IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9810 of 2015
Date of Decision: 08.09.2015

Managing Director, JSK Steels (P)
Limited and others

... Petitioners

Versus

Appellate Authority under Payment of
Gratuity Act and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Manjit Singh Sarao, Advocate,
for the petitioners.

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

RAJIV NARAIN RAINA, J.

The management was proceeded *ex parte* on application under Section 7 by the Authority under the Payment of Gratuity Act, 1972 on July 14, 2011 on the statement of Narinder Peon in the office of the Tribunal recorded on solemn affirmation deposing that he delivered Dasti M. No.3108 to 3110 dated May 19, 2011 and the signatures of the recipient were entered in the Peon Book which is part of record. Documented proof of service of summons was exhibited on record.

The Controlling Authority passed an *ex parte* order dated February 16, 2012 allowing the claim for gratuity determined under Section 4 of the Act for service rendered from January 01, 1987 to December 16, 2007 by the workman, i.e., for the period of about 20 years. The last salary drawn by the workman was Rs.9500/- per month and in this manner the gratuity was computed in a sum of Rs.1,09,615/-. The Authority has also granted 9% interest on the amount from the date of filing of the claim application under Section 7 of the Act. The Payment of Gratuity Act, 1972 makes it incumbent on the employer to pay gratuity and in case workman is compelled to approach the Authority to seek redress then the order of payment of gratuity would follow with simple interest payable under Sub-Section (3-A) of Section 7 at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long tern deposits as that Government may, by notification specify.

The length of service rendered by the employee was proven among other things vide Ex.M-5 which is an experience certificate issued to the claimant from the one of the Directors of the Company which clearly mentioned that the respondent claimant had worked with the company from January 01, 1987 with the management. The Controlling Authority has reposed trust and faith in this document as an admission of employment. The version of the claimant in the claim application was supported by oral testimony recorded before the Controlling Authority.

Aggrieved by the order passed by the Controlling Authority, the management carried an appeal under section 7 (7) of the Act before the Appellate Authority under the Payment of Gratuity Act, 1972-cum-Legal Remembrancer-cum-Director of Prosecution, Chandigarh Administration, Chandigarh in the rank of an Additional District Judge subordinate to this Court. The learned Judge by the order dated September 24, 2014 has dismissed the appeal filed on January 14, 2014 as time barred and consequently has not touched on the merits of the case nor was he required to. The delay in filing the appeal was an enormous 620 days from the date of the order dated February 16, 2012. The limitation for filing an appeal under the Act against an order under Section 7 is sixty days and where sufficient cause is shown for the delay the period can be extended by a further 60 days and no more as after which extended period the Controlling Authority is denuded of power, on a fair reading of the first Proviso to Sub-Section (7) of Section 7 of the Act.

If not to miss the point, it may be noticed that the application dated December 04, 2012 for setting aside the *ex parte* order dated July 14, 2011 was rejected on August 29, 2013 by the Controlling Authority vide Annexure P-3. The power to condone and that too without sufficient cause has not been conferred on the Authority or to recall final orders as the statute does not provide the remedy and instead an appeal is provided against the order as discussed in the preceding paragraph. The learned Judge in appeal exercising powers of the Appellate Authority discovered that there is also a delay of 110 days from the date of rejection of the application for setting aside the *ex parte* order. He factored both these propositions in dismissing the appeal.

I asked the learned counsel appearing for the petitioners to show me sufficient cause in the petition explaining non-appearance before the Controlling Authority. He relies on the provisions of Order 5 Rules 16 & 18 CPC which deal with the mode and manner of service of summons. Rule 12 (Form U, Abstract of Act and Rules) inserted by GSR 2868, dated 22nd November 1975 in The Payment of Gratuity (Central) Rules, 1972 which is the identical apparatus in Sub-Section (5) of Section 7 of the Act which empowers the Authority the same powers as are vested in a court, while trying a suit under the Code; and which both provisions deal with the powers of the Controlling Authority and prescribe as follows:-

> *"**12. Powers of the Controlling Authority.** - The Controlling Authority for the purposes of conducting an inquiry as to the amount of gratuity payable to an employee 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, shall have the same powers as are vested in court, under the Code of Civil Procedure, 1908 in respect of the following matters, namely:-*
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> *(a) enforcing the attendance of any person or examining him on oath;*
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> *(b) requiring the discovery and production of documents;*
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> *(c) receiving evidence on affidavits; and*
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> *(d) issuing commissions for the examination of witnesses. [Section 7(5)]."*

The Controlling Authority is the appropriate forum to determine and order recovery of unpaid gratuity of which the designated authority is area Assistant Labour Commissioner deputed from the Labour Department to discharge duties under the Act. Section 7(3A) of the Act and Rule 12 enumerates four general powers drawn from the Code of Civil Procedure, 1908 which speak of things other than the mode of service of summons. Section 7 talks of suit tried under the Code but the Rule is silent on suits. Be that as it may, the three modes of service of summons or notice at the Controlling Authority's option is specifically provided for under Rule 15 of the 1972 rules framed under the Act which read as follows:-

> *"**15. Service of summons or notice.** - (1) Subject to the*

> *provisions of sub-rule (2) any notice, summons, process or order issued by the controlling authority may be served <u>either personally</u> or by registered post acknowledgement due or in any other manner as prescribed under the Code of Civil Procedure, 1908 (Act 5 of 1908).*
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> *(2) Where there are numerous persons as parties to any proceeding before the controlling authority and such persons are members of any trade union or association or are represented by an authorised person, the service of notice on the Secretary, or where there is no Secretary, on the principal officer of the trade union or association, or on the authorised person shall be deemed to be service on such persons."*

Rule 15 permits service of summons or process personally or by a registered post acknowledgement due or in any manner prescribed under the Code of Civil Procedure, 1908. Mode of service personally through the official Peon is thus within the prescribed manner and choice of mode remains within the discretion of the authority exercised judiciously as the demands of a case may dictate. No fault can be found with the recognized mode of service adopted to serve the respondent with the summons and notice.

The only question which remains to be considered is whether service through Peon is personal service and was properly executed at the know address of the respondent. I have no reason to disbelieve service of summons by this mode or to hold as urged by the learned counsel that such service is void *ab initio* or that Controlling Authority was not empowered to follow the procedure of Rule 15 in the manner it thought fit by any of the prescribed modes.

A reading of the order dated July 14, 2011 whereby the management was proceeded *ex parte* does not make out a case of procedural flaw. Nothing has been placed on the record of this petition from the record of the Controlling Authority that there is anything remiss in the service of summons or notice on the management or that prejudice was caused so long as the service was effected dasti at the correct address by an official Peon attached to the Controlling Authority. This is a pure finding of fact which is not open to upsetting in discretionary jurisdiction exercised by this Court provided by Article 226 or 227 of the Constitution of India unless service of summons was proved to be false service thereby resulting in *ex facie* substantial injury to the management. This is not even the case demonstrated in the writ petition forget about in the application for setting aside the *ex parte* order which was the first and last opportunity for the petitioner-management to have done so. I also do not find any fundamental flaw or perversity in the reasoning of the work of the Controlling Authority or the Appellate Authority which might vitiate the conclusions arrived out. I find none of those debilitating factors present in the case papers placed before me or an error apparent on the face of the record presented.

For the foregoing reasons, this Court finds no merit in this petition which is ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

08.09.2015
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