

(2009) 12 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No. 15084 of 2008

Sun and Ski Exports Private Limited

APPELLANT

Vs

P.K. Sujith and Another

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Karnataka Payment of Gratuity Rules, 1973 — Rule 11 (4), 11 (5)

Citation : (2010) 1 KarLJ 380

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : J. Kanikaraj, for the Appellant; T. Puttaswamy, for Respondent-1 and Jagadish Mundargi, Government Advocate for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—Having heard the learned Counsel for the parties, the short question that arises for decision making is, "Whether the application filed by the petitioner on 21-10-2008 invoking Rule 11(5) of the Karnataka Payment of Gratuity Rules, 1973 was barred by limitation?"

2. The undisputed facts are that, the order dated 28-7-2008 Annexure-A under Sub-rule (4) of Rule 11 was passed by the Controlling Authority under the Payment of Gratuity Act, 1972, in the absence of the petitioner, and was not communicated to him. However, the petitioner when informed of the said order by the Advocate for the respondent on 13-10-2008 to comply with the order and make payment of Rs. 1,80,770/- as gratuity, led to the petitioner filing an application to set aside the ex parte order Annexure-A.

3. According to Sri Kanikaraj, learned Counsel for the petitioner, the crucial date to be taken for computing 30 days from the date of order ought to be the date of communication of the order and if so done, the application under Sub-rule (5) of Rule 11 would be well-within the period of 30 days.

4. In almost identical circumstances, a similar provision of law under a Minimum

Wages Act read with Andhra Pradesh Minimum Wages Rules, 1960, when considered by the High Court of Andhra Pradesh in *D. Murugappa Mudaliar v. Authority Appointed under the Minimum Wages Act* *D. Murugappa Mudaliar Vs. Presiding Officer, Labour Court, Guntur and Another*, following the reported opinions of the Madras High Court, held that the mere passing of an order under Rule 34(2) of the Andhra Pradesh Minimum Wages Rules, will not start limitation against an affected party, and that limitation will begin to run only when that party had notice or knowledge of the order by its being formally communicated to him or otherwise. In the facts of that case, it was held that the affected party did not have notice or knowledge of the ex parte order passed to his detriment by the authority under Rule 34(2) and came to know only when it was communicated to him on 12-10-1963 and therefore, the period of limitation of one month prescribed by Sub-rule (4) of Rule 34 would begin to run against him only from 12-10-1963 and the application made on 7-11-1963 was before the expiry of one month from 12-10-1963. In that view of the matter, the Andhra Pradesh High Court further held that the order passed rejecting the application for reconsideration, was in clear violation of law and was accordingly quashed.

5. Rule 11(5) reads thus:

11. (5) If the employer concerned fails to appear on the specified date of hearing after due service of notice without sufficient cause, the Controlling Authority may proceed to hear and determine the application ex parte. If the applicant fails to appear on the specified date of hearing without sufficient cause, the Controlling Authority may dismiss the application:

Provided that an order under this Sub-rule may, on good cause being shown within thirty days of the said order, be reviewed and the application reheard after giving not less than fourteen days notice to the opposite party of the date fixed for rehearing of the application.

6. Having regard to Sub-rule (5) of Rule 11 of the Karnataka Payment of Gratuity Rules, 1973, which is similar to Sub-rule (4) of Rule 34 of the Andhra Pradesh Minimum Wages Rules, as extracted in the reported opinion in *D. Murugappa Mudaliar's* case, for the very same reasons as are stated therein, time begins to run only from the date of communication of the order under Sub-rule (4) of Rule 11 of the Rules. In the instant case, the petitioner came to know of the order dated 28-7-2008 Annexure-A, on 13-10-2008 and the application for review filed on 23-10-2008 before the Controlling Authority, was well-within the period of limitation of 30 days.

7. The answer to the question is in the negative and the endorsement dated 20-11-2008 Annexure-B of the Controlling Authority is arbitrary, illegal and deserves to be interfered with.

8. The writ petition is allowed in part. The endorsement dated 20-11-2008 Annexure-B is quashed and the proceeding remitted for consideration afresh by extending reasonable opportunity of hearing to the parties concerned and to pass

orders, in accordance with law.