

*** THE HON'BLE SRI JUSTICE P. NAVEEN RAO**

+ WRIT PETITION No.7212 of 2014

% 16.07.2018

M/s.Deepak Transport Agency Private Limited,
Rep., by its Managing Director,
Mr.Nitin Kumar Shah,
808, 8th Floor, Raghava Ratna Towers,
Chirag Ali Lane, Abids, Hyderabad.

.. Petitioner

And

\$ The Appellate Authority U/Sec.7(7) of Payment
Of Gratuity Act 1972 Cum Deputy Commissioner of Labour,
Circle-II, Anjaiah Karmika Bhavan,
RTC X Roads, Chikkadpally, Hyderabad & others.

.. Respondents

! Counsel for the petitioner : Sri C.Sridhar

Counsel for respondents : Government Pleader for Labour
for Respondents 1 and 2

Sri Anand Kumar Kapoor for
respondent No.3

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> Head Note :

? Citations:

(1995) 2 SCR 1 = AIR 1955 SC 423

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.7212 of 2014

Between :

M/s.Deepak Transport Agency Private Limited,
Rep., by its Managing Director,
Mr.Nitin Kumar Shah,
808, 8th Floor, Raghava Ratna Towers,
Chirag Ali Lane, Abids, Hyderabad.

.. Petitioner

And

The Appellate Authority U/Sec.7(7) of Payment
Of Gratuity Act 1972 Cum Deputy Commissioner of Labour,
Circle-II, Anjaiah Karmika Bhavan,
RTC X Roads, Chikkadpally, Hyderabad & others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED : 16.07.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : Yes / No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : Yes / No
marked to Law Reporters/Journals ?
3. Whether Their Lordship wish to : Yes / No
see the fair copy of the Judgment ?

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.7212 OF 2014

DATED :16.07.2018

Between :

M/s.Deepak Transport Agency Private Limited,
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Petitioner

And

The Appellate Authority U/Sec.7(7) of Payment
Of Gratuity Act 1972 Cum Deputy Commissioner of Labour,
Circle-II, Anjaiah Karmika Bhavan,
RTC X Roads, Chikkadpally, Hyderabad & others.

..

Respondents



This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.7212 of 2014

ORDER :

Heard learned counsel for the petitioner, learned Government Pleader for Labour and Sri Anand Kumar Kapoor learned counsel for 3rd respondent.

2. As the 3rd respondent had grievance regarding settlement of his gratuity from the petitioner-employer, he filed application before the Controlling Authority under Payment of Gratuity Act, 1972 (for short 'the Act') vide Case No.PG/02/2007 on the file of Assistant Commissioner of Labour, Circle-III, Hyderabad, who is the Controlling Authority. The Controlling Authority by order dated 12.10.2007 allowed the claim and ordered payment of gratuity arrived at Rs.90,045/- by taking the total service rendered by the 3rd respondent as 27 years. Aggrieved by the same, petitioner herein preferred appeal on 03-08-2013 before the Appellate Authority under Section 7(7) of the Act, vide File No.B/1457/2013. The said appeal was dismissed by order dated 17.10.2013, holding that the appeal was filed beyond the limitation prescribed under Section 7(7) of the Act and amount was not deposited as required by the provision.

3. Learned counsel for the petitioner contends that the same authority who decided the original petition of the 3rd respondent, in the meantime became the Deputy Commissioner of Labour and he decided the appeal preferred by the petitioner and the same is *ex-facie* illegal. He would further submit that the 3rd respondent had worked for only 11 years and when he left the service in the year

1991 all the benefits were settled and therefore, the authority erred in holding that the amount of gratuity be determined by taking the total service as 27 years.

4. To appreciate the first contention, which goes to the root of the matter, it is necessary to consider scope of Section 7. Section 7 of the Act deals with various aspects of determination of gratuity. On an application by aggrieved employee that his employer has not paid the gratuity due to him, the authority shall decide and pass order under sub-section 4 on the claim of employee.

