IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.573 of 2020

S.Anbarasan .. Appellant

Vs

1.The Management,
Jaigopal Garodia Vivekananda Vidyalaya,
Vivekananda Nagar, Avadi,
Chennai – 600 054.

2.The Joint Commissioner of Labour – II,
DMS Compound, Teynampet,
Chennai – 6. .. Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 22.10.2019 passed in W.P.No.29783 of 2019.

For Appellant : Mr.K.M.Ramesh

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Learned counsel for the appellant contends that gratuity is a statutory payment, which cannot be denied in terms of Section 7 of the Payment of Gratuity Act, 1972 read with the Tamil Nadu Payment of Gratuity Rules, 1973, on the ground of any delay in the presentation of the application. Learned counsel has laid stress on Rule 7(5) of the Rules to contend that no claim for gratuity under the 1972 Act shall be invalid merely because the applicant failed to present his application within the specified period.

2. In the instant case, the claim has been declined on the ground that it was presented after eleven years. The learned Single Judge has also taken the same view.

3. We have considered the submissions raised.

4. Section 7(1) of the 1972 Act reads as follows:

"***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."

5. The aforesaid Section refers to the prescription of Rule and for that, Rule 7(1) of the 1973 Rules is extracted hereinunder:

"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 or resignation of an employee is known, the employee may apply to the employer **before thirty days** of the date of superannuation or retirement or resignation as the case may be.

(2) A nominee of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, **ordinarily within thirty days** from the date the gratuity became payable to him in Form 'J' to the employer:

Provided that an application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall

apply, **ordinarily within one year from** the date the gratuity became payable to him, in Form 'K' to the employer.

(4) Where gratuity becomes payable under the Act before the commencement of these rules, the periods of limitation specified in sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such commencement.

(5) … … …"

6. In order to appreciate the arguments as advanced by Shri K.M.Ramesh, learned counsel, we have also perused the affidavit filed by the applicant in support of the application moved before the concerned authority, and paragraph 3 of the said affidavit is extracted hereinunder:

"*3. I further submit that the Management has processed to settle the P.F. amount and I* *received the P.F. dues in the Month of September 2007. As regards the gratuity payment from the Management, I had contacted the Office Manager in person during the Month of September and October 2007 for payment of Gratuity, when he assured that the gratuity details is being worked out the payment will be made shortly. Therefore, I was* ***waiting for some times.****"*

7. It is evident that this application was admittedly moved after eleven years with the aforesaid explanation. The explanation recites that the Management had promised to clear the payments shortly when the appellant had contacted the Office Manager in the month of September and October, 2007. The appellant then goes on to say that he thereafter kept waiting for some time. Thus, an approach had already been made in 2007 and the appellant took up the plea of waiting for some time.

8. The question is as to what meaning can be assigned to the

words "*some time*" for the purpose of treating it to be a satisfactory explanation in terms of the language used under sub-rule (5) of Rule 7 extracted hereinunder.

> *"7(5). An application for a payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant* ***adduces sufficient cause for the delay*** *in preferring his claim, and* ***no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period****. Any dispute in this regard shall be referred to the controlling authority for his decision."*

9. A perusal of the said Rule requires satisfaction of the authority if the applicant adduces sufficient cause for the delay and then qualifies it by saying that no claim for gratuity shall be invalid merely because the application has been filed beyond the time, meaning thereby that if the delay has been sufficiently explained, the

application shall not be declined to be entertained.

10. It appears that the Management had already offered payments, which we find to have narrated in paragraph 4 of the affidavit and therefore, it does appear that the Management had also extended payment only in March 2018, but this was no reason to explain sufficient cause for a waiting period of 11 years in spite of knowledge with the phrase "*some time*" as used in the preceding paragraph of the affidavit. We are unable to understand or gather any plausible reason as to why the appellant did wait for eleven years to approach the authority.

