(110) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.13919 of 2019 in/and
CWP No.23364 of 2019
Date of decision: 23.09.2019

The Punjab State Co-operative Supply
and Marketing Federation Ltd., Chandigarh …. Petitioner

Versus

Appellate Authority Constituted under
the Payment of Gratuity Act & Ors. … Respondents

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

Present: Ms. Neha Sharma, Advocate for the petitioner.

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

CM No.13919 of 2019

[1] For the reasons as are mentioned in the application, the same is allowed. Case is restored to its original number and on request is taken up for hearing today.

[2] Challenge in the writ petition is to order Annexure P-3 dated 29.10.2018 whereby the appeal filed by the petitioner against the decision of the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act') was dismissed by the Appellate Authority on account of the same having been filed after 147 days of receipt of order by the Controlling Authority. Order dated 11.01.2018 passed by the Controlling Authority was received in the office of the petitioner on 15.01.2018. Aggrieved against order dated 11.01.2018 the petitioner filed an appeal praying therein for condonation of delay in filing the appeal. The Appellate Authority vide order dated 29.10.2018 dismissed the same on the

ground that under no circumstances the same could be entertained beyond 120 days of the date of order. Accordingly, the appeal was dismissed being time barred.

[3] Learned counsel contends that the appellate authority dismissed the application for condonation of 33 days delay despite huge delay by the respondent in filing application before the Controlling Authority having been condoned by the Controlling Authority, besides, the matter pertained to Jalandhar and filing of appeal required approval of the head office at Chandigarh, therefore, sufficient cause was made out for condoning delay in filing the appeal but the learned appellate authority failed to take the aforementioned aspect of the matter into account, therefore the impugned order is liable to be set aside, delay in filing the appeal condoned and the matter remitted to the appellate authority to decide the appeal in accordance with law.

[4] I have considered the submissions of learned counsel. Section 7 (7) of the Act, provides for maximum period of 120 days of 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 11.01.2018 was received by the petitioner on 15.01.2018. However, the appeal was not filed within the stipulated period of time. It was filed 147 days after 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 and beyond said period of time, the Appellate Authority has no power to condone the delay. Admittedly, appeal was filed 147 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 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 dismissed in limine.

(B.S. Walia)
Judge

23.09.2019
amit

1. Whether speaking/reasoned: Yes/No.
2. Whether reportable : Yes/No.