeal was not filed in the manner in which it ought to have been filed, it cannot be held that

even if the memorandum of appeal grounds had been filed within the stipulated time without necessary deposit to be made under the second

proviso to Section 7(7), the appeal was filed within time. When statute has prescribed a specific period and also made it mandatory for the party

intending to prefer an appeal against the order of the Controlling Authority that along with the appeal the proof for deposit of the amount ordered

by the Controlling Authority should be enclosed, it is incumbent on the party concerned to comply with the said provision in letter and spirit in

order to make him eligible to be heard by the Appellate Authority. When the petitioner failed to comply with the mandatory provision, he cannot

be heard to complain against the action of the statutory authority functioning under the Act. In such circumstances, the order of the first respondent

in rejecting the appeal which was admittedly not filed in the manner prescribed under the relevant provision, there is no scope for interfering with

the said order of the first respondent. Therefore the writ petition fails and the same is dismissed.

3. It is stated that the petitioner subsequently deposited the amount ordered by the Controlling Authority and the same is lying in deposit with the

first respondent. Since the order of the Controlling Authority has become final, the first respondent is directed to disburse the amount deposited

with it to the third respondent on receipt of copy of this order.