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

+ **W.P.(C) 4661/2018**

BAL VIKAS SAMITI (REGD.)

..... Petitioner

Through: Mr.Mudit Gupta, Advocate

versus

SURJEET KAUR & ANR

..... Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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04.07.2018

CM Nos.17972-73/2018

Exemption allowed, subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 4661/2018 & CM No.17971/2018 (Stay)

1. The petitioner is aggrieved by the order dated 20th July, 2017 whereby the Appellate Authority under Payment of Gratuity Act, 1972 has dismissed the appeal for the following reasons:-

“20.07.2017 None appeared for either of the Parties

Appeal against the order dated 05.04.2017 was passed by the Controlling Authority under Payment of Gratuity Act 1972, on 29.05.2017 file by the respondent. Notice dated 15.06.2017 was sent to both the parties to appear today i.e. 20.07.2017 at 11.00 am. On scrutiny of the appeal application, the appeal is within time but without enclosing the certificate of deposit of Gratuity Amount, issued by the controlling authority under Section 7(4) of the Act, herein the appeal is dismissed with direction to appellant/respondent to comply the order dated 05.04.2017 of the Controlling Authority.

File to be consigned to record.

Copy of order be sent to all the parties.”

2. Mr.Mudit Gupta, learned counsel for the petitioner submits that the Appellate Authority under Payment of Gratuity Act, 1972 has dismissed the appeal for not enclosing the certificate of deposit of the gratuity amount despite the fact that the petitioner had deposited the said amount.
3. Learned counsel for the petitioner has referred to Annexures P-5 & P-6 which are demand draft in favour of the Controlling Authority under the Payment of Gratuity Act, 1972.
4. Learned counsel for the petitioner further submits that the order impugned herein is unsustainable in the eyes of law when the petitioner has already complied with the requirement by depositing the gratuity amount.
5. During the course of hearing, attention of learned counsel for the petitioner was drawn to the copy of the appeal annexed with this writ petition as annexure P-4 wherein there is no averment to the effect that the appellant has deposited the amount of gratuity with the Controlling Authority or with the Appellate Authority. Even the appeal does not mention any annexure in the form of copy of pay order. The copy of the appeal does not even bear date of signing/filing. From the noting on the first page of the appeal, it appears to have been filed on 29.05.2017 whereas the deposit was made for the first time on 12.06.2017 i.e. much after filing of the appeal.
6. As per the procedure laid down for filing of the appeal under the Payment of Gratuity Act, 1972 and the rules made thereunder, employer's appeal must be accompanied by a certificate of deposit. Deposit of gratuity amount either before the Controlling Authority or before the Appellate Authority is mandatory for filing of an appeal against the order of the Controlling Authority. The petitioner/employer herein though filed the

appeal within the stipulated time but without producing the certificate of deposit of gratuity amount issued by the Controlling Authority under Section 7(4) of the Act. While preferring an appeal, the certificate of deposit of the amount being not filed, the Appellate Authority could not have entertained the said appeal despite the same being filed within the period of limitation.

7. Learned counsel for the petitioner fairly concedes that at the time of preferring the appeal, the precondition of deposit of the amount as per the order passed by the Controlling Authority, was not satisfied before the Controlling Authority or before the Appellate Authority.

8. In the decision reported as *Onward Trading Company, Madras Vs. Deputy Commissioner of Labour & Anr.* 1989(2) LLN 672, the Division Bench of Madras High Court held that the statutory precondition must be obeyed and also held that failure to deposit the amount would mean that the appeal itself is incompetent.

9. In the given facts and circumstances, the Appellate Authority had no discretion to admit/accept the appeal unless precondition of deposit was complied with by the petitioner herein.

10. For the aforesaid reasons, the order impugned herein cannot be faulted with. Resultantly the writ petition is dismissed without any order as to costs.

PRATIBHA RANI, J.

JULY 04, 2018

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