

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-8406-2014

Date of Decision:06.02.2018

Vidya Niketan

... Petitioner

Vs.

Controlling Authority under Payment of Gratuity Act and another... Respondents

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

Present : Mr. Adarsh Jain, Advocate for the petitioner.
Mr. Rohit Ahuja, Advocate for respondent No.2.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the order passed by the Controlling Authority dated 2.5.2013 (Annexure P-10) and order dated 28.2.2014 (Annexure P-14).

2. Respondent No.2 was appointed with the petitioner. His services were terminated on 20.05.2004. For the purpose of claiming gratuity, application was made by respondent No.2 on 5.1.2011 which was belated claim. Thus, petitioner filed his objection only on the ground of delay in presenting the application for payment of gratuity, it was dismissed. Consequently, an appeal was filed before the appellate authority. Appeal was also dismissed on 25.9.2012. In the meanwhile, controlling authority proceeded to decide the application of the respondent for the purpose of payment of gratuity which was due to the respondent. Perusal of the record, it is evident that there is total inaction on the part of the petitioner to the extent that there was no interim order by the appellate authority insofar as rejection of the petitioner's application relating to delay in belated claim of the respondent. Thus, there was no hurdle for filing written statement before the controlling authority. Despite giving sufficient time and further imposing cost of Rs.500/- on 27.1.2001, petitioner was adamant in not filing written statement before the controlling authority. Thus, an ex parte order

has been passed on 2.5.2013. Thereafter, petitioner's appeal before the appellate authority was dismissed on 28.2.2014. Hence, the present petition.

3. Learned counsel for the petitioner submitted that controlling authority has not provided ample opportunity to the petitioner. Petitioner's counsel has wrongly noted down the date of hearing as 29.2.2012 instead of 21.2.2012. The same was brought to the notice of the controlling authority. However, the same was not appreciated. It was further submitted that no evidence has been recorded on 21.02.2012 as is evident from Annexure P-11 by which controlling authority has rectified ex parte evidence as recorded on 21.2.2012. Therefore, ex parte order passed by the controlling authority and consequential order of the appellate authority are liable to be set aside.

4. Per contra, learned counsel for the respondents while resisting the claim pointed out that having regard to the conduct of the petitioner in not co-operating in deciding the application for Payment of Gratuity before the Controlling Authority and the fact that Controlling Authority has recorded from time to time. Moreover, as on 2.5.2011 the date on which controlling authority decided the respondent's application, petitioner has not submitted his reply despite imposing cost on 27.1.2001 and which has attained finality. In view of these facts, there is no infirmity in the order of the controlling authority so also appellate authority. Hence, no interference is called for. It was also submitted that during pendency of the litigation, respondent has died on 16.5.2014. Therefore, question of remanding the matter to the controlling authority may not be appropriate at this juncture.

5. Heard learned counsel for the parties.

6. No doubt it is an ex parte order by the controlling authority, at

the same time, one has to go through the dates and events how the controlling authority has extended time to the petitioner to enable him to file reply. Despite imposing cost of Rs.500/- on 27.1.2012, petitioner is adamant in not filing reply as well as depositing cost of Rs.500/-. Petitioner had sufficient time from 27.1.2012 to 15.5.2013 the date on which application of the respondent for payment of gratuity was decided. No doubt on 21.2.2012 ex parte may not have been recorded and it was rectified on 2.5.2013 by the controlling authority. Having regard to the conduct of the petitioner and the fact that respondent had died on 16.5.2014, therefore, question of setting aside ex parte order may not be appropriate at this juncture for the reasons that deceased employee is not available for adducing evidence. During pendency of this petition, petitioner had deposited 50% of the determined gratuity amount by the controlling authority in the Registry of this Court. The Registry of this Court is hereby directed to release 50% deposited amount in favour of the legal representatives of respondent No.2 after due examination and their identity through bank. Further petitioner is hereby directed to pay remaining 50% of the gratuity amount determined by the controlling authority within a period of four months from today alongwith 6% interest on gratuity amount to the legal heir. The interest on gratuity amount shall be paid prior to 38 months from the date of filing an application before the controlling authority by the deceased employee.

7. With the above observation, petition stands dismissed.

06.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No