

Court No. - 17

Case :- WRIT - C No. - 1001935 of 2007

Petitioner :- Director Local Bodies U.P.Lucknow

Respondent :- The Appellate Authority U.P. Kanpur And 2 Others

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :-

Hon'ble Alok Mathur,J.

1. Heard Sri Shiv Pujan, Learned counsel for the petitioner. No one has put in appearance on behalf of respondents.

2. By means of present writ petition the petitioner has assailed the order dated 31.10.2005, passed by the appellate authority under the Payment of Gratuity Act, 1972 whereby he while disposing of the appeal directed the petitioner to comply with the order dated 31.12.2001.

3. It has been submitted by learned counsel for the petitioner that respondent no. 3 was an employee of the Uttar Pradesh Palika Centralized Services and his services were governed by the U.P. Palika (Kendriyat) Seva Niyamawali, 1966. The respondent no. 3 superannuated on 31.07.1991 and after his retirement his post retiral benefits were paid to him and also the amount of gratuity admissible to him was also paid. Grievance of respondent no. 3 was that only portion of gratuity was paid and still outstanding amount of Rs.44,415/- was not paid, for which he moved an application under the Payment of Gratuity Act seeking direction to the petitioner to pay the remaining amount of gratuity admissible to him. It seems that despite notice the petitioner did not put in appearance before the Prescribed Authority and only by considering the contentions raised by respondent no. 3 the application was allowed on 31.12.2001, directing the petitioner to pay respondent no. 3 the remaining amount of gratuity admissible to him.

4. Since the petitioner came to know about the order dated 31.12.2001 with some delay, it moved an application for recall of the said order. The recall application was allowed on 31.07.2003 and the matter was again re-heard by the Prescribed Authority and the authority by means of order dated 23.03.2004 rejected the claim of respondent no. 3 on the ground that his claim has been made belatedly after nine years of his superannuation and such delay has not been explained by him

and hence his claim was rejected.

5. Aggrieved by the order dated 23.03.2004, respondent no. 3 moved an application for review which was also dismissed on 03.05.2005. Against the order of dismissal of review, respondent no. 3 preferred an appeal which has been allowed by means of order dated 31.10.2005, and the petitioner has been directed to comply with the order dated 31.12.2001, by which the claim of the petitioner was initially allowed and the petitioner was directed to pay balance amount of gratuity admissible to respondent no. 3.

6. It is submitted by learned counsel for the petitioner that firstly order dated 31.12.2005 was an ex-parte order against which application for recall was allowed on 31.07.2003. Once the application for recall is allowed and the matter is subsequently re-heard, the order dated 31.07.2003 ceased to be in existence. The order dated 31.07.2003 was never challenged by respondent no. 3 before any forum and therefore the said order became final and respondent no. 3 had also participated in the remand proceedings before the Prescribed Authority and consequently, there was no occasion for appellate authority for reviving the order dated 31.12.2001. It is further submitted that perusal of impugned order would indicate that appeal was filed only against dismissal order of review dated 31.05.2005. Even in the appeal respondent no. 3 has not assailed the validity of order dated 31.07.2003 and consequently there was no occasion for the appellate authority to have set aside the order dated 31.07.2003. It is stated that against the order dated 31.12.2001, the petitioner has only filed appeal and there was no provision for filing recall application.

7. It is in the aforesaid situation this Court is of the considered view that the appellate authority has exceeded jurisdiction vested in it by allowing the appeal preferred by respondent no. 3 and directed the petitioner to comply with the order dated 31.02.2001, which was no longer in existence. In the light of above the impugned order is illegal and arbitrary and deserves to be set aside.

8. It is also seen that despite number of orders having been passed by the Prescribed Authority as well as Appellate Authority, there has not been adjudication on the merits of the case till date. Initially claim was allowed because petitioner had not put in appearance and subsequently the authorities have only considered the question of limitation and rejected the claim of respondent no. 3.

9. It is further noticed that under the Payment of Gratuity of Act

no period of limitation is prescribed for approaching the competent authority in case employer does not pay the amount of gratuity. Even if question of limitation is not applicable the authority would be competent to look into the aspect whether the claim is time barred or suffer from laches as the same was filed after nine years.

10. Gratuity is statutory obligation of the employer to pay to the employee and consequently delay if any, has to be considered in its proper perspective.

11. In the present case considering that claim of respondent no. 3 has not been considered on merits by any of the forums, all the orders passed by the Prescribed Authority as well as Appellate Authority are accordingly set aside. The matter is remanded to the Prescribed Authority to decide the claim of respondent no. 3 on merits.

12. Considering the fact that substantial period of time has lapsed, the Prescribed Authority is directed to consider and decide the claim of respondent no. 3 expeditiously, say within a period of two months from the date of production of certified copy of this order.

13. Learned counsel for the petitioner is directed to intimate respondent no. 3 about this order.

14. The writ petition is **allowed**.

Order Date :- 1.11.2023

A. Verma

(Alok Mathur, J.)