

(2015) 03 KAR CK 0360

In the Karnataka High Court

Case No : Writ Petition No. 84516 of 2013 (L-KSRTC)

The Divisional Controller, North-West Karnataka Road
Transport Corporation

APPELLANT

Vs

Jamedabi and Others

RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

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

Citation : (2016) 1 AKR 311 : (2015) 146 FLR 227 : (2015) 3 KarLJ 29 : (2015) 4 KCCR 3975

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : Shashikala L. Desai, for the Appellant; Ravi V. Hosamani, Additional Government Advocate, Advocates for the Respondent

Judgement

B. Veerappa, J.

1. Sri Ravi V. Hosamani, learned Additional Government Advocate is directed to take notice to respondents 6 and 7. Notice to respondents 1 to 5 is dispensed with, in view of the memo filed by the learned Counsel for the petitioner stating that she will deposit the amount within four weeks from today before the Appellate Authority.

2. The petitioner-Divisional Controller, North-West Karnataka Road Transport Corporation, Bagalkot Division, Bagalkot filed the above writ petition challenging the order dated 6-8-2012 passed by the Deputy Labour Commissioner/Appellate Authority by issuing an endorsement/order dated 6-8-2012, rejecting the appeal on the ground that while filing the appeal before him, the petitioner has not complied with the provisions of Section 7(7) of the Payment of Gratuity Act, 1972.

3. Respondents 1 to 5 filed an application before the 6th respondent-Assistant Labour Commissioner for difference of gratuity under Rule 4 of the Payment of Gratuity (Central) Rules, 1972. The same was considered by the 6th respondent

and passed the order on 22-11-2011, directing the petitioner-Corporation to pay difference gratuity amount of Rs. 99,763/- with 10% interest, as per Annexure-C in the writ petition. Aggrieved by the said order, the petitioner filed an appeal before the Deputy Labour Commissioner and Controlling Authority who dismissed the appeal by an order/endorsement dated 6-8-2012, mainly on the ground that the petitioner has not paid the statutory deposit, as contemplated under the provisions of Section 7(7) is mandatory for the employer to deposit the award amount before an appeal is filed. The said provision 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".

4. Therefore, the order passed by the Appellate Authority is perfectly justified and is in consonance with the provisions of Gratuity Act.

5. During the course of the arguments, learned Counsel for the appellant has filed a memo to the effect that the petitioner is ready and willing to deposit the differential amount awarded by the Assistant Labour Commissioner within two weeks from the date of receipt of the copy of this order. Memo filed by the Counsel for the petitioner is taken on record.

6. In view of the memo, now the petitioner has come forward before this Court to deposit the amount. In the interest of justice, I deem, it proper to provide one more opportunity to the petitioner to deposit the amount before the Appellate Authority within four weeks. In view of the same the order passed by the Deputy Commissioner/Appellate Authority is set aside. If the petitioner deposits the deferential amount as ordered by the Assistant Labour Commissioner within four weeks, the Appellate Authority shall consider the case on merits in accordance with law. If the petitioner fails to deposit the amount within four weeks, that the order passed by the Appellate Authority stands upheld. It is clarified that the Appellate Authority/Deputy Commissioner shall take up the appeal only if the petitioner deposits the amount as stated above and issue notice to the respondents 1 and 5 and pass appropriate orders in accordance with law.

Sri Ravi V. Hosamani, learned Additional Government Advocate is permitted to

file memo of appearance within a period of four weeks.