IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

222

CWP-21545-2015

Date of decision: 19.08.2019

HSMITC LTD

...PETITIONER

VS.

M.R.ARORA AND OTHERS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Pritam Saini, Advocate,
for the petitioner.

Mr. Virender Kumar, Advocate,
for respondent No. 1.

***

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the order dated 15.01.2014 (Annexure P-15) passed by the Appellate Authority under the Payment of Gratuity Act-cum-Deputy Labour Commissioner, Panipat-respondent No. 2, whereby appeal preferred by Sh. M.R.Arora-respondent No. 1 under the Payment of Gratuity Act challenging the order dated 10.03.2006 passed by the Controlling Authority under the Payment of Gratuity Act, 1972, Karnal, which appeal was beyond the period of limitation prescribed, has been entertained by condoning the delay of about 6 years and thereafter, granting interest on delayed payment of gratuity.

2. It is the contention of the learned counsel for the petitioner that respondent No. 1-Sh. M.R.Arora filed an application under the Payment of Gratuity Act for release of his gratuity. The said application was entertained by the controlling authority under the Payment of Gratuity Act, 1972, Karnal and an order dated 10.03.2006 (Annexure P-8) was passed. Referring to the application, which has been filed by respondent No. 1

before the competent authority, he asserts that respondent No. 1 had claimed interest @18% per annum from the date of his retirement till the realization of amount. The Controlling Authority, vide order dated 10.03.2006, granted the gratuity amount to respondent No. 1, which was assessed as ₹95,088/- with further liberty to adjust the amount of excess paid, if any, on account of leave encashment beyond the permissible limits of leave encashment. The said amount was to be paid to respondent No. 1 within a period of 30 days, failing which the petitioners were liable to pay simple interest @8% per annum from the date of the order till its realization on the awarded amount. Respondent No. 1 chose not to challenge this order whereas the petitioner-Haryana State Minor Irrigation and Tubewells Corporation Ltd. challenged the same in appeal, which was dismissed by the Appellate Authority vide order dated 31.01.2007 (Annexure P-9). Petitioner, thereafter, filed a writ petition i.e. CWP No. 9027 of 2007 titled as Haryana State Minor Irrigation and Tubewells Corporation Ltd vs. M.R.Arora and others, which was dismissed by this Court on 12.08.2008 (Annexure P-10) followed by dismissal of SLP and then the review petition on 04.09.2012 (Annexure P-11).

3. In all these proceedings, respondent No. 1 did not agitate with regard to non-grant of interest to him by the Controlling Authority, Karnal and preferred an appeal against the order dated 10.03.2006 (Annexure P-8) passed by the Controlling Authority, Karnal on 02.07.2013. There was an inordinate delay on the part of respondent No. 1 in filing the appeal, which has been condoned by the Appellate Authority taking into consideration the fact that the petitioner, after passing of the order dated 10.03.2006, had challenged the same up to the Supreme Court and it is on finalization of the

said proceedings that respondent No. 1 has filed the appeal. The explanation, which is being sought to be projected, was on the pretext that respondent No. 1 would only be entitled to interest after the finalization of the amount of gratuity as was determined by the Controlling Authority. The Appellate Authority accepted the said contention of respondent No. 1 and after condoning the delay in filing the appeal, proceeded to allow the said appeal entitling him to interest @12% per annum as per the order of the Controlling Authority i.e. from the date of the order till the realization of the said amount. It is this order which is challenged by the petitioner by filing the present writ petition.

4. Learned counsel for the petitioner has placed reliance upon Section 7 of the Payment of Gratuity Act, 1972, especially sub-section (7) thereof, to contend that the appellate authority could entertain the appeal within a period of 60 days from the date of passing of the order, in any case, not beyond the period of 120 days, as there is a period specified under the Statute itself which entitles the appellate authority to condone the delay up to 60 days after the expiry of initial period of 60 days, on it being satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the time specified. He, thus, contends that the delay in filing the appeal, as preferred by respondent No. 1 after a period of almost 7 years, could not have been condoned by the appellate authority. He has placed reliance upon a judgment passed by the Madhya Pradesh High Court in **Western Coalfields Ltd.** vs. **Controlling Authority under the Payment of Gratuity Act,** 2001 (1) SCT 587 and a judgment passed by the Bombay High Court in **Shri Gurudeo Ayurved Mahavidyalaya through its Principal and another** vs. **Madhav s/o Narayan mahakode and others**,

1994 (3) BCR 27. He, therefore, contends that the impugned order passed by the appellate authority cannot sustain and deserves to be set aside.

