

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2018

CORAM :

THE HONOURABLE DR. JUSTICE S.VIMALA

W.P.No.5490 of 2016

Deputy Registrar / Principal
Peraringar Anna Institute of
Co-operative Management,
Opposite to Collectorate Complex,
Kancheepuram - 631 501.

... Petitioner

versus

1. The Joint Commissioner of Labour,
D.M.S.Offices Complex,
Teynampet, Chennai - 600 006.
2. The Assistant Commissioner of Labour,
Office of the Deputy Commissioner of Labour-II,
D.M.S.Offices Complex,
Teynampet, Chennai - 600 006.
3. R.Ravichandran

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorarified mandamus, to call for the records relating to the orders passed by the first respondent in E/3757/15 dated 06.10.2015 and the second respondent in PG17/2014 dated 11.02.2015 and to quash both the orders and consequently, to direct the second respondent to return the deposit amount of Rs.1,46,894/- with accrued interest.

For Petitioner : Mr.P.Anbarasan

For Respondents : Mr.N.Srinivasan, AGP, for R1 & R2
Mr.S.Selvadurai for R3

ORDER

This writ petition has been filed challenging the order dated 06.10.2015 of the Appellate Authority under the Payment of Gratuity Act 1972.

2. The Appellate Authority has returned the appeal filed under Section 7(7) of the Act on the ground that it has been filed after the expiry of 120 days.

3. A persual of the provisions of Section 7(7) of the Payment of Gratuity Act reveals that the remedy open to an aggrieved person in view of the order passed by the Controlling Authority under the Payment of Gratuity Act, is to file an appeal within 60 days from the date of receipt of the order and thereafter, 60 days time is provided for condonation of delay.

4. The provisions of Section 7 of the Payment of Gratuity Act is reproduced for convenient reference:

7. Determination of the amount of gratuity.-

(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

[(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify: Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]

(4) (a) If there is any dispute 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.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a

judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(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.]

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the decision of the controlling authority."

5. The Appellate Authority has passed the order with a finding that the appeal is barred by limitation. But, instead of rejecting the appeal, it is returned. Therefore, the petitioner ought to have represented the appeal, if it is within time and ought to have sought for remedy only before the appellate authority. In view of the availability of alternative remedy, the writ petition before this Court is not maintainable.

6. Accordingly, the writ petition is dismissed. No costs.
Ogy

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Joint Commissioner of Labour,
D.M.S.Offices Complex,
Teynampet, Chennai - 600 006.
2. The Assistant Commissioner of Labour,
Office of the Deputy Commissioner of Labour-II,
D.M.S.Offices Complex,
Teynampet, Chennai - 600 006.

+lcc to Mr.P.Anbarasan, Advocate S.R.No.56237
+lcc to the Government Pleader, S.R.No.56906

KR/14/11/18

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