IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 605 OF 2006
IN
WRIT PETITION NO. 637 OF 2004

1. Shri Dnyanoba Vishnu Sawant,	)	… Appellants.
2. Shri Pandurang Maruti Khodade,	)	(Org. Petitioners)
3. Shri Sadanand Muniraj Kurmi,	)	
4. Shri Deoraj Bhijnath Kurmi,	)	
5. Shri Yeshwant Tatoba Karamalkar,	)	
6. Shri Maruti D. Patil,	)	
7. Shri Shantaram Babaji Jadhav,	)	
8. Shri Maruti Appa patil,	)	
9. Shri Anant Narayan Kadam,	)	
10. Shri Gangaram Ramchandra Bane,	)	
11. Shri Pandurang Janba Dhegaskar,	)	
12. Shri Madhukar Sabrao Kanerkar,	)	
13. Shri Gulap Genoo Padekar,	)	
14. Shri Rangnath Shiwa Chowgule	)	

V/s.

1. M/s. Sitaram Mills Unit of National	)	
Textile Corporation,North Maharashtra,		
N.M.Joshi Marg, Mumbai -11.	)	
	)	
2. M/s.National Textile Corporation Ltd.,	)	… Respondents.
North Maharashtra, NTC House,	)	(Org.Respondents)
N. Morarjee Marg, Ballard Estate,	)	
Mumbai – 400 038.	)	

Ms. Nivedita S. Deshpande a/w. Mrs. S. P. Munshi i/by S. N. Deshpande for the Appellants.

None for the Respondents.

CORAM : ANOOP V.MOHTA AND P.R.BORA,JJ.

Judgment Reserved on : 09th JANUARY, 2017.
Judgment pronounced on: 24th JANUARY, 2017.

JUDGMENT : (Per : P.R. BORA, J.)

1 By this Appeal, the Appellants have challenged the order passed by the learned single Judge of this Court in Writ Petition No. 637 of 2004. The said writ petition was filed by the Appellants (Original Petitioners), challenging the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as "the said Act" for the sake of brevity), whereby the Appellate Authority has rejected the Appeals filed by the present Appellants against the order passed by the Controlling Authority under the said Act.

2 Few facts which are relevant for the decision of the present Appeal, in brief, are thus : the Appellants were working in M/s. Sitaram Mills, the Unit of National Textile Corporation, North Maharashtra (for short, hereinafter referred to as "the said Mill"). The said Mill was nationalized in the year 1983. It is the contention of the present Appellants that each of them was in continuous service of the said M/s. Sitaram Mills at the time when it was nationalized. It is the further contention of the Appellants that after nationalization of the said Mill, the Appellants-workmen were

forced to submit their resignation some time in the year 1990. According to the Appellants even after nationalization, they had worked in the said Mill up to the year 1990 continuously and as such they were entitled for the payment of the gratuity. Since the gratuity was not paid to the Appellants-workmen, they filed applications before the Controlling Authority, seeking directions against the employer for determining the amount of gratuity payable to the Appellants-workmen and accordingly, to pay the said amounts to the Appellants-workmen.

3 The applications so preferred by the Appellants-workmen were resisted by the Opponents-Respondents. In the reply filed by the Opponents, an objection was raised that the applications so filed by the appellants were barred by limitation and on that ground alone, the rejection of the applications was sought by the Opponents. Though the applications were sought to be rejected on the ground of limitation, the Opponents have admitted that the Appellants-workmen were entitled to receive gratuity from the National Textile Corporation for the period from 18.10.1983 till the date of their retirement. Further, though the amount of gratuity, as was claimed by the Appellants-workmen, was disputed by the Opponents, in each of the applications, certain amount was admitted by the Opponents to be payable to the

respective workmen towards gratuity, subject to the deductions, if any.

4 Since in the reply filed by the Opponents, the rejection of the applications was sought on the ground of limitation, the Appellants-workmen subsequently filed separate applications, seeking condonation of the delay. It was contended in the said applications that the Opponents have assured them that they would be paid the amount of gratuity and hence, workmen were patiently waiting for some positive action from the Opponents. It was specifically contended by the workmen that however, when in the year 2000 it was declared that the majority of the NTC Mills would be closed, the appellants-workmen filed the applications and it was the reason that the delay was caused in filing the applications by the workmen.