5. On the other hand, learned counsel for respondent No. 1 has reiterated the stand, which has been taken by respondent No. 1 before the appellate authority. He has also referred to sub-section (3) of Section 7 of the Payment of Gratuity Act, 1972, to contend that there is no limitation prescribed and since it is beneficial legislation, therefore, technicality would not come into play and should not be given precedence. Reliance in this regard has been placed upon a judgment of the Supreme Court in the case of **H.Gangahanume Gowda** vs. **Karnataka Agro Industries Corpn. Ltd.**, 2003 (1) SCT 937 and a judgment of this Court in **National Projects Construction Corporation Ltd.** vs. **Appellate Authority under Section 7 (7) of the Payment of Gratuity Act, 1972-cum-Deputy Chief Labour Commissioner (Central), Chandigarh and others,** (2019-1) 193 PLR 76. He, on this basis, contends that the order passed by the appellate authority is in accordance with law and, therefore, should be upheld and the writ petition dismissed.

6. I have considered the submissions made by the learned counsel for the parties and with their assistance, gone through the records of the case.

7. The issue which requires adjudication in this case is; "whether an appeal filed under Section 7 (7) under the Payment of Gratuity Act. 1972, can be entertained by the Appellate Authority by condoning the delay beyond the maximum specified permissible period provided therein by applying the provisions of the Limitation Act 1963?"

8. Counsel for respondent No. 1 has placed reliance on sub-

section (3) and (3-A) while counsel for the petitioner relies on sub-section (7) of Section 7 of the Act. Section 7 of the Act is reproduced herein below for ready reference.

> "**Section: 7. Determination of the amount of gratuity**.
>
> **(1)** A person who is eligible for payment of gratuity under this Act or any person authorized, 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 (i) 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 as 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.

(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, 1860 (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 subsection (4), or deposits with the appellate authority such amount.”

9. A perusal of Section 7 (3) of the said Act would show that it deals with and enjoins upon the employer to make payment of the amount of gratuity within a period of 30 days from the date it becomes payable to an employee or the person entitled to the said payment. Section 7 (3-A) deals with the aspect with regard to the entertainment of an application in case the payment is not made within the time specified by the competent authority. These provisions have been relied upon by the counsel for respondent No. 1 and while dealing with these provisions, the Hon'ble Supreme Court in the case of **H.Gangahanume Gowda's case** (supra) and this Court in the case of **National Projects Construction Corporation Ltd.' case** (supra), have proceeded to hold that the delay in approaching the competent authority alone could not be a ground to deny the relief to the employee. There can be no dispute with regard to the preposition as laid down in these judgments. The Courts, were dealing in these cases, with sub-sections (1) to (5) of Section 7 of the Act. It was observed that under sub-sections (1), (2) and

(3), period of limitation for applying for gratuity has been provided. However, sub-section (5) provides for entertainment of the application for gratuity beyond the period of limitation and further says that merely on the application being beyond the period mentioned would not render the claim invalid. Further, no outer limit for entertaining such applications has been provided.

10. In the present case, the facts are different. Initial entertainment of the claim for gratuity was within time and the competent authority, not only proceeded to entertain the application and claim for gratuity but had passed an order on 10.03.2006 (Annexure P-8). The competent authority while accepting the application of respondent No. 1 did not grant him interest from the date of retirement from service but granted simple interest @ 8% per annum, in case where delay in making payment so assessed is beyond 30 days from the date of order till realization of the awarded amount. Had respondent No. 1 been aggrieved with the said order, there was no bar or impediment to his filing of an appeal against the said order especially when the petitioner-employer had challenged the said order in an appeal.

