

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 289 OF 2019

BANK OF MAHARASHTRA, REP. BY ITS
CHIEF MANAGER AND AUT. OFFICER,
ANAND SUMAN.,

... Petitioner

Versus

ANANT RAJARAM SAWANT AND ANR.,

... Respondents

Mr. V. Ajay Kumar, Advocate for the Petitioner.

Mr. Jaiprakash Sawant, Advocate for the Respondent No. 1.

Mr. Mahesh Amonkar, Central Government Standing Counsel
for the Respondent No. 2.

Coram:- C. V. BHADANG, J.

Date:- 24th April 2019

ORAL ORDER:

The challenge in this petition is to the order dated 21.09.2018, passed by the Appellate Authority, under the provisions of the Payment of Gratuity Act, 1972 (Act, for short), holding that the Appellate Authority has no power to entertain the appeal, in view of non-production of a certificate as to deposit of the amount of gratuity, as required under the provisions of the said Act.

2. The learned Counsel for the petitioner has submitted that in fact, a demand draft representing the amount of gratuity, as ordered to be paid by the Controlling Authority, was enclosed along with the appeal and the application for condonation of

delay, which is evident from the acknowledgement on the index of the appeal (at page 24 of the compilation).

3. This aspect is disputed by the learned Counsel for the respondent no. 1. It is submitted that there was no draft of the gratuity amount enclosed. It is submitted that in any event, the amount has to be deposited before the Controlling Authority and the certificate as to the deposit has to accompany with the appeal memo, which is not complied with.

4. I have considered the circumstances and the submissions made. It appears that after the impugned order dated 08.09.2017 was passed by the Controlling Authority, an appeal accompanied by an application for condonation of delay was filed before the Appellate Authority on 10.01.2018. At this stage, it is not necessary to go into the question whether, the application for condonation of delay was accompanied by the draft representing the amount of gratuity or not.

5. The learned Counsel for the petitioner submitted that since after the passing of the impugned order, the amount is deposited before the Controlling Authority and the petitioner has obtained the certificate to that effect, which he can produce before the Appellate Authority.

6. In such circumstances, in my considered view, it would be appropriate that the Appellate Authority decides the application for condonation of delay afresh, after the petitioner produces the certificate, as required under the provisions of the Act.

7. In the result, the following order is passed:

O R D E R

- (a) The petition is partly allowed.
- (b) The impugned order is hereby set aside.
- (c) The application for condonation of delay, filed by the petitioner, is restored back to the file of the Appellate Authority, for disposal in accordance with law.
- (d) The petitioner is permitted to file the certificate of deposit, as required under sub-section 7 of Section 7 of the Act, before the Appellate Authority, within two weeks from today.
- (e) On such production, the Appellate Authority shall proceed to decide the application for condonation of delay on its own merits and in accordance with law, after hearing the respondent no. 1.
- (f) Rival contentions of the parties are left open.
- (g) The Appellate Authority shall decide the application as expeditiously as possible and preferably within a period of three months from the receipt hereof.
- (h) The parties to remain present before the Appellate Authority on 06.05.2019.

(i) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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