

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.6926 of 2015 (O&M)
Date of decision: 21.04.2015**

Digamber Jain Society and another ... Petitioners

Vs.

Appellate Authority and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Pawan Kumar Mutneja, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

C.M.No.4955 of 2015

The application is allowed, subject to all just exceptions.

Appointment letter of respondent No.3(Annexure P-7) is taken on record.

CWP No.6926 of 2015

Notice of motion.

At the asking of the Court, Mr. S.S.Saini, Advocate, who is present in the Court, accepts notice on behalf of respondent No.2.

Mr. Pawan Kumar Mutneja, learned counsel for the petitioner inter alia contends that as per the notification dated

31.12.2009, the petitioners had paid a sum of ₹ 45,258/- to respondent No.2, which fact is noticed by the Controlling Authority in its impugned order and against the order of Controlling Authority, an appeal was preferred by taking comprehensive grounds. However, the Appellate Authority has dismissed the appeal on the premise that amount of gratuity has not been deposited in compliance of Section 7 (7) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act'), and has not pondered upon the other grounds of appeal.

Mr. S.S.Saini, learned counsel appearing on behalf of respondent No.2 contends that the plain and simple reading of sub section 7(7) of the Act would require that an amount awarded by the Controlling Authority is required to be deposited by the appellant against the order of Controlling Authority.

I have heard learned counsel for the parties and appraised the paper book.

The language of Section 7(7) of the Act is clear and un-ambiguous as there is no requirement of law that whatever the amount has been determined by the Controlling Authority is required to be deposited by the aggrieved person.

For the sake of brevity, the provisions of Section 7(4) of the Act and Section 7(7) are reproduced herein below:-

“7(4) (a) If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall

deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit—

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the²⁹ [nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

“7(7) 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 or such other authority as may be specified by 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: ³⁰ [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 going through the language of the aforementioned provisions, it is manifest that the aggrieved person has to deposit whatever the amount, which according to him, is liable to be payable to the employer, which is only the condition for entertaining the appeal under Section 7(7) of the Act.

In the instant case, there is no denial of the fact, whatever the amount was payable by the aggrieved person to the employer had been deposited which fact is noticed in the order of the Controlling Authority. The Appellate Authority has not pondered upon the various other grounds taken in Annexure P-4. The Appellate Authority has simply dismissed the appeal observing that the awarded amount has not been deposited. The said observation is totally fallacious, as it is evident, from the order of Controlling Authority that a sum of ₹ 45,258/- has already been deposited and received by respondent No.2. The Appellate Authority was, therefore, under obligation to decide the appeal on merits. The order dated 8.12.2014 (Annexure P-3) of the Controlling Authority is set aside and the matter is remitted back to the Appellate Authority for deciding the appeal on merits in accordance with law.

With the aforementioned observations, the writ petition stands disposed of.

The petitioner shall be at liberty to seek interim relief
before the Appellate Authority.

(AMIT RAWAL)
JUDGE

April 21, 2015
savita