11. A perusal of sub-section (7) of Section 7 of the Act would leave no manner of doubt that the period of 60 days has been provided for filing an appeal against the order passed by the competent authority from the date of the receipt of the same to the appropriate Government or such other authority specified by the appropriate Government in this behalf. Proviso to the sub-section further clarifies that the said appellate authority, if satisfied, that there was sufficient cause which prevented the appellant to prefer an appeal within a period of 60 days, could extend the period for

further 60 days, meaning thereby that it could condone the delay of 60 days beyond the period already specified. The total period, therefore, within which the appellate authority could entertain an appeal, would be 120 days and not beyond it. Meaning thereby, that, if an appeal is preferred beyond the period of 120 days from the date of receipt of the order passed by the competent authority, the appellate authority had no option but to dismiss the same as not maintainable or being barred by limitation.

12. In the present case, admittedly, respondent No.1 was aware of the order passed by the competent authority and had received the same as well but had preferred not to file an appeal within the time as stipulated under the Statute. According to his own stand, he waited till the finalization of the proceedings initiated at the behest of the petitioner up to the Supreme Court and thereafter, had filed an application on 02.07.2013. This delay, in the light of the specific provisions as provided in sub-section (7) of Section 7 of the Act, could not have been condoned by the appellate authority as it did not have the jurisdiction to do so and entertain such an appeal irrespective of the fact that it was satisfied with regard to there being a sufficient cause to the appellant for having been prevented from filing an appeal within time. Although in the present case, the explanation, which has been projected by respondent No. 1, is unacceptable and cannot be said to be sufficient cause for not preferring an appeal because there is nothing in the Statute which states that on filing of an appeal by any party, operation of the order, which is under challenge, would automatically stand stayed.

13. The Hon'ble Supreme Court, on various occasions, had considered the applicability of the provisions of the Limitation Act, 1963 to the various General or Local or Special Acts. For culling out the principles

involved and evolved, reference to some of the cases would be necessary.

14. A Three Judge Bench of the Hon'ble Supreme Court in **The Commissioner of Sales Tax, U.P., Lucknow** vs. **M/s Parson Tools and Plants, Kanpur,** 1975 (4) SCC 22, while dealing with the principles of the applicability of the Limitation Act viz-a-viz the Special/General Statute, in para Nos. 17 and 18, held as follows:-

> "17. Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only up to a specified time-limit and no further, than the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act.
>
> 18. We have said enough and we may say it again that where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver; more so if the statute is a taxing statute. We will close the discussion by recalling what Lord Hailsham at P.11 in Pearlberg v. Varty (1972) 2 All England Reporter 6, has said

recently, in regard to importation of the principles of natural justice into a statute which is a clear and complete Code, by itself :

> "It is true of course that the courts will lean heavily , against any construction of a statute which would be manifestly fair. But they have no power to amend or supplement the language of a statute merely because in one view of the matter a subject feels himself entitled to a larger degree of say in the making of a decision than a statute accords him. Still less is it the functioning of the courts to form first a judgment on the fairness of an Act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgment.
>
> xxx xxx xxx xxx"

15. The Three Judge Bench of the Hon'ble Supreme Court in **M/s Consolidated Engg. Enterprises** vs. **Principal Secy. Irrigation Deptt. And others,** 2008 (2) RCR (Civil) 897, while considering the applicability of the provisions of the Limitation Act to the Arbitration and Conciliation Act, 1996, has, in para Nos. 26 and 27, laid down the general principles, which read as follows:-

> "26. Where the Schedule to the Limitation Act prescribes a period of limitation for appeals or applications to any court, and the special or local law provides for filing of appeals and applications to the court, but does not prescribe any period of limitation in regard to such appeals or applications, the period

of limitation prescribed in the Schedule to the Limitation Act will apply to such appeals or applications and consequently the provisions of sections 4 to 24 will also apply. Where the special or local law prescribes for any appeal or application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, then the provisions of section 29(2) will be attracted. In that event, the provisions of section 3 of Limitation Act will apply, as if the period of limitation prescribed under the special law was the period prescribed by the Schedule to Limitation Act, and for the purpose of determining any period of limitation prescribed for the appeal or application by the special law, the provisions contained in sections 4 to 24 will apply to the extent to which they are not expressly excluded by such special law. The object of section 29 (2) is to ensure that the principles contained in sections 4 to 24 of Limitation Act apply to suits, appeals and applications filed in a court under special or local laws also, even if it prescribes a period of limitation different from what is prescribed in the Limitation Act, except to the extent of express exclusion of the application of any or all of those provisions.

