IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.21134 of 2015
Date of decision: 5.10.2015

M/s Paramount Impex Pvt. Ltd.

... Petitioner

Versus

The Appellate Authority and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Adish Gupta, Advocate,
for the petitioner.
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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. (Oral)

The Controlling Authority under the Payment of Gratuity Act, 1972 [in short, "the Act"] has not placed any faith on the receipt [P-1] dated 30.6.2010 as it was not been produced in evidence with the other evidence and therefore the document has no evidentiary value and is not proof of payment of gratuity. The document is exhibited as RW1/3. It may be noted that the employee had resigned from his job on 30.6.2010 and had worked since 11.11.1995 i.e. for about 15 years and is entitled to payment of gratuity in terms of Section 4 of the Act.

2. I asked learned counsel for the petitioner of the mode of payment of the gratuity to the employee and whether it was documented payment through cheque etc., he admits that the defence case is that the amount of ₹ 1,31,885/- was paid in cash which is somewhat hard to believe coming from a private limited company whose accounts are to pass the test

of accounts in the Companies Act, 1956 besides under the Income Tax Act, 1961 notwithstanding the many labour laws involved. There was failure in the management to produce the record which may have proven discharge of liability but there was inability to do so. When the claimant had asserted that the gratuity was due and payable, then the burden shifted on the management to prove otherwise. That onus the management has failed to discharge and the Controlling Authority has calculated the gratuity of the respondent on last drawn wages i.e. at ₹ 27,000/- per month as was admitted by the appellant in the written statement as well as in evidence. The Appellate Authority has upheld the order passed by the Controlling Authority vide order dated 27.7.2015 and no interference is called for in either.

3. Mr.Gupta appearing for the petitioning management submits that there was delay in filing the original claim under Section 4 of the Act before the Controlling Authority which should have been within 90 days of non-payment of gratuity after the right matured, in this case on the date of submitting resignation by the employee-respondent No.3.

4. As Mr.Gupta argues on delay in presentation of the application, then he is confronted with delay in filing of the appeal against the order of the Controlling Authority. It has been recorded that the appeal was filed 20 days after the period of limitation prescribed in appeal had expired and the ground furnished was that the Director of the Company was suffering from high fever and was not in a position to come and file the appeal. However, the appellate authority had rightly condoned the delay and heard the case on merits.

5. Counsel then refers to rule 10 of the Payment of Gratuity (Central) Rules, 1972 to contend that an application for gratuity cannot be entertained after 90 days when the right to sue accrues under Section 4 of the Act. Rule 10 of the aforesaid Rules reads as follows : -

> "**10. Application to controlling authority for direction**.- (1) If an employer- (i) refuses to accept a nomination or to entertain an application sought to be filed under rule 7, or (ii) issues a notice under sub-rule (1) of rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or (iii) having received an application under rule 7 fails to issue any notice as required under rule 8 within the time specified therein, the claimant employee, nominee or legal heir, as the case may be, may, within ninety days of the occurrence of the cause for the application, apply in Form 'N' to the controlling authority for issuing a direction under sub-section (4) of section 7 with as many extra copies as are the opposite party: Provided that the controlling authority may accept any application under this sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period. (2) Application under sub-rule (1) and other documents relevant to such an application shall be presented in person to the controlling authority or shall be sent by registered post acknowledgement due."

6. None of the events mentioned in rule 10 has occurred in this case and I do not see how the provisions apply as an exclusion clause or would act as the law of limitation does taking away the right to sue. Under the payment of Gratuity Act in Section 4, no period of limitation has been prescribed for initiating a claim for gratuity under the Act.

7. I would, therefore, not think it proper to accept the specious argument of Mr.Gupta on bar of limitation in filing the application claiming unpaid gratuity and would dismiss the petition as warranting no interference

with the orders of the Controlling Authority and that of the Appellate Authority which suffer from no ex facie illegal infirmity, perversity or an error apparent on the face of record. The petition is accordingly rejected.

(RAJIV NARAIN RAINA)
JUDGE

October 5, 2015
Paritosh Kumar