

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 26 of 2021**

The Sub Area Manager South Eastern Coalfields Ltd., Ncph Colliery ,
Chirmiri Area, Post Office Haldibadi, District Korea Chhattisgarh.

---- Petitioner**Versus**

1. Shri Anam S/o Late Dina Ex Pump Operator , Old Mines Quarter, At
P.O. West Chirmiri Colliery, District Korea Chhattisgarh 497773
2. Controlling Authority And The Regional Labour Commissioner
Bilaspur Chhattisgarh.
3. Deputy Chief Labour Commissioner (C) Government Of India,
Ministry Of Labour And Employment, Raipur Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Vivek Chopda, Advocate
For Respondents No. 2 & 3	:	Mr. Ramakant Mishra, Asstt. S.G. along with Mr. Amit Banerjee, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****20/07/2021**

1. Aggrieved by the order of the respondent no.3 dated 28.09.2020 delivered upon the petitioner on 08.10.2020 passed in PGA-15/2020 the present writ petition has been filed.
2. The facts of the case in brief are that the respondent no.1 was employed by the petitioner on the post of General Mazdoor Category-I. However, in the course of his employment a complaint was received in respect of his getting employment by impersonating himself. Subsequently, a disciplinary proceeding was initiated and the respondent no.1 was terminated from service vide order dated 30.04.2018.

3. The order of termination from service has not been challenged by the employee before any Court of law. Subsequently, the respondent no.1 preferred an application before the Controlling Authority for payment of gratuity under the Payment of Gratuity Act. The matter was registered as Case No. BSP-36(71)/2019-RLC. The Controlling Authority vide order dated 11.03.2020 passed an order holding that the respondent no.1 is entitled for payment of gratuity to the tune of Rs.20,00,000. The order of the Controlling Authority was subjected to challenge before the Appellate Authority i.e. the respondent no.3 under Section 7(7) of the Payment of Gratuity Act. The respondent no.3 vide impugned order dated 28.09.2020 dismissed the appeal of the present petitioner on the ground that the appeal has not been properly constituted as is required under the provisions of Sub Section 7 of Section 7 of the Payment of Gratuity Act. According to the Appellate Authority, the petitioner was required to deposit the entire amount awarded by the Controlling Authority, and refused to accept a Demand Draft of RS. 1636343/= which was the actual amount of Gratuity the employee would have got had he permitted to be retired, and the appeal thus has been rejected.
4. The contention of the learned counsel for the petitioner is that the quantum arrived at by the Controlling Authority is without any basis and is also without any proper calculation in terms of the entitlement under the Payment of Gratuity Act as per the salary received by the employee under the petitioner. According to the counsel for the petitioner, the petitioner company themselves had calculated gratuity amount in accordance with the provisions of law governing the

Payment of Gratuity Act upon the petitioner establishment and found that the employee would have been entitled for an amount of Rs.16,36,343 for which a demand draft was also prepared and presented along with the memo of appeal which has not been accepted by the Appellate Authority while rejecting the appeal.

5. The bone of contention in the present writ petition is whether the order of the Appellate Authority rejecting the appeal for want of deposit of the amount quantified by the Controlling Authority to be proper, legal and justified or not?
6. For proper understanding of the case it would be relevant at this juncture to take note of the provisions of Sub Section 7 of Section 7 of the Payment of Gratuity Act which for ready reference is being reproduced hereinunder:

“7(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 sub-section (4), or deposits with the appellate authority such amount.]”

7. A plain perusal of the second proviso to Sub Section 7 of Section 7 would clearly reveal that the statute mandates for the employer to deposit the amount as per Sub Section 4 of Section 7 of the Payment of Gratuity Act and the certificate of the deposited amount be accompanied with the memo of appeal. In view of the requirement of the second proviso it would be relevant to take note of the provisions of Sub Section 4 which again for ready reference is being reproduced hereinunder:

“(4)(a). If there is any dispute 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.”

8. If we read the clauses of Sub Section 4 it would clearly establish that Clause (a) and Clause (b) are stages which have to be applied before the Controlling Authority finally adjudicates upon a matter. However, only if the matter is left for the Controlling Authority to be decided then Sub section (c) and (d) would come into play. Once when the dispute is left for the Controlling Authority to be decided and the Controlling Authority passes an order determining the amount of gratuity payable to the employee then under the second proviso to Sub Section 7 of Section 7, the employer should deposit the entire amount awarded by the Controlling Authority. The employer ought to have deposited the entire amount and immediately pressed upon hearing of an appeal or at least an interim application seeking for stay of the disbursement by the Controlling Authority.

9. In the instant case, the petitioner company have not deposited the entire amount as awarded by the Controlling Authority and on the contrary they have deposited something which according to their calculation is proper. In the opinion of this Court depositing of an amount which according to the employer is correct calculation after an order of the Controlling Authority after adjudication by the Controlling Authority where the Controlling Authority passes a final order will be in contravention to Sec 7.7 of the Act. After the final order is passed by the Controlling Authority it has to be the final amount awarded by the Controlling Authority which needs to be deposited.

10. According to the learned counsel for the petitioner since the amount of Rs.20,00,000 was not deposited at the time of filing of appeal, but only an amount of Rs.16,36,343 was deposited by way of a Demand Draft, the Appellate Authority refused to accept the same and have rejected the appeal on the ground that the entire amount has not been deposited. It is further contended that the Management of SECL further tried to deposit the entire amount of Rs.20,00,000 before the Appellate Authority, which too has been not accepted by the Appellate Authority stating that since the appeal has already been rejected by him earlier, the subsequent amount cannot be accepted by him.
11. At this stage, learned counsel for the petitioner submits that the appellate authority at least ought to have pointed out the default and should have granted some period of time to cure the default so that the appeal could be heard on merits and prayed for at least this Court may direct the Appellate Authority to permit the petitioner to deposit the entire amount once again and let the appeal be decided on merits. According to the counsel or else substantial injustice could happen to the Petitioner as the respondent no.1 who had obtained employment by impersonation would be again benefited by another huge amount of Rs. 20,00,000 in terms of the order of the Controlling Authority.
12. Given the submission by the learned counsel for the petitioner and taking note of the fact that the impugned order of the Appellate Authority does not reveal any opportunity being granted to the petitioner for curing the default. Accordingly, the impugned order Annexure P/1 deserves to be set-aside only on this limited ground of

not granting the appellant some reasonable time for curing the default, which is otherwise the condition precedent for entertaining an appeal under Section 7(7) of the P.G. Act. In the opinion of this Court, ends of justice would meet if the matter is remitted back to the Appellate Authority with a direction to the petitioner to ensure that the entire amount awarded by the Controlling Authority is deposited before the Appellate Authority within a further period of 2 weeks from the date of receipt of copy of this order. The appellate Authority shall thereafter consider the appeal on its own merits in accordance with law and decide the same at the earliest.

13. The writ petition accordingly stands disposed of.

Sd/-
(P. Sam Koshy)
Judge