

(1983) 02 MAD CK 0034

In the Madras High Court

Case No : Writ Petition No. 1799 of 1979

The Special Officer, Madurai District Central Co-operative
Bank Ltd., Madurai

APPELLANT

Vs

The Appellate Authority under the Payment of Gratuity Act,
Madurai and others

RESPONDENT

Date of Decision : 08-02-1983

Acts Referred:

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

Citation : (1983) 02 MAD CK 0034

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : D. Raju, for the Appellant; P.P. Dinakaran for the Govt. Pleader and Mr. Manilal, for the Respondent

Judgement

Nainar Sundaram, J.—The controversy in this writ petition lies within a limited compass. The third respondent was an employee under the petitioner. He retired from service and the question of payment of gratuity under the Payment of Gratuity Act 39 of 1972 hereinafter referred to as the Act, was agitated before the second respondent and the second respondent, by order, dated 8th July, 1977, determined the gratuity at Rs. 18,027.69 and directed the petitioner to pay third respondent a sum of Rs. 10,902.69 after giving credit to the sum of Rs. 7,125, already paid. This order was admittedly not passed in the presence of the petitioner or after notice to him about the date on which the order was to be passed. There is a communication dated 8th July, 1977, emanating from the second respondent to the petitioner and it merely indicates that the second respondent has passed orders to the above effect and further directed the petitioner to pay the amount referred to above. An order in the real sense, namely, an order containing the reasons for the determination, and the direction was not at all communicated to the petitioner by this communication, dated 8th July, 1977. This communication was received by the petitioner on 13th July, 1977. On 30th July, 1977, the petitioner applied for a certified copy of the order

of the second respondent and this was granted to the petitioner by the communication of the second respondent dated 17th August, 1977. The petitioner preferred an appeal against the order of the second respondent, dated 8th July, 1977, a certified copy of which was actually received by the petitioner by the communication, dated 17th August, 1977, and this appeal was filed before the first respondent on 17th September, 1977. This appeal has been dismissed by the first respondent without going into the merits on the ground that it was filed beyond time as per S. 7(7) of the Act, by order, dated 30th November, 1978. It is this order of the first respondent that is the subject-matter of challenge in the present writ petition, and the petitioner prays for the issue of a writ of certiorarified Mandamus, calling for the records of the first respondent in P.G Ap. No 47 of 1977, dated 30th November, 1978 and of the second respondent in P.G App. No. 59 of 1976, dated 8th July, 1977, and quash the orders of the first respondent dated 30th November, 1978, referred to above and consequentially, direct the first respondent to take up the appeal to his file and dispose it of on merits. The facts recapitulated above are not in dispute. There is no clarity in the order passed by the first respondent on the question of limitation. It is not clear as to whether he has taken the date of receipt by the petitioner of the communication of the result in the case from the second respondent, viz., 13th July, 1977 as the starting point, or the date on which the certified copy of the order of the second respondent was received by the petitioner, viz, 17th August, 1977 as the starting point. S. 7(7) of the Act states as follows--

(7) Any person aggrieved by an order under sub-S. (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.

Sixty days will run from the date of the receipt of the order. The expressions used are "from the date of the receipt of the order". Order definitely cannot mean a bare communication of the result in the case. Order could only mean an order containing the reasons for the decision in the case. The second respondent must either communicate such an order to the affected party so that he can assess the reasons therefor and, if aggrieved, can prefer the appeal provided for, within the time stipulated, viz., sixty days from the date of the receipt of the order. If there is a failure on the part of the second respondent to communicate the order, viz., the order containing the reasons for the decision, the party aggrieved will have no other alternative but to apply for a copy thereof and on receipt of the same alone the time of sixty days would run and on general principles the time requisite for obtaining such a copy will have to be excluded.

The expression used in S. 7(7) of the Act is portent. In contrast to the expressions "from the date of the order" and "after the making of the order" occurring in some of the statutes, the expressions used in S. 7(7) are "from the date of the receipt of the order". Even in the former cases, courts have held that the party aggrieved must have knowledge of the order either by communication thereof by the authority or otherwise when the order was not pronounced in the presence of the party or the party did not have notice of the hearing date when the order was going to be pronounced. Hence, the starting point could only be on receipt of the order. Either the second respondent must communicate the order containing the reasons for his decision to the party affected, or the party affected must receive a copy of such order on making an application therefor and sixty days could be computed either way, only on receipt of such order. There is one salutary principle which cannot be omitted to be taken note of and that is, although a party by himself could not extend the time, yet, if the delay was not by an act of his own but by some act of the court or the authority concerned, that cannot be put against the party. In this sense, the time taken by the party in applying for and receiving the copy of the order against which he prefers the appeal will have to be excluded, especially when the court or the authority, by itself, does not communicate the order. If this is the principle to be applied, the particulars taken note of above, definitely make the appeal filed by the petitioner before the first respondent on 17th September, 1977, within time. Copy was applied for on coming to know of the order, on 13th July, 1977 before the lapse of the time and the appeal itself was filed before the lapse of the time, excluding the time taken for obtaining the copy.

2. Mr. R. Manilal, learned counsel for the third respondent, submits that the receipt of the communication dated 8th July, 1977 by the petitioner on 13th July, 1977 must be deemed to be the receipt of the order passed by the second respondent. This in my view is a misconception. The order which S. 7(7) speaks about must be the reasoned order which could be made the subject-matter of an appeal and on a perusal and on the basis of which alone the appeal could be competently and appropriately preferred. A mere communication of the result in the matter cannot be equated to the order itself. I find that the first respondent has not appreciated and applied the correct principles governing the situation and this obliges me to interfere in writ jurisdiction. Accordingly, the writ petition is allowed ; the order of the first respondent in P.G. App. No. 47 of 1977, dated 30th November, 1978 is quashed ; and the matter will stand remitted to the file of the first respondent for him to take it up on his file and dispose it of on merits in accordance with law. There will be no order as to costs in this writ petition. Considering the lapse of time and since the matter involves payment of gratuity to a retired employee, viz., the third respondent herein, the first respondent is directed to take up the matter and dispose it of within a period of three month from the date of receipt of a copy of this order.