

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8447 of 2016

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The General Manager (Region), Food Corporation of India, Regional Office,
Arunachal Building, Exhibition Road, Patna- 800001.

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Labour & Employment, New Delhi.
2. The Regional Labour Commissioner (Central), Patna-cum-Appellate Authority under the Payment of Gratuity Act, 1972 Maurya Lok Complex, 2nd Floor, Patna- 800001
3. The Assistant Labour Commissioner (Central)-cum-Controlling Authority under the Payment of Gratuity Act, 1972, Maurya Lok Complex, 2nd Floor, Patna- 800001.
4. Shri Jai Prakash Singh, ex-Manager (Depot), son of Late Jugal Singh, resident of Dharamnarayan Road, Madhopur, Basdeopur, Munger, State- Bihar, Pin- 811202.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. P. K. Verma, Sr. Advocate
Dr.Mankeshwar Tiwari, Advocate
For the Respondent/s : Mr. S.D SANJAY (ADDL. SOC. GEN.)
For the respondent : Mr. Arvind Kumar Tiwary, CGC

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 04-05-2017

Heard Mr. P. K. Verma, learned Senior Counsel
appearing for the petitioner and Mr. Arvind Kumar Tiwary, learned
counsel appearing on behalf of Union of India and perused the
impugned order passed by the Appellate Authority.

2. This writ application has been filed against the
order of the Appellate Authority under the payment of Gratuity
Act, 1972 (for short 'the Act') dated 26/27.05.2015 passed in



Appeal Case No. 36/13/2015/Appeal/RLC whereby the appeal of the petitioner against the order dated 28/30.01.2014 passed by the Assistant Labour Commissioner (Central)-cum-Controlling Authority in File No. 48/22/2013/ALC-II by which the petitioner has been directed for making payment of gratuity with interest to respondent no. 4, has been dismissed.

3. The Appellate Authority has dismissed the appeal filed by the petitioner herein under sub-section (7) of Section 7 of the Act on the ground that the petitioner failed to deposit the amount of gratuity with interest as directed by the Controlling Authority.

4. In order to examine the legality of the order, it would be pertinent to refer to the second proviso to sub-section (7) of the Act inserted by Act 25 of 1984 with effect from 01.07.1984, which reads as under :-

“Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces the 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.”

5. On query made by this Court, learned Senior



Counsel appearing on behalf of the petitioner conceded that the amount of gratuity with interest, as required to be deposited under sub-section (4) of Section 7 of the Act has neither been deposited before the Controlling Authority nor the said amount has been deposited with the Appellate Authority. He contended that the said amount was not an admitted amount and thus in view of sub-section (4)(a) of Section 7 of the Act, the petitioner was not required to deposit the amount.

6. The argument advanced by the learned Senior Counsel for the petitioner for not depositing the amount either with the Controlling Authority or the Appellate Authority cannot be accepted.

7. As noted above, the second proviso to sub-section (7) of Section 7 of the Act clearly mandates that no appeal by an employee 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. Simply because the petitioner disputes the amount, the same cannot be a ground for not depositing the same.

8. It would be evident from perusal of sub-section



(7) of Section 7 that the right of appeal, though is a vested statutory right is restricted by the first proviso. A person aggrieved by an order of determination of the amount of gratuity passed by the Controlling Authority can prefer an appeal before the Appellate Authority within the statutory period of sixty days. The first proviso gives discretion on the Appellate Authority to extend the period of limitation by additional 60 days.

9. The second proviso to sub-section (7) of Section 7 provides a pre-condition of deposit of amount ordered by the Controlling Authority to entertain an appeal. The Appellate Authority cannot admit an appeal unless at the time of preferring appeal, the appellant either produces a certificate of the Controlling Authority to the effect that the appellant has deposited with the Authority an amount equal to the amount of gratuity required to be deposited under sub-section (4) of Section 7 of the Act. Thus, the second proviso to sub-section (7) of Section 7 of the Act clearly prohibits admission of the appeal in absence of the due compliance of the necessary requirements mentioned therein.

10. It is true that clause (a) of sub-section 4 of Section 7 provides that if there is any dispute to the amount of gratuity payable the employer is required to deposit with the Controlling Authority such amount as he admits to be payable by



him as gratuity. However from a bare reading of clauses (b) (c) (d) and (e), it would be evident that under any circumstance the deposit of the gratuity amount, whether disputed or undisputed cannot be postponed for any reason. From the language of sub-section (7) of Section 7, it becomes absolutely clear that the appellant is required to deposit the amount of gratuity as directed by the Controlling Authority while filing an appeal. In case of failure to deposit the amount within the statutory period prescribed under the Act, the Appellant cannot invoke the vested right to appeal, as the same is a pre-condition to entertain an appeal.

11. In that view of the matter, if the Appellate Authority has dismissed the appeal, no illegality can be found with the order impugned.

12. Accordingly, the writ application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.05.2017
Transmission Date	NA