5. As per Section 7(7) any person aggrieved by order made under Sub-section (4) may prefer appeal within 60 days from the date of receipt of the order. If the employer is aggrieved by the order of original authority, as per proviso appended to section, he is required to deposit the amount of gratuity quantified before the Controlling Authority and shall enclose the certificate of the Controlling Authority to the effect that the appellant has deposited with him amount equivalent to the amount of gratuity awarded by him. The Appellate Authority is vested with discretion to condone the delay in filing appeal to a maximum extent of 60 days if sufficient cause is shown for not preferring the appeal within the time prescribed. In other words, the maximum time available to prefer appeal, including grace period, is 120 days. Thus, to prefer appeal by the employer he is required to comply with two conditions at the threshold, (i) pre-deposit of amount awarded and (ii) filing appeal within limitation prescribed. These two are mandatory and appeal is not maintainable even if one of the two conditions are not satisfied and the Appellate Authority has no discretion on these two aspects. The Appellate Authority becomes *functus officio* even if one of these two conditions are not satisfied.

6. It is not in dispute that copy of the order of the authority was received by the petitioner on 25.10.2007. Learned counsel for respondent no. 4 submits that initially petitioner filed application on 05.11.2007 to recall the order. The Controlling Authority passed conditional order on 29.12.2008 by directing to deposit 50% of the amount ordered. This condition was not complied. Therefore, the conditional order worked itself out and the original order revived. Petitioner filed application to condone delay of 2335 days. This shows that appeal was not preferred within 120 days as required by Section 7 (7) of the Act.

7. Further, admittedly amount awarded by the original authority was not deposited before the original authority and certificate of deposit was not enclosed while preferring the appeal.

8. Thus, petitioner did not comply with two mandatory requirements to prefer appeal and his appeal is not maintainable. When there is violation of statutory requirement in preferring appeal, it cannot be said that the appeal was validly instituted in the eye of law. The role of the Appellate Authority at that stage is to consider satisfaction of twin conditions to prefer appeal and nothing more.

9. Record discloses that Mr. M.Ashok worked as Assistant Commissioner of Labour-III and in that capacity as Controlling Authority he decided the issue on the original side. By the time appeal was preferred, the same person became Deputy Commissioner of Labour-II and was designated as the Appellate Authority under the Act. Thus, the same officer could not have entertained the appeal, consider and pass orders sitting over his own decision made in the capacity as the original authority. No

doubt, a quasi-judicial authority cannot sit and decide the validity of his own decision after he became appellate authority.

10. One of the facets of fair hearing in quasi-judicial proceedings also that same authority who heard original application cannot sit and decide the appeal. Ordinarily, on this aspect order of Appellate Authority is not sustainable and liable to be set aside and matter be remitted to the appellate authority for reconsideration of the issue by the officer other than the officer who decided the original complaint. Whenever, such issue comes up before writ court, writ court would not hesitate to hold such action as illegal and direct fresh consideration of appeal by a different authority. However, in the case on hand matter does not rest there. In this case the petitioner/appellant did not comply with twin conditions to prefer appeal under Section 7(7) of the Act and unless those conditions are fulfilled appeal is not maintainable. As noted above, the appellate authority has not decided the appeal on merits but only highlighted the requirements to prefer appeal and held that appellant has not fulfilled those requirements. This is an incurable defect. Thus, no useful purpose would be served by such remittance. It is a futile exercise. A breach of procedure cannot give rise to remedy unless there is something of substance which is lost by such failure. In the facts of this case it cannot be said that prejudice is caused to petitioner as his appeal suffers from incurable defect.

11. The writ remedy is an equitable remedy. Grant of relief to an aggrieved person is discretionary in the hands of writ Court. Merely because the party makes out a case to grant relief, the Court need not grant the relief prayed if granting of relief prayed is futile.

12. In **Sangram Singh Vs. Election Tribunal**¹, Supreme Court delineated scope of exercise of power of judicial review under Article 226 of the Constitution of India. Supreme Court held:

“14. That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case.”

13. Having regard to the history of litigation briefly noted above and the fact that gratuity payable as determined by the original authority was only Rs.90,045/- and as appellant failed to comply two mandatory requirements to prefer appeal, therefore suffers from incurable defect, this Court is not inclined to relegate the matter to the appellate authority at this stage on the ground that same authority sat in appeal against his own decision.

14. Accordingly, the Writ Petition is dismissed. Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO,J

16th July, 2018
Rds

Note : L.R.Copy to be marked.

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