

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (L) No. 4395 of 2007**

M/s Atul Plywood Pvt. Ltd. through Managing Director Sondongari Road,
Hirapur, Raipur, CG

---- Petitioner**Versus**

1. Appellate authority, Payment of Gratuity Act and Deputy Labour Commissioner Office of Labour Commissioner, Raipur, CG
2. Ram Shiromani Chaturvedi S/o Late Shri Shiv Kumar Chaturvedi, age about 38 years, Address- Gogaon, Raipur, CG

---- Respondents

For Petitioner	:	Shri S. P. Kale, Advocate
For Respondent no.2	:	Shri N. K. Vyas, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****17/11/2016**

1. The petitioner in the present petition is assailing the order dated 11.07.2007 passed by the Appellate Authority under the Payment of Gratuity Act in Case No. 43/PGA/2006.
2. The limited question involved in the present case is whether the Appellate Authority has got the power to remand the matter to the Controlling Authority for assessing the gratuity amount and passing an order afresh.
3. Counsel for the petitioner submits that in the present case the claim of the respondent no.2 seeking gratuity was initially rejected by the Controlling Authority vide its order dated 17.07.2006 in Case No.

151/PGA/2004. He submits that the rejection of the claim application was on the ground that the claimant was not having the qualifying service required for the entitlement of gratuity as per the Payment of Gratuity Act. He submits that the admitted fact in the instant case is that the respondent no.2 employee had worked with the petitioner for a period of 4 years 2 months 27 days which would not fall within the qualifying service required for making a person entitled for grant of gratuity. Therefore, the Controlling Authority has rightly rejected the claim application of the respondent no.2. However, the Appellate Authority has committed an error in remitting the matter back to the Controlling Authority for adjudication of the case on its merit after quantifying the salary of the respondent no.2 as Rs.2,600/- per month.

4. Counsel for the petitioner relied upon the decision of the Madras High Court in the matter of Tiruchengode Agricultural Producers Co-operative Marketing society Ltd. v. Appellate Authority under Payment of Gratuity Act. reported in 2002 (94) FLR 64. Counsel for the petitioner relying upon the said judgment submits that in the instant case, the Appellate Authority therefore was not justified in remitting the matter back to the Controlling Authority. Rather in view of the said judgment, the Appellate Authority concerned should have finally adjudicated upon the case itself or should have set aside/quashed the order of the Controlling Authority.
5. Per contra Sh. N.K. Vyas appearing for Respondent No.2 employee submits that the Court below has not committed any error of law while remitting matter back to the Controlling Authority for a fresh adjudication in the case. According to Mr. Vyas the Appellate

Authority has given specific reasons for sending it back. Therefore, in the light of the reasons assigned the impugned order does not warrant any interference. He further submits that even otherwise the findings of the Court is in accordance with the judgment of the Supreme court in case of **Gopal Krishnaji Ketkar v. Mohd. Hazi Latif & Ors** reported in AIR 1968 SC 1413. Learned Counsel for the Petitioner drew attention of this Court to the order under challenge whereby the appellate authority in the course of passing of the impugned order has taken an adverse inference against the Petitioner for not producing record during the hearing of the case and thus prayed for rejection of the present Petition.

6. Having considered the contention put forth by the Counsel on either side it would be relevant at this juncture to refer to the provisions of law itself. An appeal against the order of the Controlling Authority under the payment of gratuity Act fall under Section 7 (7) of the Payment of Gratuity Act 1972 (herein after referred to as the Act of 1972) which for ready reference Rule 7(7) and 7(8) are reproduced herein under:

“ 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.
7(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity or being heard, confirm, modify or reverse the decision of the controlling authority.”

7. It is also necessary to mention the rule position so far as the appeal is concerned Sub-rule 6 Rule 18 of the Payment of Gratuity (Central) Rules, 1972 reproduced as under:

“18 (6) The appellate authority shall record its decision after giving the parties to the appeal a reasonable opportunity of being heard. A copy of the decision shall be given to the parties to the appeal and a copy thereof shall be sent to the controlling authority returning his records of the case.”

