NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No. 155 of 2018

M/s A2Z Infraservices Ltd. through its authorized signatory (on behalf of Managing Director) Mr. Hemant Yadav, S/o Late Brij Lal Yadav, aged about 36 years, address O-116, First Floor, Shopping Mall, Arjun Marg, DLF City, Phase-I, Gurugram, Haryana

---- Petitioner

Versus

1. Controlling Authority (under the Payment of Gratuity Act, 1972) and Assistant Labour Commissioner (Central) D-6, Adarsh Society, Sector-1, Avanti Vihar Raipur, District Raipur, Chhattisgarh

2. Narad Yadav Ward No.8, Luchaki Para, nearby Ganesh Mandir, Durg, District Durg, Chhattisgarh

---- Respondents

For Petitioner : Shri Mateen Siddiqui, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

06.09.2018

Challenge in the present writ petition is to the order dated 12.02.2018 communicated to the petitioner vide correspondence dated 19.02.2018 which has been received by the petitioner at a later stage.

2. Facts of the case are that the worker i.e. respondent no.2 in the instant case had filed a claim application under the provisions of the Payment of Gratuity Act, 1972 (in short 'the PG Act') before the Controlling Authority i.e. the Assistant Labour Commissioner (Central), Raipur where the case was registered as Case No. RP-48(51)/2017-ALC claiming gratuity

for the services that he has rendered with the petitioner. Notices were issued and the petitioner entered appearance before the competent authority and participated in the proceedings. Finally an order was passed on 12.02.2018 which was forwarded to the petitioner vide correspondence dated 19.02.2018 Annexure P-1 which was received by the petitioner at a later date.

3. Counsel for the petitioner tried to assail the impugned order on the ground that the contentions of the petitioner contractor/employer have not been duly considered or properly appreciated by the Controlling Authority. The Controlling Authority has also not properly appreciated the application for condonation of delay and the same has also been entertained and allowed in a casual manner. He submits that there is a considerable delay on the part of the employee in approaching the Controlling Authority under the Act and therefore the claim of the employee could have been rejected on the ground of delay itself. He further submits that it is a case where the respondent employee by making false submission got two of the contracts of the petitioner merged together and has taken both the contracts of the petitioner into consideration for quantifying the length of service.

4. Given the aforesaid facts and circumstances of the case, this Court is not inclined to accept all these grounds which the petitioner intends to take in the present writ petition under Article 226 of the Constitution of India on the simple ground of there being statutory alternative remedy available to the petitioner. Section 7 (7) of the Payment of Gratuity Act, 1972 reads as under:

> "(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:"

5. This Court has no hesitation in holding the provisions of the PG Act which is a special law enacted by the Parliament for ensuring that the provisions of the Gratuity Act are maintained and the employees working in different establishment are protected under its provisions. Once when the said Act itself has provided a mechanism for the employees to approach a particular authority for redressal of their grievance and if the Act itself further provides another provision for challenging the order of the Controlling Authority by way of an appeal which in the instant case is Section 7(7) of the PG Act, this Court exercising its extraordinary powers under Article 226 of the Constitution of India would not like to bypass the statutory alternative remedy by entertaining the writ petition.

6. At this juncture, counsel for the petitioner submits that he has instruction from his client that the Appellate Authority was not functional for quite sometime and therefore he did not prefer an appeal and has approached this Court for ventilating his grievances.

7. This again would not be a strong ground for the High Court to entertain the writ petition. The proper course for the petitioner would have been to prefer an appeal and in case if the respondent Authority initiated an execution proceeding, the petitioner could have approached the High Court, under those circumstances, where the appeal was pending consideration without there being an appellate authority.

8. The writ petition for this reason would not be maintainable. Reserving the right of the petitioner for preferring an appeal before the

appellate authority, the present writ petition stands disposed of. While filing an appeal the petitioner would be entitled to move an application for condonation of delay giving reasons that the office of the appellate authority was not functional for quite sometime and the said ground may be considered for condoning the delay if any caused in the filing of the appeal. Subject to the petitioner's filing a photocopy of the impugned order, the certified copy shall be returned back to the petitioner.

Sd/-
P. Sam Koshy
Judge

Bhola