11. The statutory provisions of Rule 7 of the 1973 Rules also indicate that an employee who is eligible for payment of gratuity should ordinarily within thirty days from the date the gratuity becomes payable has to move an application in writing in Form-I appended to the Rules for such payment. It is also provided that the employee can also apply before thirty days of the date of superannuation or retirement or resignation, if the date is known. The nominee of an employee can also apply within the same period for such payment.

There is a further relaxation in the case of a legal-heir of an employee to apply ordinarily within one year from the date of gratuity becomes payable. It is thereafter that a more liberal indication has been given that no claim for gratuity shall be invalid merely because the claimant failed to present the application within the specified period if the applicant adduces sufficient cause of the delay in preferring his claim. The aforesaid assemblage of words prescribing an ordinary period of limitation is also an indicator of the reasonableness of the period within which such a claim can be set out before the authority concerned.

12. The present is a case where the employee himself had to move the application for payment of gratuity and he did so after 11 years and not within thirty days as prescribed under the Rules. Even stretching such period to a reasonably far extent, waiting 11 years does not appear to be commensurate to the words "**ordinarily**" used in the statute to accommodate the claim.

13. The phrase "*some time*" can be construed to mean a reasonable spell of time and not an unusual extended spell of time as in the present case, which is a huge period of eleven years.

14. A Division Bench of the Patna High Court in the case of ***KAVITA KUMARI v. THE STATE OF BIHAR AND OTHERS,*** reported in **MANU/BH/2310/2019**, while interpreting a rule under the Bihar Police Manual, 1978 relating to resignation came to the conclusion that the rule intended to give some time to an employee to think over his/her resignation as provided for in the rule itself which further stipulated that the authorities should not be in a hurry to accept it. Paragraph 18 of the said judgment is extracted herein below:

> "18. Apart from this, we find that the letters of acceptance of resignation is after a week i.e., on 19th June, 2012. Rule 808 extracted above grants discretion to the authority to give "some time" to the employee with a rider that the authority should not be in a "hurry" to accept the same. The adjective "some" describes an indeterminate or unstated quantity or number. It also means certain but unspecified. It can also mean an appreciable amount or a considerable quantity or even a rough estimate

depending on the context in which it is used. "Hurry" is a transitive verb that means to move quickly or something done in too much haste. It denotes suddenness or undue rapidity. The appellant was given a couple of days and the acceptance came after one week of the tendering of resignation. The period in our opinion was sufficient and the decision to accept the relinquishment was not taken suddenly but after a week. There was no indication by the appellant in between intending to withdraw the letter of resignation. In such circumstances, it cannot be said that authorities had acted hurriedly or acted in a way which could amount to be an acceptance in undue haste or beyond the purview of Rule 808."

15. Even assuming that the adjective "*some*" as explained above

was indeterminate and unspecified, the same in the present context has also to be understood as "some reasonable time". We may clarify that we are not interpreting the averments made in the affidavit as if it were a statute but at the same time we are trying to emphasize that the explanation given has to be in tandem with the expiry of a reasonable period of time after knowledge without reflecting unexplained inordinate delay. To equate the delay of eleven years with the phrase "*some time*" would be in the present context therefore completely incongruous and otherwise also does not appeal to reason. The appellant ought to have in a reasonably diligent way approached the authorities within some explainable spell of time.

16. In such circumstances, we do not find that the conclusion drawn by the learned Single Judge suffers from any manifest error in declining to exercise discretion. Even if the law of limitation has to be liberally construed as per the language used in Rule 7(5) above, such period should not be extended unreasonably for a period of eleven years, which is the admitted case of the appellant. Consequently, there is no occasion to interfere with the impugned judgment of the learned single Judge without prejudice to the appellant to receive payments

from the Management that was offered and the Management shall abide by its own promise uninfluenced by these proceedings.

17. The appeal is accordingly consigned to records.

(A.P.S., CJ.)　　　(S.K.R., J.)
29.07.2020

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Index : Yes

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