

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP No.11193 of 2019

Date of decision: 17.05.2019

The Punjab State Cooperative Supply & Marketing
Federation Ltd. (Markfed) and another

...Petitioners

versus

Amarjit Singh Brar and others

...Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. Rajan Bansal, Advocate for the petitioners.

B.S. WALIA, J.

[1] Prayer in the writ petition is for setting aside order, Annexure P-2 dated 15.11.2018, passed by the Appellate Authority under the Payment of Gratuity Act, 1972 cum Deputy Labour Commissioner (C), Chandigarh dismissing the appeal filed by the petitioner against the order of the Controlling Authority Annexure P-1 dated 21.09.2017, holding the respondent-workman entitled to receive gratuity along with interest on ground of the appeal having been filed beyond the period of time prescribed for filing of appeal u/s 7(7) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act).

[2] Learned Counsel contended that appeal was filed against the order of the Controlling Authority along with an application for condonation of 260 days delay on account of time taken for deciding to file an appeal, in getting sanction for the same from the management and thereafter in preparing the appeal, therefore delay ought to have been condoned and the appeal heard on

merits but the Appellate Authority vide order Annexure P-2 dated 15.11.2018, rejected the appeal on the ground that under Section 7(7) of the Act, the time limit for preferring an appeal was 60 days, whereas the appeal had been filed after 260 days, therefore, it had no jurisdiction to condone delay beyond additional period of 60 days.

[3] I have considered the submissions of learned counsel. Admittedly, appeal was filed by the petitioner against the order of the Controlling Authority, Annexure P-1 dated 21.09.2017 on 02.04.2018. Objections raised at the time of filing of appeal were removed where after the appeal was re-filed along with an application for condonation of 260 days delay on 13.06.2018 seeking condonation of delay on account of a Committee having been constituted for considering withholding of payment of gratuity of employees on account of pending departmental proceedings and decision by said Committee was taken on 12.01.2018, where after, legal opinion was obtained and withholding of gratuity approved by the petitioner-Corporation vide order dated 07.02.2018. Section 7 (7) of the Act, however, provides for a maximum period of 120 days from the date of passing of order by the Controlling Authority for filing of appeal. Section 7 (7) of the Act reads as under :-

"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.

[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.]"

[5] Thus, as per Section 7(7) of the Act, a person aggrieved by an order passed by the controlling authority can file an appeal before the appellate authority within 60 days of the date of receipt of order of the controlling authority. Said period of 60 days can be extended by 60 days. In the instant case, copy of order dated 21.09.2017 was received by the petitioner in time but the appeal was not filed within the period of maximum time stipulated in Section 7(7) of the Act but after a delay of 260 days from the date of receipt of order of the controlling authority.

[6] A coordinate Bench of this Court in **Inspector General of Prison and Jail-cum-Deputy Commissioner, UT, Chandigarh vs Rachhpal Singh and Ors, 2016 (148) FLR 1101 (P&H)** in similar circumstances held as under :

“10. Thus, as per the above provision any person aggrieved by an order passed by the controlling authority can file an appeal within 60 days of the date of the receipt of the order before the appellate authority. The said period can be extended by 60 days. A perusal of the application under Section 5 of the Limitation Act placed on record reveals that the certified copy of the order Annexure P-4 was received by the Department before

08.08.2012 as a letter was written to Auditor General, Pension Branch, U.T. Chandigarh for taking necessary action in view of the order dated 18.07.2012. In the present case, the appeal had not been preferred within the stipulated period. Rather the appeal had been preferred after the expiry of 820 days of the passing of the order by the controlling authority. The appellate authority had thus rightly dismissed the appeal filed by the petitioner being time barred.”

[7] In the light of the position as noted above, appeal against decision of the Controlling Authority could have been filed within maximum period of 120 days from date of receipt of order and beyond said period of time, the Appellate Authority has no power to condone the delay. Admittedly, appeal was filed 260 days after receipt of order of the controlling authority, therefore, the appellate authority rightly dismissed the appeal filed by the petitioner on account of the same being time barred. Learned counsel for the petitioner has not distinguished the decision of this Court in **Rachhpal Singh’s case (Supra)**. In the circumstances, the impugned order does not warrant interference. Accordingly, finding no merit in the plea for setting aside order Annexure P-2 dated 15.11.2018, passed by the Appellate Authority and for remanding the appeal for fresh decision after condoning the delay, the writ petition is ***dismissed in limine***.

May 17, 2019
‘Rajneesh’

(B.S. WALIA)
JUDGE

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