8. The State also has its own rules known as the Payment of Gratuity (Chhattisgarh) Rules, 1973 wherein also Rule 18 of the said rules is *pari materiya* to the Central rules reproduced above.
9. Thus, from the plain reading of the said provision of law what clearly reflects is that neither Acts nor Rules restrain Appellate Authority from remanding the matter to the Controlling Authority. In the light of the said provision of law the argument put forth by the Counsel for the Petitioner that since the rules does not stipulate any such power to remand and therefore is not acceptable.
10. Sub-section 8 of Section 7 of the Act of 1972 clearly holds that after hearing the parties the Appellate Authority if deems it fit may either confirm the order or modify the order or it can even reverse the decision of the Controlling Authority. These terms that is the power to confirm, modify and power to reverse has to be given wide interpretation. Over and above it is also to be appreciated that the power to remand is always an inherent power conferred upon an Appellate Authority. Therefore, as an implied implication, had the law itself excluded the power of remand from the appellate powers then under such circumstances, the question of inherent power would not arise. Further, since there is no exclusion of power to remand it clearly indicates that there would be inherent power upon Appellate Authority. Once when the statutes provides for the Appellate Court to confirm, modify or reverse it necessarily also implies that it has power to remand also. Without a power to

remand it would be difficult for the Appellate Authority to dispose off an appeal specifically if the Appellate Authority finds that the Court below has committed technical error while reaching to the conclusion it has arrived at and if argument of the Counsel for the Petitioner is to be accepted the Appellate Authority can only either confirm the order or reverse the order, in the opinion of this Court cannot be regarded as a fair decision to have been taken by the Appellate Authority. In a given case if Appellate Authority finds that the matter has to be remanded back for fresh adjudication on account of some technicalities, this Court strongly feels that the power of remand is an inherent power conferred upon Appellate Authority exercising its appellate jurisdiction under the statute and the Appellate Authority giving reasons can remand the matter to be decided as directed.

11. It would be relevant at this juncture also to quote decision of the Hon'ble Supreme Court in the case of **Union of India & Others V Umosh Dhaimode** reported in (1997) 10 SCC 223 wherein the Supreme Court in paragraph 2 held as under:

“2. As the order under appeal itself notes, the aforesaid provision vested the appellate authority with powers to pass such order as it deemed fit confirming, modifying or annulling the decision appealed against. An order of remand necessarily annuls the decision which is under appeal before the appellate authority. The appellate authority is also invested with the power to pass such order as it deems fit. Both these portions of the aforesaid provision, read together, necessarily imply that the appellate authority has the power to set aside the decision which is under appeal before it and to remand the matter to the authority below for fresh decision.”

12. Another reasons to hold that the Appellate Court has all the powers to remand the matter back to the Controlling Authority is for the

reasons if after the fresh adjudication upon the matter if the parties are aggrieved they can still prefer an appeal and if the Appellate Authority does not have power to remand and decides an appeal one way or the other entertaining the case even where the matter requires a fresh adjudication, the parties aggrieved from the final decision would lose their right to appeal. Thus, in the factual matrix of the case this Court is of the opinion that the ground for challenge of the Appellate Authority denuded of his power to remand a case is not acceptable. This Court respectfully disagrees to the view of the Madras High Court in the case of **Tiruchengode Agricultural Producers Co-operative Marketing Society Ltd. (Supra)** for the reason that if the Court has power to modify and reverse, in addition of the confirming the order there is implied implication of power also for remanding the case to the Court below for fresh adjudication.

13. So far as the merits of the case is concerned it would be relevant at this juncture to take note of the law laid down by the Supreme Court in the case of **Gopal Krishnaji Ketkar (Supra)** wherein it is being held by the Supreme Court in paragraph 5 is as under :

“5.....Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof.”

14. Now, if we read impugned order of the Appellate Authority which is under challenge in the present Petition what clearly reflects is that in paragraph 5 of its judgment the Appellate Authority

has specifically given reasons for drawing an adverse inference in as much as in spite of opportunity granted to submit relevant document so as to ascertain the period of employment of Respondent No.2 employee, the records were not produced by the Petitioner establishment and therefore drawing an adverse inference the Court below also reached to the finding that the salary of the Respondent No.2 employee was Rs. 2600/- and for quantifying gratuity payable to Respondent No.2 the matter was remanded back. In the given facts and circumstances of the case particularly the decisions referred to in the preceding paragraph, this Court is of the opinion that no strong case has been made out by the Petitioner calling for interference with the impugned order and the Writ Appeal is accordingly held to be devoid of merits and the same deserves to be and is accordingly rejected.

15. The Interim Order if any granted earlier also stands vacated.

16. Taking into consideration the fact that it is a case related to gratuity, it is ordered that the Controlling Authority shall at the earliest take prompt steps for an early disposal of the claim made by the Respondent in accordance with the directives given by the Appellate Authority vide the impugned order. The records if any lying with the Appellate Authority shall forth with be sent back to the Controlling authority for a prompt decision.

**Sd/-
(P. Sam Koshy)
JUDGE**