

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-12471-2019

Date of decision: - 11.07.2019

Haryana Women Development Corporation Limited

....Petitioner

Versus

Surinder Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Padamkant Dwivedi, Advocate
for the petitioner.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner-Corporation is against the order passed by the Controlling Authority dated 04.09.2017 (Annexure P-7) by which respondent No.1 has been found entitled for gratuity amounting to ₹7,97,388/- alongwith interest @ 9% per annum. A challenge to the order dated 10.04.2019 (Annexure P-10) has also been raised in the present writ petition by which the appeal filed by the petitioner before the appellate authority challenging the decision of the Controlling Authority, has also been dismissed on the ground of limitation.

Counsel for the petitioner argues that order of the appellate

authority dated 10.04.2019 (P-10) by which the appeal filed by the petitioner has been dismissed on the ground of delay is liable to be set aside as the same has not been decided on merits, but has been simply rejected on the ground that same was not preferred within the limitation provided.

Counsel for the petitioner argues that the delay in filing the appeal against the order dated 04.09.2017 was explained to the appellate authority, but still, the same has been rejected having been time barred.

Section 7 of the Payment of the Gratuity Act, 1972 (for short '1972 Act') deals with as to how the amount of the gratuity is to be determined in case an application is moved before the Controlling Authority. The said Section 7 is as under: -

“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 [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.
- (e) 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: [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.”

A bare perusal of the above would shows that the Controlling Authority has been conferred power under Section 7(4) of the 1972 Act to compute the amount of gratuity in case there is a dispute of amount between employer and employee. Under Section 7(7) of the 1972 Act, any person who is aggrieved against the order, which is passed by the Controlling Authority under sub-section (4), can file an appeal before the appropriate authority. Under Section 7(7) of the 1972 Act, limitation of 60 days is provided for filing the appeal, but the Government has power under the proviso to Section 7 of the 1972 Act to extend the period of limitation further for a period of 60 days in case the sufficient cause is shown to the appellate authority which prevented the appellant from filing the appeal within the prescribed period of 60 days.

A bare perusal of Section 7(7) of the 1972 Act would show that there is no power with the appellate authority to condone the delay which is beyond 120 days under any circumstances.

Admittedly, the appeal by the petitioner against the order of the Controlling Authority dated 04.09.2017 (P-7) was preferred on 19.06.2018 and the application dated 19.06.2018 (Annexure P-8) attached with the present writ petition clearly shows that there was a delay of 168 days in filing the appeal and no power has been vested with the appellate authority to condone delay beyond 120 days. No provision of law is brought to the notice of this Court to show that order passed by the appellate authority is contrary to 1972 Act.

Keeping in view the above, no fault can be found with the order of the appellate authority dated 10.04.2019 (Annexure P-10), which

has been passed rejecting the appeal of the petitioner being time barred.

In view of the above, no interference is called for and the present writ petition is accordingly dismissed.

July 11, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes