

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6957 of 2014 (O&M)
Date of Decision:-17.08.2017.

M/s Napa Auto Forge Pvt. Ltd.

.....Petitioner

Versus

Appellate Authority under the Payment of Gratuity Act-cum-Deputy Labour Commissioner, Faridabad (Haryana) and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. S.S. Narula, Advocate for the petitioner.

Mr. Bharat Bhushan Sharma, Advocate for respondent No.3.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has assailed the order passed in Appeal No.25/2013 by the Appellate Authority under the Payment of Gratuity Act-cum-Deputy Labour Commissioner, Faridabad dated 28.02.2014 (Annexure P-12).

The respondent filed application before the Controlling Authority under the Payment of Gratuity Act, 1972. Controlling authority decided in favour of the respondent-workman that he is entitled to gratuity amount of ₹ 64,615/- along with interest @ 9% per annum from the date of filing of the application till its realization. The petitioner feeling aggrieved by the order of controlling authority preferred an appeal before the Appellate Authority under the Payment of Gratuity Act, 1972 on 28.02.2014. Appellate Authority under the Payment of Gratuity Act, 1972 decided the petitioner's appeal only on the technicality to the extent that petitioner failed to deposit interest part also on determined gratuity amount

of ₹ 64,615/- which is pre-condition for filing an appeal before the Appellate Authority.

Learned counsel for the petitioner submitted that filing of an appeal against the order of the Appellate Authority under the Payment of Gratuity Act, 1972, it is a pre-condition for depositing gratuity amount and not for depositing interest under sub-section 7 of Section 7 of the Payment of Gratuity Act, 1972. Thus, the Appellate Authority has erred in holding that appeal is not maintainable for not depositing the interest portion as awarded by the controlling authority is liable to be set aside. In support of the petitioner's contention insofar as non-depositing of interest part at the time of filing of an appeal, learned counsel for the petitioner relied on reported decision, reported in **2004 (8) SLR 87 (Standard Stonewares and Tiles Vs. Appellate Authority).**

Per contra learned counsel for the respondents submitted that petitioner was required to deposit both the determined gratuity as well as interest amount as awarded by the controlling authority, while filing the appeal before the Appellate Authority. In support of this contention, he relied on sub-section 4 (c) of Section 7 of the Payment of Gratuity Act, 1972. He has also relied on decisions which are reported in **2015 LIC 1472 (Mahabir Shiksha Prasara Samiti Vs. S.K. Sawarkar and others)** and **1994 (1) CLR 487 (Janpad Panchayat Masturi, Bilaspur Vs. Appellate Authority and Deputy Labour Commissioner and others)**

Heard learned counsel for the parties.

Crux of the matter in the present case is whether the petitioner aggrieved by controlling authority's order, if he intends to prefer an appeal before the Appellate Authority was required to deposit gratuity amount as

well as interest awarded by the controlling authority or not? Perusal of sub-section 4 (c) of Section 7 and sub-section 7 of Section 7 of the Payment of Gratuity Act, 1972. The above statutory provision do not provide for pre-deposit of gratuity amount and interest. It speaks of only gratuity amount as is evident from proviso to sub-section 7 of Section 7 of the Payment of Gratuity Act, 1972. Proviso 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.”

Respondent counsel relied on two decisions cited (supra) do not deal with the deposit of interest as well as interpretation of sub-section 7 of Section 7 of the Payment of Gratuity Act, 1972. In one of the case cited by him wherein the employer had paid the gratuity amount and the employer preferred an appeal against interest part. Thus, in view of Proviso of sub-section 7 of Section 7 of the Payment of Gratuity Act, 1972, Appellate Authority's order dated 28.02.2014 is liable to be set aside. Accordingly, it is set aside and the matter is remanded to the Appellate Authority for consideration of petitioner's appeal afresh on merit within a period of 4 months from the date of receipt of certified copy of this order.

Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

August 17, 2017.

sandeep

Whether speaking/reasoned:-

Whether Reportable:-

Yes / No

Yes / No.