IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.20551 of 2011
Date of decision: 15.01.2015

Ashutosh Kumar

... Petitioner

Versus

The Appellate Authority and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Jasmeet Singh Bedi, Advocate, for the petitioner.

Mr.Deepak Singh, Advocate, for respondent No.3.

Mr.Ajay Bhardwaj, Advocate, for respondent No.4.

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The petitioner was appointed as an Accountant with M/s Paliwal Overseas Private Limited-respondent No.3. On 29th January, 2004, he was transferred from respondent No.3 to M/s Abhitex International, a partnership firm functioning from the same premises as of respondent No.3 through its partner Avinash Chander Sharma. Avinash Chander Sharma was also a Director in respondent No.3 company.

2. The petitioner served from 1st March, 2004 to 30th September, 2007 with respondent No.4 when his services were terminated after

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rendering 17 years of continuous service. The petitioner did not make a *lis* of his termination in a court of law. He was nevertheless not paid gratuity due to him under the provisions of the Payment of Gratuity Act, 1972. Feeling aggrieved, he served a legal notice claiming a specified amount of gratuity calculated on the basis of the statutory formula prescribed. But the management refused to pay the gratuity claiming that the company and the partnership firm were separate entities and the claim for gratuity would have to be restricted from 1st January, 1991 to 29th February, 2004, i.e., for 13 years and 2 months of service rendered in the first company which only amounted to ₹ 60,750/- which the management was prepared to pay but not for the balance service in the 4th respondent. In his claim application filed before the Controlling Authority under the Payment of Gratuity Act, he made both the company and the partnership as respondents.

3. The written statements of both the respondents were filed by Avinash Chander Sharma, one as Director, the other as partner of the firm. The Controlling Authority allowed the claim application vide order dated 22nd September, 2010. A view was taken on the facts and evidence established on record that respondents No.3 and 4 are one and the same entity and the total period worked under both seamlessly was from 1st January, 1991 to 30th September, 2007. The amount of gratuity was accordingly decreed with 9 percent interest per annum payable for 1.5 years totalling a sum of ₹1,00,185/- payable jointly and severally by respondents No.3 and 4.

4. Three months after the order was passed, respondent No.3 moved an application on 13th December, 2010 for clarification of the amount due towards it, upon which, the Controlling Authority vide its

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impugned order dated 16th December, 2010 directed that respondent No.3 is liable to pay/deposit a sum of ₹ 60,750/- only out of total claimed amount.

5. Feeling aggrieved by the order, the 3rd respondent filed an appeal on 17th January, 2011 before the Appellate Authority-cum-Deputy Labour Commissioner, Panipat after depositing the amount of ₹ 60,750/- as a pre-condition for entertainment of the appeal. Also aggrieved, the petitioner company filed a cross appeal dated 22nd May, 2011 challenging the impugned orders dated 22nd September, 2010 and 16th December, 2010 passed by the Controlling Authority. It may be mentioned that respondent No.4 did not appeal against the order dated 22nd September, 2010 which has attained finality qua the partnership firm.

6. The appellate authority has remanded the case for fresh adjudication by the Controlling Authority on what are urged to be flimsy grounds. A perusal of the impugned order passed by the appellate authority reveals that the only reason assigned for remanding the case is that the Controlling Authority failed to frame issues arising in the case and a direction has thereby been issued to the Controlling Authority to frame specific issues involved and to decide the same after allowing the parties to lead their respective evidence, if any. The order has been made applicable to the appeal filed by the petitioner and both the appeals have consequently been disposed of by a common order which is impugned. The appellate authority has set aside the orders passed by the Controlling Authority on 22nd September, 2010 and 16th December, 2010 respectively.

7. A perusal of the order passed by the Controlling Authority shows that two issues were framed; one whether the applicant is entitled to the amount of gratuity as claimed? If so, to what amount? and, 2, The relief?

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8. These two issues in the considered opinion of this Court were sufficient for the sum total adjudication of the rights of the respective parties and for there to know their respective cases and what evidence was required to be led by either in support of the cases, pro and contra.

