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

CWP No.26915 of 2018
Date of Decision : 10.09.2019

The Punjab State Cooperative Supply & Marketing Federation Ltd., Markfed, Chandigarh. ….Petitioner

v/s

Appellate Authority under Payment of Gratuity Act 1972 -cum-Additional Labour Commissioner, Punjab and others ….Respondents

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

Present: Mr. Sumit Jain, Advocate for the petitioner.

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**B.S. Walia, J. (Oral)**

[1] Prayer in the writ petition under Article 226/227 of the Constitution of India is for the issuance of a writ of Certiorari for quashing Order (Annexure P-2), dated 10.08.2017, passed by respondent No.2, allowing the application filed by respondent No.3 and holding him entitled to Gratuity under the Payment of Gratuity Act, 1972 along with interest as also Order (Annexure P-3) dated 23.04.2018 passed by respondent No.1 dismissing the appeal filed by the petitioner against order Annexure P-2 dated 10.08.2017 (inadvertently recorded as 07.10.2016).

[2] Brief facts of the case, leading to the filing of the writ petition are that application filed by respondent No.3 was allowed and he was held entitled to payment of balance gratuity of Rs.1,67,152/- along with interest @ 9% per annum w.e.f. the date of filing of the application i.e. 07.10.2016 with payment of balance amount of gratuity together with interest to be released within 60 days from the date of receipt of order.

[3] The petitioner filed an appeal against Order (Annexure P-2) dated 10.08.2017 passed by the Controlling Authority under the Payment of Gratuity Act, 1972-cum-Assistant Commissioner, Sangrur before the Appellate Authority under the Payment of Gratuity Act, 1972-cum-Additional Labour Commissioner, Punjab, Chandigarh. However, the same too was dismissed by the Appellate Authority on the ground that the appeal had been filed beyond the period of limitation i.e. as against the order of the Controlling Authority dated 10.08.2017, appeal had been filed on 18.12.2017. The Appellate Authority vide its order dated 25.04.2018 dismissed the appeal on account of the same having been filed *in derogation* of the period stipulated under Section 7(7) of the Payment of Gratuity Act, 1972.

[4] Learned counsel contended that the Appellate Authority dismissed the application for condonation of delay despite the fact that sufficient cause was made out, as earlier the papers had been entrusted to counsel to file an appeal but said counsel expressed her inability to pursue the matter and returned the document's on 28.10.2017, where after the case was entrusted to another counsel, who filed appeal without further delay. The Appellate Authority took into account that in the affidavit filed by the petitioner in support of the application, seeking condonation of delay, it was no where mentioned as to who was the counsel and why she showed her inability to pursue the case. Secondly, as per the showing of the petitioner itself, the documents were returned to the petitioner on 28.10.2017, whereas the appeal was filed on 18.12.2017 i.e. after a lapse of about 02 months thereafter and that in the circumstances, the appeal was not maintainable as per Section 7(7) of the Payment of Gratuity Act, 1972.

[5] I have considered the submissions of learned counsel. Section 7 (7) of the Act, provides for maximum period of 60 days from the date of passing of order by the Controlling Authority for filing of appeal. However, said period of 60 days can be extended by another 60 days if sufficient cause is made out for not filing the appeal within initial period of 60 days. 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.]"*

[6] 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 if sufficient cause is shown for not filing the appeal within the stipulated period of time. In the instant case, despite learned counsel for the petitioner having taken time for informing the date on which the certified copy of the order of the Controlling Authority which was stated to have been applied for on the

date of its pronouncement was supplied has expressed inability to give the particulars and has stated that in fact the impugned order was received within a few days of the passing of the order but that the appeal could not be filed within the stipulated period of 60 days but was filed beyond 120 days from the date of receiving of the order of the Controlling Authority dated 10.08.2017.

[7] The petitioner has also failed to produce evidence in respect of the date on which papers were entrusted to the Counsel to file appeal, the name of said counsel and why it was returned by said counsel on 28.10.2017 and further the reason for not filing the same till 18.12.2017. Thus, as per the provision of Section 7(7) of the Act, an appeal may be preferred within 60 days from the date of receipt of the order, but if the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within said period of 60 days, the period for filing appeal may be extended by another 60 days. Thus, although, the order of the Controlling Authority dated 10.08.2017 is stated to have been received within a few days of its passing, yet the appeal was not filed within 60 days in terms of Section 7(7) of the Act.

[8] Apart from the above, the appeal is shown to have been returned by the counsel, who is stated to have been entrusted with the papers for filing of the appeal, but date on which said papers were entrusted, the reasons for returning of the same as well as the reasons why the appeal was filed on 18.12.2017 despite the papers having been returned on 28.10.2017 i.e. almost after lapse of close to 02 months is not forthcoming. Thus, no sufficient cause whatsoever is made out, showing the reasons for not filing the appeal even on receipt of papers on 28.10.2017. Thus in the absence of sufficient cause having been made out for not filing the appeal within the period of 60

days on making out of sufficient cause, I do not find any circumstances, warranting interference with the order passed by the learned Appellate Authority.

[10] 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."*

[11] In the light of the position as noted above, appeal against the decision of the Controlling Authority could have been filed within maximum period of 60 days from date of receipt of order of the Controlling Authority, whereafter if sufficient cause was made out, the Appellate Authority could have further extended the said period of 60 days by another period of 60 days for filing the appeal. Admittedly, the appeal was filed 130 days after the date of passing of the order i.e. close to 02 months after the return of papers by the first counsel on 28.10.2017, on 18.12.2017 without setting our sufficient cause for not filing the appeal within time or immediately thereafter on

receipt of papers on 28.10.2017. Thus, in the absence of sufficient cause having been made out, the period for filing appeal beyond 60 days could not have been extended and was accordingly rightly not extended by the learned Appellate Authority. Therefore, the Appellate Authority rightly dismissed the appeal filed by the petitioner on account of the same being time barred, besides learned counsel for the petitioner has not been able to distinguish the decision of this Court in '***Rachhpal Singh'***s case *(supra)*. No other point has been argued. In the circumstances, the impugned order does not warrant interference. Resultantly, the writ petition is devoid of merit and is accordingly ***dismissed*** *in limine*.

**(B.S. Walia)**
**Judge**

**September 10, 2019**
*'Rajneesh'*

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