(2023) 04 SHI CK 0074

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No.1642 Of 2022

State Of H.P. & Another APPELLANT

Vs

Kaul Singh RESPONDENT

Date of Decision : 13-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 143, 226
Payment Of Gratuity Himachal Pradesh Rules, 1972 — Rule 10(1)
Payment Of Gratuity Act, 1972 — Section 7,7(4), 7(7), 8
Electricity Act, 2003 — Section 120, 121, 123, 124, 125
Limitation Act, 1963 — Section 3, 5, 29, 29(2)

Citation : (2023) 04 SHI CK 0074

Hon'ble Judges : Sabina, J;Satyen Vaidya, J

Bench : Division Bench

Advocate : Pranay Pratap Singh, Vijay Kaundal

Final Decision : Dismissed

Judgement

Sabina, J

1. Petitioner-State has filed the petition under Article 226 of the Constitution of India, seeking following relief:-

"i). That the impugned award Annexure P-1 & P-2 dated 19.02.2021 & 07.01.2020 may kindly be quashed and set aside in the interest of justice."

2. We have heard learned counsel for the parties and have gone through the record available on the file carefully.

3. Respondent had filed the application under Section 4, read with sub-rule (1) of Rule 10 of the Payment of Gratuity Himachal Pradesh Rules, 1972. The said application was allowed by the Controlling Authority-cum-Labour Officer Mandi Zone, vide order dated 7th January, 2020 with following observations:

" Therefore, the due amount of gratuity of Rs.34,875-10875=Rs.24,000/- (Rupees twenty four thousand only) is determined to the applicant. Further the applicant should be paid interest on the delayed payment of gratuity @9% simple interest per annum from the date of filing the application till the payment is actually made to him.

Keeping in view the aforesaid facts and findings, I order that due admissible amount of gratuity be paid to the applicant by the respondent employer for the services rendered by the applicant within one month in accordance with the provisions of the payment of Gratuity Act, 1972 and aforesaid rate of interest be paid as per section 7(3) of the ibid Act on the due amount of gratuity as in the case instant case no exemption as required under Section (5) has been obtained."

4. Aggrieved against the order dated 7th January, 2020, petitioners preferred an appeal before the Appellate Authority under Sub Section 7 & 8 of Section 7 of the Payment of Gratuity Act, 1972. The said appeal was dismissed by Joint Labour Commissioner-cum-Appellate Authority vide order dated 16th March, 2021 on the ground that the appeal was time barred.

5. The question that requires to be considered is as to whether the Appellate Authority had the power to condone the delay in filing the appeal.

6. Section 7(7) of the Act reads as under:-

" 7(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the 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 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 sub-section (4), or deposits with the appellate authority such amount."

7. Thus, any person, who is aggrieved by the order passed under sub-section 4 of Section 7 of the Act could file an appeal within 60 days from the receipt of the order and the said period could be further extended by 60 days in case the appellate authority was satisfied that the appellant was prevented by sufficient cause from preferring an appeal within 60 days.

8. In the present case, the order passed by the Controlling Authority-cum-Labour Officer is dated 7th January, 2020. However, the appeal was filed on 18th September, 2020. Thus, the appeal was filed much beyond the period of limitation.

9. The Hon'ble Supreme Court, in Suryachakra Power Corporation Limited versus

Electricity Department, (2016) 16 Supreme Court Cases, 152, while interpreting Section 125 of the Electricity Act, 2003, having similar provisions as Section 7(7) of the Act, has held as under:-

“5. The appeal under Section 125 of the Electricity Act, 2003 in Supreme Court has to be filed within 60 days from the date of communication of the decision or order of the Appellate Tribunal. However, the Supreme Court, if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period of 60 days, may allow it to be filed within a further period not exceeding 60 days. Thus, the maximum period within which an appeal can be filed under Section 125 is 120 days which includes the discretion granted to the Supreme Court to condone the delay limited to 60 days. The Supreme Court cannot condone the delay beyond 60 days by invoking Section 5 of the Limitation Act, 1963 and ignoring the special limitation prescribed under the Electricity Act, 2003. This Court, in Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission, at para 32, has settled this issue:

“32. In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract the applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory.”

10. The Hon’ble Supreme Court, in Oil and Natural Gas Corporation Limited Versus Gujarat Energy Transmission Corporation Limited, (2017) 5 Supreme Court Case, 42 has held as under:-

“15. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in Supreme Court Bar Assn. Has ruled that there is no conflict of opinion in Antulay's case or in Union Carbide Corporation's case with the principle set down in Prem Chand Garg vs. Excise Commr. Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corporation's case. As the pronouncement in Chhattisgarh SEB lays down quite clearly that the policy behind the Act emphasizing on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution."

11. Hence, we are of the opinion that as per Section 7(7) of the Act, the maximum period of limitation available to the petitioners for filing the appeal against the order passed by the Controlling Authority was 120 days, whereas, in the present case the appeal had been filed much beyond the period of limitation. Thus, the Appellate Authority had rightly dismissed the appeal filed by the petitioners on the ground that it was barred by limitation. No ground for interference is made out.

12. Dismissed.

Pending application(s), if any, shall also stand disposed of.