9. The learned counsel for the petitioner, Mr. Jasmeet Singh Bedi, appears right in arguing that the issues framed by the Controlling Authority, upon which, evidence was led and the case decided in favour of the petitioner, was broad enough for letting an evidence without remanding the case for no useful purpose. Parties did in fact lead evidence and it is not known from where the appellate authority has culled out the necessity for framing specific issues, and that too without indicating what those issues may be. The exercise of jurisdiction by the appellate authority could not be based on principles of framing of issues as are required under the Code of Civil Procedure, 1908. The appellate authority was deciding an appeal in a gratuity matter under the Act and not in a civil suit. The irregular exercise of jurisdiction has resulted in failure of justice where the appellate authority has even refused to release the admitted amount of the gratuity as locked by it under the impugned order for a fresh adjudication on remand directions.

10. Mr.Bedi submits that the appeal filed by respondent No.3 itself was time barred. But this argument should not detain us since the petitioner did file a counter appeal and was also aggrieved by the impugned orders, I would think that it is best in law to disallow respondent No.3's appeal being time barred especially when the Controlling Authority had no jurisdiction to review its own order and restrict the claim according to the wishes of the 3rd respondent company. There was sufficient evidence adduced before the Controlling Authority when it passed the first order on the premise that

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there was no proof by way of documentary evidence of a transfer order from respondent No.3 to respondent No.4 involving the petitioner, shifting him from one to the other. If the respondent was transferred by a verbal order, he had to comply quietly, lest he lost his job on wrath earned.

11. It is thus thought fit by this Court to lift the veil of the two entities and go to the root of the matter as both are found to be one and the same thing as far as the petitioner claimant is concerned so that the petitioner is not denied the benefit of gratuity for period of service with the 4^{th} respondent as not reckonable towards total period for earning gratuity on the ground that the second part of the period of service was less than the minimum period of 5 years as prescribed in the Act for entitlement to payment of gratuity. Indeed, there was a definitive continuity of employment in the same premises run by the same man who defended both the entities before the Controlling Authority in an effort to deny gratuity partially.

12. I would, therefore, allow this petition and set aside all the impugned orders leaving only the order dated 22^{nd} September, 2010 as enforceable subject to limitations hereunder. It cannot be discounted that the amount of gratuity became due and payable on 30^{th} September, 2007 but the respondents did not care to deposit the same towards gratuity with the Controlling Authority which amount of money remained with the petitioner for 3 long years and for them to enjoy the use of money which they could not. The amount had to be deposited by law within one month from the date of accrual of the cause of action brought about by termination of services. Therefore, the applicant ought to have been awarded interest @ 10 percent which is prescribed under the Act and not 9 percent as awarded. Even the 9

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percent interest awarded per annum has been restricted unfortunately for a period of 1½ years out of the span of 3 years vide order dated 22nd September, 2010 on the fallacious reason that justice will prevail if it is so ordered. Both these directions are consequently not found proper and are hence set aside. The petitioner would be entitled to interest @ 10 percent on the principal amount by taking the total period of service as 17 years from 1st January, 1991 to 30th September, 2007

13. In passing, I must say that I have harboured serious doubts as to whether the Controlling Authority in passing an order on the clarification application modifying its final order and the order of the appellate authority has been wangled by the 3rd respondent for personal gain. For being compelled by unwarranted litigation at the hands of the 3rd respondent, after the passing of the first order by the Controlling Authority, the petitioner has been seriously wronged by frivolous litigation initiated by the 3rd respondent and, therefore, for the time and money spent, on the litigation, the respondent is held entitled to compensatory damages/costs of ₹ 25,000/- to be paid to the petitioner by deposit before the Controlling Authority, Panipat under the Payment of Gratuity Act. The amount of gratuity and interest thereon @ 10 per cent as directed and ₹ 25,000/- costs be paid within one month from the date of receipt of a certified copy of this order by the 3rd respondent.

(RAJIV NARAIN RAINA)
JUDGE

January 15, 2015
Paritosh Kumar

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