
(2000) 01 MP CK 0048
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4238 of 1995

Western Coalfields Ltd.

APPELLANT

Vs

Controlling Authority and Others

RESPONDENT

Date of Decision : 29-01-2000

Acts Referred:

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

Citation : (2000) 86 FLR 312 : (2001) ILR (MP) 927 : (2000) 2 LLJ 965 : (2000) 3 MPHT 219 : (2000) 3 MPLJ 63

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : R. Menon, for the Appellant;

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India the petitioner has called in question the defensibility of the order dated October 20, 1995 passed in Appeal No. 8/95 by the Regional Labour Commissioner (Central), Jabalpur respondent No. 2 herein, and prayed for issue of a writ in the nature of certiorari for quashment of the same.

The facts as have been ascertained are that the respondent No. 3 filed an application u/s 7(3) of the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act") before the Controlling Authority under the Act, respondent No. 1 herein, claiming differential amount of gratuity. The said authority on consideration of the material on record and after appreciating the stand of the petitioner allowed the differential amount by order dated January 25, 1995. The said order has been brought on record as Annexure A-2. Being dissatisfied with the aforesaid order the petitioner preferred an appeal under Sub-section (7) of Section 7 of the Act before the appellate authority. As there was delay in presentation of appeal an application for condonation of delay was filed. The

appellate authority considering the application for condonation of delay by the impugned order rejected the same on the ground that it has no jurisdiction to condone the delay beyond 120 days from the date of passing of the order and, accordingly dismissed the appeal.

Mr. Menon, learned counsel for the petitioner, assailing the impugned order has contended that the order is unsustainable as the appellate authority could have condoned the delay beyond 120 days. None has appeared on behalf of the respondent No. 3 to defend the order passed vide Annexure A. 1.

It is the admitted position that the impugned order was passed on January 25, 1995 in case No. CHA-48(46)/94. It is also admitted by Mr. Menon that the appeal was presented after 120 days.

The moot question that arises for consideration is whether the appellate authority has the jurisdiction to condone the delay beyond 120 days. In this context it is apposite to refer to Section 7(7) which reads as under :-

"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 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."

On a plain reading of the aforesaid provision it becomes luminously clear that the appellate authority has jurisdiction to condone the delay beyond the period of sixty days if sufficient cause is shown, by extending the said period by a further period of sixty days. It is to be borne in mind that the Payment of Gratuity Act is a special statute and there is provision for condonation of delay. Once the limitation period has been provided and there is further provision conferring the power on authority to condone the delay of 60 days beyond the specified period if sufficient cause is shown, the authority cannot travel beyond it. It is well settled in law that in absence of conferment of jurisdiction to condone delay the statutory authority which is a quasi juridical authority cannot condone delay or extend the period of limitation. In this regard, I may profitably refer to the decision rendered in (he case of Officer on Special Duty (Land Acquisition) and another v. Shah Manilal Chandulal 1996 (2) JT 278 wherein the Apex Court while considering whether the Land Acquisition Officer under the Land Acquisition Act is Court or not and can condone the delay u/s 18 of the said Act, has held as

under :-

"17. It is to remember that the Land Acquisition (Amendment) Act (68 of 1984) was enacted prescribing the limitation to exercise the power under Sections 4, 6 and 11 and also excluded the time occupied due to stay granted by the Courts. Taking cognizance of the limitation prescribed in proviso to Sub-section (2) of Section 18 the provisions of the Limitation Act were not expressly extended. Though Section 29(2) of the Limitation Act is available, and the limitation in proviso to Sub-section (2) of Section 18 may be treated to be special law, in the absence of such an application by Land Acquisition (Amendment) Act (68 of 1984), the Act specifically maintains distinction between the Collector and the Court and the Collector/LAO performs only statutory duties under the Act, including one while making reference u/s 18. It is difficult to construe that the Collector/LAO while making reference u/s 18, as statutory authority still acts as a Court for the purpose of Section 5 of the Limitation Act.

Though hard it may be, in view of the specific limitation provided under proviso to Section 18(2) of the Act, we are of the considered view that Sub-section (2) of Section 29 cannot be applied to the proviso to Sub-section (2) of Section 18. The Collector/LAO, therefore, is not a Court when he acts as a statutory authority u/s 18(1). Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to Sub-section (2) of Section 18..."

In view of the aforesaid enunciation of law and keeping in view the provisions contained in the Act I am of the considered view that the appellate authority has rightly rejected the appeal on the ground of limitation.

In the result the writ petition sans merit and, accordingly, stands dismissed without any order as to costs.