

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.110 of 2018

In

Civil Writ Jurisdiction Case No.125 of 2016

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

... .. Appellants- Appellant/s

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 Nagendra Prasad Singh, ex-Manager (General), Resident of Krishna Toli, Road No. 4, Brahampura, P.O. - M.I.T., District - Muzaffarpur, PIN - 842003.

... .. Respondents-Respondent/s

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Appearance :

For the Appellant/s : Mr. P. K. Verma, Senior Advocate
Mr. Suman Kumar Jha, Advocate
For the Union of India : Mr. Uma Shankar Verma, S. S.C.(P)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-12-2018

Re.: Interlocutory Application No.1400 of 2018

Heard Sri P. K. Verma, learned Senior Counsel for the
appellant and Shri Uma Shankar Verma, learned counsel for the
1st respondent-Union of India.

The cause shown is sufficient. The delay condonation
application is allowed. The appeal shall be treated to be within
time.



Re.: Letters Patent Appeal No.110 of 2018

Heard Sri P. K. Verma, learned Senior Counsel for the appellant and Shri Uma Shankar Verma, for the 1st respondent-Union of India.

2. We had posted the matter vide our order dated 3rd December, 2018 while expressing a *prima facie* opinion on the issue raised. The same is extracted here-in-under:

“Heard Sri P. K. Verma, learned Senior Counsel for the appellant-Food Corporation of India and Sri Uma Shankar Verma, learned counsel for the 1st respondent.

The issue raised in this appeal is that the learned Single Judge has proceeded to dismiss the writ petition on an incorrect interpretation of the provisions of Section 7 (4) and (7) of the Payment of Gratuity Act, 1972 (hereinafter referred to as ‘the Act’) which on the facts of the present case, according to the learned counsel for the appellant, was not attracted. Even otherwise, Shri Verma states that the appellant is prepared to make the deposit for the purpose of entertaining the appeal and consequently the judgment of the learned Single Judge as well as the order dated 27th May, 2015 be set aside for the purpose of entertainment of the appeal.

We have considered the submissions raised and the short question is as to whether the terminology used in Section 7(4) (a) of the Act can be construed to mean that the amount which is admissible and payable has to be compulsorily deposited for the purpose of entertaining an appeal to be filed by an aggrieved person under sub-section (7) of Section 7 of the Act.

In the instant case, the appellant-employer had taken a decision to forfeit the gratuity of the employee on certain allegations which under the Act was determined to be payable by the authority. Aggrieved, the appellant-Corporation filed an appeal, but without making the statutory deposit as contemplated under sub-section (7) of Section 7 of the Act and the appellate authority dismissed



the same on 27th May, 2015.

Sri Verma contends that non-deposit will only make the appeal inadmissible and would not necessarily result in dismissal of the appeal and even otherwise once the forfeiture clause had been invoked by the appellant employer, then the same would not amount to a payable amount admitted by the appellant as contemplated under sub-section (4) (a) of Section 7 of the Act.

The question, therefore, is that if the forfeiture has been resorted to, the same is in respect of the amount that was payable to the employee and consequently the amount payable can it be treated to be the amount which is admissible or merely a permissible amount.

Sri Verma submits that he may be permitted to advance his submissions on this issue on Wednesday.

Put up day-after-tomorrow, i.e., 05.12.2018.”

3. Today, Sri P.K.Verma has cited the judgment of a learned Single Judge of the Calcutta High Court in the case of **Gloster Jute Mills Ltd. Versus Deputy Secretary, Labour Department and others, 2002-III-LLJ 76**, whereby the learned Single Judge has held that the employer is required to deposit with the controlling authority only such amount as he admits to pay as gratuity in terms of Section 7(4) (a) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the ‘Act’).

4. The issue, therefore, in short is as to whether a compulsory deposit has to be made in all circumstances or the employer has any options. For this, we may extract the provisions of sub-section (6) of Section 4 of the Act which is quoted here-in-under:



“ 4 (6) Notwithstanding anything contained in sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, **shall be forfeited** to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

5. The aforesaid provision categorically begins with a *non-obstante* clause giving the power to the employer to forfeit the payment of gratuity in certain circumstances.

6. This right of forfeiture is subject to adjudication in a dispute which can be raised in terms of Section 7 of the Act. This dispute is referable to sub-section (4) of Section 7 of the Act which is extracted here-in-under:

“ 7 (4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity,



the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority **shall**, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, **determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount** or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit -

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.”



7. The provisions of sub-section (4) (a) of Section 7 of the Act relates to a deposit with the controlling authority by the employer on a dispute being raised of such amount that he admits to be payable to the employee.

