IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1038 of 2015

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The General Manager (Region) Food Corporation of India, Regional office, Arunachal Building, Exhibition Road, Patna 800 001

.... Petitioner

Versus

1. The Union of India
2. The Regional Labour Commissioner (Central), Patna - Cum - Appellate Authority, Maurya Lok Complex, 2nd Floor, Patna 800 001
3. The Assistant Labour Commissioner (Central) - cum - Controlling Authority under the Payment of Gratuity Act , 1972, Maurya Lok Complex, 2nd Floor, Patna 800 001
4. Shri Harendra Prasad Srivastava, Ex - Manager (Depot), Resident of Adarsh Colony, Yadav Nagar, Post - Bhagwanpur, District Muzaffarpur 842 001 (Bihar)

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Prabhakar Tekriwal, Advocate

For the Union of India : Mr. Rajesh Kumar Verma, CGC

For the Respondent no.4 : Mr. Sunil Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 24-07-2017

Heard Mr. Prabhakar Tekriwal, learned counsel for the petitioner, Mr. Rajesh Kumar Verma, learned Counsel for the Union of India and Mr. Sunil Kumar, learned counsel for the respondent no.4.

2. This writ petition has been filed for quashing the

order communicated vide letter dated 14.02.2014 passed by the Appellate Authority-cum-Regional Labour Commissioner (Central), Patna (respondent no.2), as contained in Annexure-1 to the writ application whereby the appeal filed by the management of the Food Corporation of India under Section 7(7) of the Payment of Gratuity Act (for short 'the Act') has not been entertained by declaring the same to be barred by limitation.

3. Mr. Tekriwal, learned counsel for the petitioner would submit that the order was passed by the Controlling Authority allowing the claim of the respondent no.4 on 30.9.2013/3.10.2013 and the same was received in the office of the petitioner on 04.10.2013. Thereafter, a memo of appeal was preferred by the petitioner on 3.12.2013, i.e. well within the period prescribed under Section 7(7) of the Act, but it has been erroneously dismissed by the impugned order dated 14.02.2014 passed by the Appellate Authority on the ground that it was barred by limitation.

4. Mr. Tekriwal would submit that the provisions of Section 7(7) of the Act provides for an appeal to be filed within 60 days of receipt of the order. The period of limitation can be condoned by further 60 days. He would submit that the appeal was not only filed within 60 days of receipt of the order, but even going by the date on which the order was passed by the Appellate

Authority, the appeal having been filed on 3.12.2013, was within 60 days of the date of order. He would submit that the appeal was dismissed on the ground that it was filed through the Area Manager and not the General Manager. He would submit that since the Area Manager is duly authorized to file such appeal vide Notification dated 6th February, 2006 (Annexure-14) which was also brought to the notice of the Appellate Authority, the order impugned is unsustainable.

5. On the other hand, learned counsel for the respondent no.4 would submit that the appeal was rightly dismissed by the Appellate Authority on the ground of limitation, as it was filed by the Area Manager and not by the General Manager. He would submit that the Controlling Authority under 'the Act' had directed to pay the gratuity amounting to Rs.10,00,000/- and interest amounting to Rs.50,000/-. He would submit that the principal amount of gratuity has already been paid to the Respondent no.4, and now the dispute remains in regard to payment of interest amounting to Rs.50,000/-. According to him in the background of facts stated above, the writ application becomes infructuous.

6. I have heard learned counsel for the parties and perused the record.

7. I find substance in the submission made by learned counsel for the petitioner. The impugned order passed by the Appellate Authority is unsustainable in view of the fact that from perusal of the Notification dated 6th February, 2006 published in the Gazette of India (Extraordinary), it would be evident that the Area Manager is duly authorized to file such appeal. By Gazette Notification dated 10.02.2006, in exercise of powers under Section 45(2)(i) of the Food Corporation Act, 1964 with the previous sanction of the Central Government, a Regulation called as "The Food Corporation of India (Authorisation of Officers for verification of pleading and other documents to be filed before various Courts, Tribunals, Authorities and Arbitrators) Regulations, 2005 was framed which came into force on the date of its publication in the Official Gazette. As per this Regulation, the Officers of the Corporation specified in the schedule annexed thereto, have been declared as the Principal Officers of the Food Corporation of India and are authorized to sign and verify plaints, petitions, appeals, reviews etc. before any Court, Tribunal, Authorities or Arbitrators on behalf of the Food Corporation of India. In that schedule, the Area Manager figures as serial no.10. Thus, the Area Manager, FCI, Muzaffarpur, being the "Principal Officer", was having authority to sign the pleadings of the memo of

appeal filed before the Regional Labour Commissioner where the "General Manager" of the FCI was party. Moreover, the Appellate Authority has erred in declaring the appeal as time barred when, admittedly, the same was preferred within the prescribed time of 60 days. Since the proceeding against the Respondent No.4 was for major misconduct of moral turpitude and as per FCI (Staff) Regulations, 1971, as contained under Regulation 60 A, if an employee is charge-sheeted and proceeded departmentally for a major misconduct, the proceeding shall continue even after he attains the age of superannuation, as if he continued in service for this purpose and until final decision gratuity shall remain withheld, in the opinion of this Court, merely because the principal amount of gratuity has been released by the order of the Controlling Authority and paid to the Respondent No.4, the appeal cannot be held to be infructuous. Further, the appeal was filed within 60 days of receipt of the order under appeal of the Controlling Authority-cum-Assistant Labour Commissioner (Central), Bihar by the petitioner. Hence, the impugned order is ex facie bad.

8. Accordingly, the impugned order dated 14.02.2014 passed by the Appellate Authority-cum-Regional Labour Commissioner (Central), Patna is set aside. The matter is remanded back to the Appellate Authority to decide the case on merits.

9. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.07.2017
Transmission Date	NA