27. It may be noticed at this juncture that the Schedule to the Limitation Act prescribes the period of limitation only to proceedings in courts and not to any proceeding before a Tribunal or quasi-judicial authority. Consequently section 3 and section 29(2) of Limitation Act will not apply to proceedings before Tribunal. This means that the Limitation

Act will not apply to appeals or applications before Tribunals, unless expressly provided."

16. Another Bench of Three Judges in **Commissioner of Customs and Central Excise** vs. **Hongo India (P) Ltd.,** (2009) 5 SCC 791, has held as follows:-

> " It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law here in this case is Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete Code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central

Excise Act relating to filing of reference application to the High Court."

17. The Supreme Court in **P.Radha Bai and other**s vs. **P.Ashok Kumar and another,** 2018 (4) RCR (Civil) 571, has held that the limitation period prescribed by the Special Law or the Local Law will prevail over the limitation period prescribed in the Schedule of the Limitation Act. It has further been held that where the Special Law or the Local Law provides an outer limit for condonation of delay and further qualifies that it cannot be condoned beyond that particular period, the said period cannot be extended. The intent of the legislature has to be respected which had fixed an outer boundary period for condonation of delay beyond the period which has been prescribed for doing a particular act such as filing an appeal.

18. In view of the above, it can be concluded that the Limitation Act would be applicable only in a case where the Local or Special Act makes no provision for limitation. But where limitation period is prescribed by Special Law or Local or General Law, it will prevail over the period as prescribed in the Schedule to Limitation Act. The provisions of the Limitation Act would apply to the Local/General or Special Act when no provision for limitation has been provided by such Act but where certain limitation period has been prescribed by Special Law or Local or General Law, it would prevail over the limitation period prescribed under the Schedule of the Limitation Act, meaning thereby that the provisions of the Limitation Act are necessarily excluded. Further, where a certain period of limitation for filing an application or appeal is prescribed by a particular Statute and provides the maximum period for which the period may be extended on sufficient cause being shown, then the Court/Tribunal has no

jurisdiction to entertain the same treating it to be within limitation by condoning the delay beyond such maximum time limit specified by the Statute.

19. Thus, it is held that the provisions of the Limitation Act, 1963 would not be applicable to the appeal filed under sub-section (7) of Section 7 of the Payment of Gratuity Act, 1972 as the Special Act will have precedence and would apply over the General Act. The Appellate Authority cannot entertain an appeal filed under Section 7 (7) under the Payment of Gratuity Act, 1972, by condoning the delay beyond the maximum specified permissible period provided therein.

20. This being the settled preposition of law, and keeping in view the mandate of the Statute, the impugned order dated 15.01.2014 (Annexure P-15) passed by the Appellate Authority under the Payment of Gratuity Act-cum-Deputy Labour Commissioner, Panipat-respondent No. 2 cannot sustain and deserves to be set aside.

21. Similar has been the position which has been settled in the judgments i.e. **Western Coalfields Ltd.** (supra) and **Shri Gurudeo Ayurved Mahavidyalaya through its Principal and another** (supra), on which reliance has been placed by the counsel for the petitioner.

22. In view of the above, the present writ petition is allowed. Impugned order dated 15.01.2014 (Annexure P-15) passed by the Appellate Authority under the Payment of Gratuity Act-cum-Deputy Labour Commissioner, Panipat-respondent No. 2 is, hereby, set aside.

August 19, 2019 **(AUGUSTINE GEORGE MASIH)**
pj **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No