5 The Controlling Authority, however, was not convinced with the reasons that were assigned by the workmen for occurrence of the delay in making the applications and ultimately, dismissed the applications filed by the workmen, observing that the appellants could not give any satisfactory reason for condoning the delay. One more reason was assigned by the Controlling Authority that though sufficient opportunities were extended, the Advocate for the workmen did not appear for the arguments.

6 Aggrieved by the order passed by the Controlling Authority, the workmen preferred the Appeals before the Appellate Authority. The Appellate Authority vide its judgment and order dated 23rd June, 2003 dismissed the Appeals filed by the workmen and confirmed the order passed by the Controlling Authority. The workmen, thereafter approached this court by filing writ petition no.637 of 2004. The learned single Judge of this court was also not convinced with the submissions made on behalf of the workmen and vide order passed on 20th June, 2006 rejected the writ petition so filed by the workmen. Aggrieved by, the workmen have preferred the present appeal.

7 The learned counsel appearing for the Appellants submitted that neither the authorities under the Payment of Gratuity Act nor the learned single Judge did properly consider the provisions of the Act and resultantly the appellants are being deprived of their legitimate claim to receive the gratuity amount which had become payable to them way back in the year 1990.

8 None has appeared for the Respondents. The record shows that even before the learned single Judge, none had appeared for the Respondents-Opponents.

9 We have carefully considered the submissions made on behalf of the Appellants-workmen. We have also perused the impugned judgment delivered by the learned single Judge and the orders passed by the Controlling Authority as well as Appellate Authority under the Payment of Gratuity Act. After having perused the material on record it is apparently revealed that gross injustice has been caused to the Appellants.

10 After having perused the orders passed by the Controlling Authority and the Appellate Authority, we are constrained to observe that the entire approach of both the authorities in deciding the applications and appeals respectively was not only casual but also perverse. While highlighting the legal obligations to be discharged by the workers under the provisions of the Act and the Rules and eventually rejecting their applications and appeals on the point of delay, both the authorities have not even whispered about the obligations the Act imposes on the employer.

11 Before the Controlling Authority it was not the contention of the respondents that the appellants were not their employees or that they were not entitled for any gratuity. The applications were opposed mainly on the ground of delay and the quantum of amount as was claimed by the respective applicants towards gratuity. Having regard

to the fact that though the quantum was disputed, the respondents did not dispute the entitlement of the appellants to receive the amount of gratuity and certain amount was also specified to be payable to the respective applicants, the Controlling Authority at the first instance ought to have called upon the respondents to disclose whether they have fulfilled the obligation cast upon them under section 7 (2) and (3) of the Act.

12 Sub-section (2) of section 7 lays down that irrespective of whether an application, as provided in sub-section (1) has been made or not, the employer shall as soon as gratuity becomes payable, determine the amount of gratuity and give a notice in writing to the person to whom gratuity is payable and to the Controlling Authority, specifying the amount of gratuity so determined.

Sub-section (3) provides that the employer shall arrange to pay the amount of gratuity within 30 days from the date on which it becomes payable to the person to whom gratuity is payable.

Sub-section (4)(a) then provides that if there is any dispute as to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim or in relation to an employee for payment of gratuity or as to the person entitled to receive gratuity, the employer must deposit with the Controlling Authority such amount as he admits to be payable.

Sub-section (4)(b) provides that upon there being a dispute with regard to any matter, specified in clause (4)(a), the employer or employee or any other persons raising dispute, may make an application to the Controlling Authority for deciding the dispute. The Controlling Authority has thereupon been empowered to adjudicate upon the dispute.

13 In absence of any positive evidence, not even a statement from the respondents that they had fulfilled the obligations imposed upon them under sections 7 (2), 7(3) and 7(4) (a) of the Act, it has to be presumed that no such compliance was made by the respondents. In the aforesaid background, it was the contention of the appellants before the Controlling Authority and the Appellate Authority that failure to pay the amount of gratuity on part of the respondents was continuing and recurring cause of action for the appellants and, therefore, virtually there was no delay on their part in approaching the Controlling Authority.

