IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 26914 of 2018
Date of Decision: 15.11.2018

The Punjab State Cooperative Supply and Marketing Federation Ltd.
...Petitioners
Vs.
Appellate Authority under Payment of Gratuity Act and others
...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sumit Jain, Advocate, for the petitioner.

Mr. Himanshu Chhabra, Advocate for the caveators-respondents.

RAJIV NARAIN RAINA, J. *(Oral)*

1. This petition by Markfed assails the orders passed by the authorities under the Payment of Gratuity Act, 1972 allowing the claim of an ex-employee.

2. When this petition came up for preliminary hearing for the first time on 30.10.2018, the following order was passed by me after hearing the counsel for the petitioner and the caveator:

> *Even if the plea of the petitioner regarding bar of limitation in presenting the appeal is accepted even then Markfed is faced with the order of the controlling authority which though has been challenged in this petition together with the appellate order but the challenge has no force for two reasons. Firstly, in*

deference to the order of the controlling authority dated 06.04.2017 Markfed has passed the order dated 19.07.2017 according sanction for release of a sum of ₹2,10,819/- as the differential amount of gratuity to the caveator-respondent along with interest @12% w.e.f. 01.09.2016 without protest or reservation. The respondent had approached the controlling authority under the Payment of Gratuity Act, 1972 ("1972 Act") against the interest part claiming that it should have been awarded from the date of retirement i.e. 30.09.2010 and not 01.09.2016. The controlling authority allowed the prayer and directed payment of interest on the principal amount of gratuity amounts over and above gratuity payable under the common cadre rules of Markfed which were less beneficial than the 1972 Act. The reason why interest should run from the date of retirement is that the amount becomes due and payable on that date and if not paid statutory interest would keep running as provided under Section 7 (3-A). Section 7 (3-A) is reproduced below:-

> *"(3-A) 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."*

The proviso deals with cases if the delay in payment is due to the fault of the employee. It was not pleaded by Markfed that there was any fault of the employee which caused the delay in payment of the statutory amount of gratuity payable under the 1972 Act. Therefore, proviso would not apply as submitted by Markfed. Delay is attributed on account of the employee not approaching the controlling authority for payment of gratuity. The proviso uses the word "delay in payment" not delay in approaching controlling authority. Therefore, the fault of employee should be such as obstructs employer from paying gratuity. The fault should be such which is not the case here.

In view of this, I find no infirmity in the order of the controlling authority dated 06.04.2017 even if the appellate order dated 09.04.2018 is set aside on ground of bar of limitation in filing appeal which were 60 days from the date of receipt of the order of the controlling authority and for another 60 days by showing sufficient cause for the delay. The appeal was presented about a month beyond limitation.

Learned counsel for the caveator relies on M.C.D v. Nand Kishore in LPA No.415 of 2002 decided *on 04.12.2002. The text is not available.*

Caveator to produce copy of judgment, adjourned to 15.11.2018.

3. Today learned counsel for the caveator/respondent has produced the text of the judgment in M.C.D. Vs. Nand Kishore, 2003 (2) LLJ 56 in which the Division Bench of the Delhi High Court have passed the following order :

1. *We do not find any infirmity in the impugned order passed by the Leaned Single Judge.*
2. *The respondent was employed as driver in the Health Department on 10th December, 1957. He retired from service on 30th June 1998. The appellant paid a sum of Rs. 1,09,098/- to the respondent as gratuity. The respondent non being satisfied with the amount of gratuity paid to him, filed an application before the Controlling Authority under the Payment of Gratuity Act, 1972. the Controlling Authority held the respondent entitled for an additional sum of Rs. 47,301/- which was short paid to him by the appellant. The main grievance of the appellant is that the Controlling authority did not take into consideration delay of the respondent in filing the application under the*

> *Payment of Gratuity Act, 1972 and the rules framed there under. The grievance of the appellant is misconceived as the on-payment of gratuity due to the respondent was a continuing wrong and there was no question of any delay in approaching the Controlling Authority. Accordingly, we do not see any reason to interfere with the order passed by the Controlling Authority of the impugned order passed by the learned Single Judge. In the circumstances, the appeal fails and is therefore dismissed."*

4. Gratuity is a statutory right and non-payment is a continuing wrong on the part of the employer. The Act is a piece of social beneficial legislation and the petitioner is an organ of the State which deserves not to be heard on a technical plea of limitation in just cause, so long as the claim for money due was a pre-existing right.

5. The right to interest on the principal amount of gratuity would run from the date of retirement since gratuity is a one time payment, the burden of which payment falls on the employer to be faithfully disbursed to the employee. This payment is to be made without the worker bending over with folded hands. If the principal sum is due on the date of retirement, then interest, which is also a statutory right under the Act continues to run till realization. The petitioner has made use of that money lying with it all this while to the detriment of

the respondent.

6. On merits, Markfed has nothing concrete to say, and, therefore, I am not inclined to interfere in the impugned order in writ jurisdiction as I find no error apparent on the face of the record or any legal infirmity therein.

7. The reasoning in the first interim order dated 30.10.2018 is made absolute and an integral part of this final order.

8. The petition is dismissed and the order to pay gratuity as assessed by the authorities below is maintained.

(RAJIV NARAIN RAINA)
JUDGE

15.11.2018
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Whether speaking/reasoned: *Yes*
Whether reportable: *No*