8. A perusal thereof would also indicate that upon adjudication an amount that becomes payable under the orders of the controlling authority, a direction is issued to the employer for payment of such amount with such deductions from the amount already if deposited. It further enjoins upon the controlling authority to pay the amount deposited, including the excess amount to the person entitled thereto. Thus, the deposit under sub-section 4(a) of Section 7 of the Act quoted hereinabove does not relate to the amount admitted by the employer at the stage of appeal. This provision in the statute is to enable the employer to deposit such amount about which there is no dispute. It is after adjudication that final amount is determined and the amount already admitted by the employer and deposited becomes deductible or adjustable otherwise upon final determination. In effect, there is no doubt about the amount which is admittedly deposited by the employer voluntarily. This is in clear contrast to the amount required to be deposited after adjudication and upon determination of the dispute.



9. Sri P.K. Verma, however, submits that if the entire amount is paid, then the entire exercise of appeal would become infructuous and for this reliance has been placed by him on a judgment of a learned Single Judge of the Calcutta High Court in the case of **Gloster Jute Mills Ltd.** (supra). He further relies on sub-section 4 (a) of Section 7 of the Act to urge that the employee is required to deposit only such amount that the employer admits being due, and since the gratuity has been validly forfeited, nothing remains due or admitted to be deposited.

10. The provision that now requires to be considered in the said backdrop is sub-section (7) of Section 7 of the Act which is extracted here-in-under:

“ 7 (7) 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.”



11. The second proviso mandates that if an employer files an appeal against an order of the controlling authority then it shall not be admitted unless at the time of preference of the appeal, the appellant has deposited the amount equal to the amount of gratuity required to be deposited under sub-section (4) of the Section 7 of the Act. Sri P. K. Verma submits that the amount to be deposited would only be the amount which is admitted to the employer and not the disputed amount.

12. We are unable to agree to this submission inasmuch as the mandate of the second proviso to sub-section (7) of Section 7 of the Act is categorical that the amount of gratuity required to be deposited has to be tendered by the employer before the appellate authority which is an amount determined under sub-section (4) of Section 7 of this Act on a dispute being raised before the controlling authority. The amount payable under sub-section (4) of Section 7 is not only an admitted amount, but also includes the determined amount by the controlling authority. The provisions of Section 7(4) (a) of the Act are clearly relatable to a voluntary deposit of the admitted amount to be made by the employer when the dispute is raised by the employee. The adjudication that follows is for any balance of the amount which the employer denies to the employee. After adjudication an



amount may be determined to be payable as per Section 7(4) (c). This amount is the amount referable to the second proviso to Section 7(7) of the Act where at the time of the filing of the appeal after adjudication the employer has to deposit the amount of gratuity which is required to be deposited under sub-section (4). The legislative intent is clear that this is the amount which has been adjudicated by the controlling authority and it nowhere relates to the amount deposited by the employer voluntarily which is admitted by the employer and about which there is no dispute. The contention of Sri Verma is, therefore, not in conformity with the aforesaid explicit statutory provisions which admits of no ambiguity. The judgement of the learned Single Judge of the Calcutta High Court in the case of **Gloster Jute Mills Ltd.** (supra) therefore, does not lay down the law correctly in view of what has been stated by us hereinabove.

13. We, are therefore, not persuaded by the ratio of the said judgement and we, accordingly, hold that the appellant employer was liable to deposit the amount so determined under sub-section (4) of Section 7 of the Act before the appellate authority.

14. At this stage, Sri P. K. Verma, learned Senior Counsel contends that there would be no difficulty in entertaining



of the appeal as the appellant is prepared to deposit the said amount.

15. In the event, the appellant deposits the said amount, then in that event, the appeal filed by the employer has to be entertained.

16. The learned Single Judge under the impugned judgment dated 29th November, 2017 has arrived at the same conclusion and has relied on another judgment in the case of the **General Manager (region), Food Corporation of India, Regional Office, Patna Vs. The Union of India & Ors.** (CWJC No.8619 of 2016) decided on 12.05.2017.

17. In the wake of what has been stated above, there is no occasion for entertaining an exemption application as the appellant is prepared to make the deposit, but at the same time, the deposit has to be made before the appellate authority and, therefore, it will be open to the appellate authority to determine the issues for any such direction which can include the modifying or reversing of the decision passed by the controlling authority. In that event, the employee would be entitled to only such amount that is ultimately determined by the appellate authority.

18. We, accordingly, dispose of this appeal and set aside the order dated 27th May, 2015 passed in the appeal filed by the



appellant-employer in supersession of the impugned judgment dated 29th November, 2017. The appeal before the appellate authority shall stand restored provided the appellant complies with the deposit to be made in this regard as observed above. In the event, the amount is deposited within one month from today, the appeal shall stand restored and shall be decided on its own merits.

19. This appeal stands disposed of accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.12.2018
Transmission Date	

