

In the High Court of Punjab and Haryana at Chandigarh.

**CWP No.1771 of 2016
Date of Decision:28.01.2016**

The Inspector General of Prison & Jail-cum-Deputy
Commissioner, UT, Sector 17, Chandigarh

...Petitioner

Versus

Sh. Rachhpal Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Vikram Vir Sharda, Advocate,
for the petitioner.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing the orders dated 18.07.2012 (Annexure P-4) and 27.11.2015 (Annexure P-6).

Learned counsel for the petitioner has submitted that the application moved by respondent No.1 under the Payment of Gratuity Act, 1972 ('Act' for short) was not maintainable. Learned counsel has further submitted that statutory appeal filed by the petitioner against the order, Annexure P-4, was dismissed being time barred. Learned counsel has further submitted that the Appellate Authority be directed to dispose of the appeal filed by the petitioner on

merits.

I have heard learned counsel for the petitioner and have gone through the record available on the file carefully.

In the present case, respondent No.1 had filed an application under the Act claiming that gratuity admissible to him as per Rules be released to him with interest. The case of the respondent No.1 was that he was employed with the petitioner as a Jail Warden w.e.f. 01.08.1982 and had resigned on 27.07.1992.

Case of the petitioner, was that the provisions of the Act were not applicable in the present case.

On the pleadings of the parties, following issues were framed by the competent/controlling authority:-

- “1. Whether the applicant is entitled for gratuity? If so, to what extent?
2. Relief.”

Parties led their evidence in support of their respective pleas.

The controlling authority vide order dated 18.07.2012 held that the respondent No.1 was entitled to receive gratuity. Consequently, the application moved by respondent No.1 was allowed.

Aggrieved against the said order petitioner preferred an appeal. Alongwith the appeal an application was filed under Section 5 of the Limitation Act for condoning the delay

of 820 days in filing the appeal. Appellate Authority vide order dated 27.11.2015 held that under no circumstances appeal could be entertained which was filed after the expiry of 120 days. Hence, the appeal was dismissed being time barred.

Section 7(7) of the Act reads as under:-

“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.

[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.]”

Thus, as per the above provision any person

aggrieved by an order passed by the controlling authority can file an appeal within 60 days of the date of the receipt of the order before the appellate authority. The said period can be extended by 60 days. A perusal of the application under Section 5 of the Limitation Act placed on record reveals that the certified copy of the order Annexure P-4 was received by the Department before 08.08.2012 as a letter was written to Auditor General, Pension Branch, U.T. Chandigarh for taking necessary action in view of the order dated 18.07.2012. In the present case, the appeal had not been preferred within the stipulated period. Rather the appeal had been preferred after the expiry of 820 days of the passing of the order by the controlling authority. The appellate authority had thus rightly dismissed the appeal filed by the petitioner being time barred.

No ground warranting interference by this court while exercising jurisdiction under Article 226 of the Constitution of India, is made out.

Dismissed

January 28, 2016
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(SABINA)
JUDGE