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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 26th September, 2018

\+ W.P.(C) 10091/2018 & CM APPLs. 39334/2018 (*for stay*), 39335/2018 (*for exemption*)

M/S MMTC LTD. ..... Petitioner

Through: Mr.Akhil Sachhar, Adv.

versus

SHRI K.K. SAXENA ..... Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

% **<u>JUDGMENT (ORAL)</u>**

1. Section 7 of the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act") reads thus:

> "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 29 [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: 30 [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."

2. *Vide* order dated 17th May, 2018, the controlling authority, under the Act, directed the petitioner to pay gratuity of ₹ 10 lakh, along with interest at the rate of 10% per annum, to the respondent.

3. The petitioner appealed, against the said order of the Controlling Authority, to the Appellate Authority under the Act. However, no pre-deposit, as mandated by the second proviso to Section 7 (7) of the Act, was furnished therewith.

4. In these circumstances, the Appellate Authority proceeded to dismiss the petitioner's appeal by the following order, dated 1st August, 2018, which is impugned herein:

"…….This is an appeal filed by M/s MMTC Ltd, New Delhi (hereinafter referred to as appellant) against the directions dated 17.05.2018 of the Controlling Authority under Payment of Gratuity Act, 1972(hereinafter referred to as the Act) and Asstt. Labour Commissioner (Central)-I, New Delhi (hereinafter referred to as C.A.) directing to pay the gratuity amount of Rs.10,00,000/- along with interest @ 10% per annum to Sh. K.K. Saxena, B-82, Golf View Apartments, Sector-19B, Plot No.4, Dwarka, New Delhi-110075 (herein after referred to as Respondent).

After examining the relevant documents it is observed that the appellant has failed to deposit the awarded amount along with interest as determined by the Controlling Authority under section 7(4) of the Act, as required under the provisions of Section 7(7) of the Act, that states:-

> "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."

Further, it is also observed that the said appeal against the order of CA dated 17.05.2018 has been filed on 24.07.2018 after the expiry of the statutory provisions of60 days without any reason for condonation of delay.

Therefore, in view of the facts as stated above, the appeal is not liable to be admitted.

Thus, the appeal is dismissed."

5. It is this order, dated 1st August, 2018, which constitutes subject matter of challenge in the present writ petition.

6. I may note, even at this juncture, that there is substance, in the grievance, of the petitioner, against the findings returned by the Appellate Authority on the issue of limitation. This is so, however, not because the appeal was within time or otherwise, but because, once the authority held

the appeal not to be maintainable, on account of failure of the appellant to make pre-deposit, it ought not to have passed any order on the issue of limitation.

7. Learned counsel for the petitioner has emphatically asserted that the learned Appellate Authority also defaulted in passing the impugned order without granting any opportunity of hearing to his client.

8. I am only partially in agreement with learned counsel for the petitioner on this aspect.

9. The requirement of pre-deposit of the amount, confirmed against the appellant, who chooses to prefer an appeal before the authority under Section 7 (7) of the Act, is a statutory dispensation, and there is no provision permitting waiver thereof. It is not possible for any court, therefore, to read, into the Act, any provision allowing for waiver of the requirement of such pre-deposit, either in whole or in part. The appeal of the appellant, preferred as it was, without making such pre-deposit, was not maintainable in the first instance. Given the statutory scenario, it cannot, therefore, be said that, in dismissing the appeal for want of pre-deposit, without affording an opportunity of hearing prior thereto, the learned Appellate Authority erred to any significant extent.

10. At the same time, it was certainly not open to the learned authority to pronounce on the issue of the limitation without extending an opportunity of hearing to the petitioner. For that reason, the finding of the Appellate Authority, to the effect that the appeal of the petitioner was barred by time, cannot sustain, tanted, as it is, by the vice of violation of the principles of natural justice.

11. On the attention of the learned counsel for the petitioner being drawn to the fact that there was no statutory escape from the requirement of pre-deposit of the amount confirmed, against his client, by the Controlling Authority, learned counsel has offered, on instructions, to make pre-deposit of the said amount i.e. ₹ 10,00,000/-, within a period of six weeks from today.

12. On such amount being deposited with the Appellate Authority, as required by the Act, the appeal before the Appellate Authority shall stand restored to its original number. In that event, the petitioner shall appear before the Appellate Authority on 5th December, 2018. The Appellate Authority shall first satisfy itself regarding the fact of pre-deposit having been made in accordance with the above directions. If it is so satisfied, the Appellate Authority shall proceed to hear the petitioner on the appeal and make a decision thereon.

13. All questions involved in the appeal, including the question of whether the appeal was barred by time, or not, are left open.

14. Needless to say, the Authority would, in deciding the appeal, being uninfluenced by any findings contained in the impugned order, dated 1st August, 2018, which, in view of the directions contained hereinabove, would stand set aside.

15. The writ petition is allowed to the above extent, with no orders as to costs.

C.HARI SHANKAR, J.

SEPTEMBER 26, 2018
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