

(2011) 06 MAD CK 0064

In the Madras High Court

Case No : Writ Petition No. 13002 of 2011 and M.P. No's. 1 and 2 of 2011

UCO Bank

APPELLANT

Vs

Controlling Authority under the Payment of Gratuity Act,
Assistant Labour Commissioner and Mrs. Suganthy Gomez

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4(6), 7(7)

Citation : (2011) 06 MAD CK 0064

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Srinath Sridevan, for the Appellant; G.B. Saravana Bhavan, for R2,
for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner is the UCO Bank represented by its Chief Manager. They have come forward to file the present writ

petition, seeking to challenge an order dated 25.04.2011 passed by the first Respondent - Controlling Authority under the Payment of Gratuity Act

cum Assistant Labour Commissioner (Central) I, Chennai.

2. By the impugned order, the first Respondent condoned the delay in filing the gratuity application filed by the second Respondent. When the writ

petition came up on 01.06.2011, notice of motion was ordered by this Court and an interim stay was granted.

3. Heard the arguments of Mr. Srinath Sridevan, learned Counsel appearing for the Petitioner and Mr. G.B.Saravana Bhavan, learned Counsel for

the second Respondent.

4. It is seen from the records that the second Respondent filed a gratuity application before the first Respondent, claiming gratuity payable to her

husband late Jeyaraj Gomez, who was employed by the Petitioner bank. The second Respondent's husband was employed in the Petitioner Bank

from 07.10.1971 till 31.10.2006. At the time of compulsory retirement, he was working as an Assistant Manager at Tirunelveli Branch. He had

put in 35 years of service in the Bank and his last drawn salary was Rs. 28,500/-. He was compulsorily retired on 29.09.2006. Her husband

passed away on 03.06.2009. When the second Respondent was pursuing the gratuity claim, she was informed by the Assistant General Manager

by a communication dated 26.03.2007 that the gratuity payable to her husband had been forfeited because of his misconduct. Thereafter, she sent

an application for gratuity and when the same was not forthcoming, she filed the gratuity application, however, with a delay of 1443 days. Hence,

she filed an application to condone the delay.

5. On notice to the Bank, they had filed a counter statement stating that the delay was long and unexplained. Therefore, the authority should not

consider the delay. But it is the case of the second Respondent that she met with an accident in the year 2006 and in the same year, her mother-in-

law had also passed away. Only when she pursued the gratuity application, she came to know that it has been forfeited by the Bank and hence,

there was a delay.

6. The authority on hearing the parties and the reasons adduced by the second Respondent condoned the delay vide order dated 25.04.2011. The

authority had stated that there were sufficient reasons to condone the delay. Instead of fighting the case on merits, the Petitioner Bank has come

forward to challenge the same.

7. Since the Petitioner has not filed any counter statement on the merits of the case, this Court is not inclined to go into the same. It is suffice to

state that after allowing the second Respondent's husband to be compulsorily retired, they had subsequently passed an order forfeiting the gratuity

payable to her husband for the loss caused by him. They also informed the second Respondent's husband that since his Act constituted

misconduct involving moral turpitude, he was not eligible for gratuity. But whether such a defence taken in the subsequent proceedings satisfies

Section 4(6) of the Payment of Gratuity Act is entirely a matter will have to be gone into by the Controlling Authority.

8. This Court is not inclined to interfere with the impugned order. In the present case, the second Respondent is a widow and she has to pursue the

claim of her husband. She had also stated that her mother-in-law had also passed away. In the matter of condonation of delay, the only question to

be answered is whether there was sufficient reasons in condoning the delay and that power to condone the delay vest solely on the authority. It is

only in case of an appeal u/s 7(7) to the Appellate Authority, a limitation has been prescribed by the statute. But with reference to filing an

application before the Controlling Authority, the Payment of Gratuity Act do not prescribe any limitation. But however the Central Government has

framed Rules and in the guise of framing rules have also prescribed some limitation. How far those Rules are valid is an issue which need not be

gone into in this writ petition.

9. It is suffice to state that when once there is power to condone the delay by an authority and the authority has exercised his power for the

reasons set out in the application, then it is not for this Court sitting under Article 226 of the Constitution to interfere with the said condonation of

delay. In the facts and circumstances of the case, this Court do not find any illegality or irregularity in the order passed by the authority. Hence, the

writ petition stands dismissed. The Petitioner is directed to file counter statement in the Gratuity application within four weeks before the first

Respondent. On such receipt of the counter statement, the first Respondent is directed to number the main gratuity application and proceed to hear

the same on merits and pass orders in accordance with law. No. costs. Consequently, connected miscellaneous petitions are closed.