14 In order to support the contention so raised by them, the appellants have relied upon the judgment in the case of **H. Jayarama Shetty vs. Sangli Bank Ltd., (2005 II**

CLR 267). In the said matter the Appellate Authority had held that the claim of the petitioner therein for payment of gratuity was barred by limitation. The learned single Judge disapproved the said finding by analyzing the facts involved in the said case. In the said matter, the petitioner had submitted his resignation on 17th September, 1995 and the same was accepted by the employer some times in December, 1995. The learned single Judge has observed that it was bounden obligation of the respondent employer to quantify and pay the gratuity soon after the resignation of the petitioner was accepted. However, the employer on 17th August, 1997 wrote to the petitioner, declining to pay the amount of gratuity on the ground that the gratuity had been adjusted against a loss which the bank has determined. The learned single Judge has observed that keeping aside the correctness of the action of an adjustment against a loss, which the Bank has unilaterally determined, without holding disciplinary proceedings, in so far as the question of limitation was concerned, the employee was justified in taking the position that the failure to pay his gratuity was a continuing and recurring cause of action and as such there was no delay on his part. The learned single Judge has observed that the breach on the part of the employer to comply with his obligation under section 7 of the Act is a recurring and continuous cause of action. Some of the observations made by the learned single Judge in para 11 of the said judgment are worth reproducing, which are thus :

"11. … … … The Act is a piece of social welfare legislation and the employer cannot be permitted by reason of his own default in complying with his obligation to defeat the just entitlement of the employee. Finally, it may be noted that the employer has to determine and pay gratuity whether or not an application is filed to him. The filing of an application before the employer is not a condition precedent. Rule 7 makes procedural provisions for such an application. On receipt of an application under Rule 7, the employer has to issue a notice under Rule 8 either admitting the claim or to specify the reasons why he holds the claim inadmissible. It is thereafter that time is prescribed in Rule 10 for an application to the Controlling Authority. The making of an application under Rule 7, therefore invokes a chain of events in Rules 8 and 10. Once the making of an application to the employer is not mandatory under the provisions of Section 7(2) of the substantive provisions of the Act, the limitation under the Rules which is triggered upon the filing of the application under Rule 7 can obviously not defeat the claim of the employee."

15 In the cited judgment, the learned single Judge has also referred to the judgment of the Delhi High Court in the case of **M.C.D. vs. Nand Kishore, (2003 (97) FLR 158),** wherein it is held that non-payment of gratuity by the employer payable to the employee was a continuing wrong and that there was no question of any delay on the part of the employee in approaching the Controlling Authority.

16 The learned Judge has further referred to the judgment of Kerala High Court in the case of **Neelakandan vs. State of Kerala**, (**2001 (II) CLR 448),** wherein the learned Judge has adverted to the provisions of section 7 of the Act, as amended, and held that while Rule 7 of the Gratuity Rules provides that an application be filed within a prescribed time, these provisions under the Rules cannot of course be taken as over reaching the provision of section 7 (2) of the Act.

17 A reference is also made to the judgment of the Karnataka High Court in the case of **General Secretary, Vokkaligara Sangha, Bangalore vs. R.Chandramouli, 2002 II CLR 1070,** wherein it was noted that Rule 7(5) permits the entertainment of the applications for payment of gratuity after the expiry of the time specified and claim shall not be invalid merely because the claimant failed to present the application within the specified period.

18 In the instant matter, throughout it is the specific contention of the workers that they were not informed by the employer as to from which date their services stood terminated, either on account of acceptance of their resignations or on account of any other reason. It was also the contention of the workers that on the contrary, they were always assured that work will be provided to them. As it is further contended, soon after the Central Government declared its intention to close down the NTC Mills, the workers approached the Controlling Authority, claiming the amount of gratuity. As we have noted earlier, the primary obligation was on the employer to comply with the provisions of section 7(2), 7(3) and 7(4)(a) of the Act. As has been elaborated by us hereinabove, it is not the case of the employer that any such notice was issued or that the admissible amount of gratuity was deposited with the Controlling Authority. In such circumstances, it has to be held that the employer had failed in discharging the obligation cast upon it under the provisions of the Act and the failure on the part of the employer, was thus a continuing and recurring cause of action for the workmen in approaching the Controlling Authority and if at all there was any delay, it was liable to be condoned.

19 The Controlling Authority as well as Appellate Authority have utterly failed in appreciating the aforesaid

aspects. The learned single Judge also did not take into account the obligations imposed on the employer under sections 4 and 7 of the Act, which were having material bearing on the subject matter.

