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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 13.09.2019

+ W.P.(C) 9882/2019 & CM Nos.40834/2019 (for stay), 40835/2019
(for exemption)

M/S CONTENTRA TECHNOLOGIES (INDIA) PVT. LTD.

..... Petitioner

Through: Mr.Hem C. Vashisht, Adv.

versus

NIKHIL PAL

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition under Article 226 of the Constitution of India assails the order dated 23.05.2019 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 rejecting the petitioner's appeal against the order dated 13.06.2016 passed by the Controlling Authority.

2. The respondent, who had worked with the petitioner organisation as a Junior Project Executive from 01.12.2008 to 21.02.2015, approached the Controlling Authority with a claim petition dated 27.08.2015 praying for a direction to the petitioner to release his gratuity. As per the claim petition, the respondent's last

drawn salary was Rs.11,518/- per month and, despite his demand notice dated 13.08.2015, the petitioner had failed to release his gratuity.

3. Upon notice being issued, the petitioner appeared before the Controlling Authority through its authorised representative on 28.09.2015 and sought time to file its reply to the claim petition, which it failed to do despite being granted repeated opportunities. In fact, none appeared on behalf of the petitioner on 26/10/2015, 18/11/2015 and 02/12/2015 and, therefore, the Controlling Authority was compelled to proceed ex parte against the petitioner on 02.12.2015. The Controlling Authority, therefore, relying on the unrebutted evidence of the respondent/claimant tendered before it, came to a conclusion that the respondent had rendered service from 01.12.2008 till 21.02.2015 and, accordingly, directed the petitioner to pay gratuity amounting to a sum of Rs.39870/- to the respondent along with 10% simple interest.

4. Aggrieved by the order of the Controlling Authority, the petitioner preferred an appeal before the Appellate Authority under the Payment of Gratuity Act (hereinafter referred as 'the Act'). In the appeal, the main plea taken by the petitioner was that the respondent, having voluntarily abandoned his services with the petitioner company, was not entitled to receive any gratuity. This appeal came to be dismissed vide order dated 23.05.2019 by observing that once the petitioner did not appear before the Controlling Authority, the Controlling Authority was fully justified in accepting the uncontroverted evidence led by the respondent that he had worked at

the petitioner company continuously for the period between 01.12.2008 to 21.02.2015. Aggrieved by this order of the Appellate Authority, the present petition has been preferred.

5. Learned counsel for the petitioner has primarily raised two contentions. He firstly submits that the Controlling Authority has failed to appreciate that the claim petition itself was not maintainable as, according to Rule 7(1) of the Payment of Gratuity (Central) Rules 1972, a claim could be made only within one month from the date when gratuity became payable to him. He, therefore, contends that in the light of the respondents' claim that his services had come to an end on 21.02.2015 and the claim petition having been preferred on 27.08.2015, the same was time barred and ought to have been outrightly rejected by the competent authority. He submits that even if the petitioner had failed to appear before the Controlling Authority, it was incumbent upon the Authority to consider the effect of Rule 7(1) before allowing the respondent's claim of the respondent which was patently time barred.

6. The petitioner's second submission is that although the respondent had claimed that he had served in the petitioner company for a period of more than 6 years, in fact, he had served for a period lesser than the mandatory period of five years required for becoming eligible for payment of gratuity under Section 4 of the Act. He submits that the respondent had abandoned services from time to time and, therefore, the actual period of service rendered by him was falling short of the qualifying period of service required for payment of gratuity. He further submits that in any event, the service of the

respondent was most unsatisfactory due to which he was issued repeated notices by the petitioner calling upon him to improve his performance. He, therefore, contends that in these circumstances the respondent was not entitled to claim gratuity and that the impugned order be set aside.

7. I have considered the submissions of the learned counsel for the petitioner and perused the record.

8. The undisputed position emerging from the record is that the respondent had joined the service of the petitioner company on 01.12.2008 where he continued to serve till 21.02.2015. Thus, the fact that the respondent was in the petitioner's employment for more than five years is evident from the averment of the petitioner itself. In fact, the only plea taken by the petitioner is that the respondent had, during that period, abandoned service from time to time and, therefore, the said period could not be counted as qualifying period of service under the Act.

9. In my view, once the petitioner, despite service, chose not to file any reply before the Controlling Authority, its bald averment that the respondent had abandoned service from time to time cannot be accepted. A perusal of the record also shows that no document demonstrating that the respondent had ever abandoned service or that his services were terminated at any time between the period from 01.12.2008 to 21.02.2015 was filed before the Appellate Authority. In fact, no such document has been filed even before this Court. 2015. Thus, I have no hesitation to reject the petitioner's contention that the respondent had not served for more than a period of five years and,

therefore, was not entitled to gratuity under the Act. In these circumstances, the Controlling Authority was fully justified in relying on the uncontroverted testimony of the respondent in holding that he had, indeed, served continuously from the period between 01.12.008 to 21.02. 2015 thereby entitling him to receive payment of gratuity under the Act.

10. The second plea raised by the petitioner that the claim filed on 27.08.2015, i.e., more than six months after the date of termination was not maintainable in the light of Rule 7(1) of the Payment of Gratuity (Central) Rules 1972 is also wholly misconceived. For the sake of convenience, the said Rule is reproduced hereinbelow:

“7. Application for gratuity.-(1) An employee who is eligible for payment of gratuity under the Act, or any person authorised, in writing, to act on his behalf, shall apply, ordinarily within thirty days from the date the gratuity became payable, in Form 'I' to the employer:

Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.”

11. I find that the contention raised by the petitioner is based on a complete misreading of the provisions of the aforesaid Rule. A perusal of Rule 7(1) of the Payment of Gratuity (Central) Rules 1972 shows that the said Rule merely provides that an employee shall make an application to his employer, ordinarily within a period of 30 days from the date when gratuity becomes payable to him. There is no requirement under this Rule that the claim petition before the

Controlling Authority must be mandatorily made within 30 days, as is sought to be contended by the petitioner.

12. In the light of the aforesaid, I find absolutely no reason to interfere with the impugned order.

13. The writ petition, being meritless, is dismissed along with the pending applications.

(REKHA PALLI)
JUDGE

SEPTEMBER 13, 2019

gm