20 The learned single Judge has referred to and relied upon the judgment of the division Bench of this court in the case of **J. V. Dalal vs. Plastpeel Chemicals & Ors.**, **1979 (I) LLJ 409**. There cannot be a dispute about the law laid down by the division bench in the aforesaid judgment, that where the Act is silent, Rules can provide for period of limitation and Rule making power being as wide as it could be, the Rule providing for limitation is valid and intra vires the Act. However, further observation made by the learned single Judge that in the case of **Jayarama Shetty**, cited supra, the provisions of Rule 10(1)(iii) were not considered, is factually incorrect. These provisions are very well considered in the said judgment. Further observation in the impugned order that the facts involved in the case of Jayarama Shetty (supra) were inapplicable to the facts of the present case also cannot be subscribed. In **Jayarama Shetty's** case, the learned single Judge after having discussed the relevant provisions of the Act and the Rules therein, has held that failure to pay the amount of gratuity by the employer was the continuing and recurring cause of action for filing an application, claiming gratuity by the employee, and there was no delay as such on

his part. We have noted hereinbefore, the facts of the aforesaid case. According to us, the facts involved in the instant case are akin to the facts which were involved in the case of Jayarama Shetty (cited supra). In the instant case also it is the contention of the employees that they were never informed about their date of retirement and the employer did not comply with the provisions of section 7(2) 7(3) and 7(4)(a) of the Act. In the circumstances, as held by the learned single Judge in the case of **Jayarama Shetty,** the employees in the instant matter were definitely having continuing and recurring cause of action and even if it is assumed that some delay has caused in preferring the application by them, in the given circumstances, the same must have been condoned by the Controlling Authority.

21 We reiterate that in no case the applications filed by the appellants should have been rejected by the Controlling Authority in view of the fact that in the replies filed by Respondent No.2, it had not disputed the entitlement of the appellants for receiving the amount of gratuity and though the quantum of the amount of gratuity was disputed, certain amount was admitted to be payable to the respective applicants. As such, at least to the extent of said admitted amount, the Controlling Authority must have allowed the applications and must have directed the employer to deposit the said admitted amount and since the delay was committed

in depositing the said amount, must have further asked the employer to deposit the said amount alongwith the interest thereon in accordance with the provisions of the Act and Rules in that regard. However, as has been noted by us hereinbefore, the entire approach of the Controlling Authority as well as the Appellate Authority is noticed to be callous which has resulted in depriving the Appellants from receiving the amount of gratuity which had become payable to them way back in the year 1990. The employer also did not deposit even the admissible amount, as provided under section 7(4)(a) of the Act. As has been held by the Hon'ble Apex Court in the case of **State of Kerala & Ors. vs. M. Padmanabhan Nair (1985) 1 Supreme Court Cases 429** - "Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment." As such, we hold the Appellants entitled for the interest at the rate of current market rate i.e. at the rate of Rs. 15% per annum on the amount of gratuity which the Respondents had admitted to be payable to the respective claimants in the replies filed by them before the Controlling Authority. It also appears to us that Appellants were unnecessarily dragged in litigation and were compelled to fight for their legitimate claim for years together. We, therefore, deem it appropriate to award each of the Appellants a sum of Rs.5000/- by way of cost of the litigation from the Respondents.

22 For the reasons recorded above, the following order is passed :

ORDER

i. The order passed by the learned single Judge of this court in Writ Petition No. 637 of 2004 and the impugned orders passed by the Controlling Authority and the Appellate Authority are hereby quashed and set aside.

ii. The Respondents are directed to deposit with the Controlling Authority the admitted amount of the gratuity payable to the respective claimants, as has been admitted and specified by the Respondents in the replies submitted in respective applications before the Controlling Authority, alongwith the interest on the said amount at the rate of 15% per annum from the date the gratuity, has become payable till the realization of the said amount, within three months from the date of this order.

iii. The Controlling Authority shall on deposit of such amount, forthwith release the said amount in favour of the respective claimants.

iv. In so far as the claim not admitted by the Respondents, the matter is remitted back to the Controlling Authority for its adjudication in accordance with the law by giving necessary opportunity to the parties for adducing necessary evidence in respect of their respective contentions.

v. The Controlling Authority shall decide the said claims, as expeditiously as possible and preferably within the period of four months from the receipt of the writ from this court.

vi. The Respondents shall pay Rs. 5000/- to each of the present appellants towards costs of the litigation.

The Appeal stands allowed in the aforesaid terms.

(P. R. BORA,J.) (ANOOP V. MOHTA J.)

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