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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 383 OF 2021

Rui A. E. Ferreira … Petitioner

Versus

The Goa Urban Co-operative Bank Ltd., Thr. Its Managing Director, Hemand D. Ghantkar …Respondents

Mr. Dhaval D. Zaveri, Advocate *for the Petitioner.*

CORAM: G. S. KULKARNI, J.

DATED: 14 December, 2022

ORAL ORDER

1. This petition assails an order dated 30 August, 2021, passed by the Appellate Authority Under The Payment of Gratuity Act, 1972, (for short, 'The P. G. Act'), whereby the respondent's appeal filed under Section 7(7) of the P. G. Act, has been allowed. By virtue of the impugned order, an dated 24 December, 2020 passed by the Controlling Authority under Rules 10 and 11 of The Payment of Gratuity (Central) Rules, 1972, directing the respondent to pay the petitioner an amount of ₹ 10,00,000/- along with simple interest at the rate of 12% per annum commencing from 12 March, 2016 till the date of actual payment, is set aside.

2. As a material part of the controversy in the present proceedings revolves around the applicability of Section 7(7) of the P.G. Act, it is appropriate to discuss the relevant contents of the said provision.

3. Section 7(7) of the P. G. Act, provides that any person aggrieved by an order under sub-section (4), may within sixty days from the date of the receipt of the order, may prefer an appeal before the appropriate Government or such authority as may be specified by the appropriate Government in this behalf. The first proviso below sub-section (7) of Section 7 of the Act provides that the appropriate Government or the Appellate Authority as the case may be, 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. The second proviso to sub-section (7) of Section 7 of the Act provides, 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 an amount of gratuity required to be deposited under sub-section (4) or "*deposits with the Appellate Authority*", such amount. For convenience, it would be appropriate to note the relevant extract of Section 7 of the P. G. Act, which read thus :

"Section 7 Determination of the amount of gratuity:--

(1) ...

(2) …

(3) ....

(3A) ...

(4) (a) If there is any dispute as 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.

(5) ...

(6)...

(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 subsection (4), or deposits with the appellate authority such amount.

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority." (emphasis added)

4. There is some history to the present litigation. It appears that there was a service dispute between the petitioner and the respondent, which was subject matter of proceedings before the Industrial Tribunal and thereafter of the proceedings before this Court in Writ Petition No. 40 of 2004. Such proceedings ultimately reached the Supreme Court in Special Leave Petition(C) No.

26748/2014, wherein the disputes came to be finally compromised between the parties, in terms of the following order passed by the Supreme Court dated 8 February, 2016:

> "Thanks to the gracious cooperation extended by the learned Senior counsel appearing on both sides, we are able to give a quietus to a long drawn litigation.
> We are happy to note that the Court is now in a position to finally settle the disputes between the parties once and for all. **In full and final settlement** of all dues to the respondent, the Bank shall pay an amount of Rs.42.50 Lakhs to the workman within three weeks from today.
> **The workman shall not be entitled to any other benefit on any count** in respect of the services rendered by him in the Bank. For the Income Tax purpose, the workman shall complete the required procedural formalities within one week from today.
> Needless to say that in case the Bank has made any deposit in the High Court, it will be open to the Bank to withdraw the amount in view of the payment of lumpsum amount of Rs. 42.50 Lakhs to the workman. In view of the settlement as above, the parties shall withdraw all pending proceedings against each other before **any forum**."
> In view of the above, the Special Leave Petitions are disposed of.
> Pending Interlocutory applications, if any, are disposed of." (Emphasis supplied)

5. It is clear from the said orders passed by the Supreme Court that the Supreme Court recorded full and final settlement of all dues to be paid to the petitioner by the respondent. The Supreme Court observed that the workman (petitioner herein), "*shall not be entitled to any other benefit on any count*", in respect of the services rendered by the petitioner to the bank.

6. It appears that despite that the above settlement and clear orders of the Supreme Court, the petitioner preferred an application before the Controlling Authority under the P. G. Act making a demand for payment of gratuity of an amount of ₹10,00,000/- which surprisingly came to be granted to the petitioner by an order dated 24 December, 2020, passed by the Controlling Authority as noted above. The respondent being aggrieved by the order passed by the Controlling Authority, primarily on the ground that the petitioner had lost all entitlements to receive any other benefit, "*on any count*", as observed by the Supreme Court in its order dated 8 February, 2016 and hence was not entitled to demand payment of gratuity, which according to the respondent formed part of the overall settlement which had taken place before the Supreme Court. Also, no such permission was granted by the Supreme Court by any further order to assert any such claim.

7. The Appellate Authority by the impugned order, thus allowed the appeal filed by the respondent *inter alia* accepting the case of the respondent on the conclusive effect of the orders passed by the Supreme Court thereby observing, that there was no entitlement of the petitioner to claim such amount. Also in adjudicating the appeal, the Appellate Authority was not persuaded to accept the contention as urged on behalf of the petitioner, that the appeal itself was not maintainable on a belated pre-deposit of the ordered gratuity amount by the respondent.

8. It is on the above premise, present proceedings are before the Court.

9. Mr. Zaveri, learned Counsel for the petitioner, in assailing the impugned order, has rested his argument primarily on the issue in regard to an alleged non-compliance of the pre-deposit by the respondent to maintain the appeal, as the proviso's to sub-section (7) of Section 7 of the Act would contemplate. His submission is that the appeal against the order passed by the Controlling Authority dated 21 December, 2020, was preferred by the respondent in or about first week of February, 2021 as the notice of the appeal was received by the petitioner itself was dated 8 February, 2021. Mr. Zaveri submits that it was revealed that along with the appeal, the mandatory pre-deposit of the ordered payment was not made by the respondent along with the appeal. Mr. Zaveri has submitted that in fact the application for pre-deposit of the amount was made by the respondent for the first time on 26 March, 2021, and a bankers cheque dated 26 March, 2021 drawn in favour of the appellate authority, came to be deposited. Mr. Zaveri has drawn the Court's attention to the said application of the respondent for pre-deposit (page 91 of the paper book) as also the bankers cheque which is also annexed to the paper book. The bankers cheque is issued in favour of the Industrial Tribunal/Appellate Authority under the P. G. Act, which is of an amount of Rs.16,00,000/-. There appears to be no dispute that the said cheque was accepted by the office of the Appellate Authority.

10. Mr. Zaveri would submit that the petitioner filed a reply to the application of the respondent dated 26 March, 2021, opposing the application and the deposit of the said amount as on 26 March, 2021. The contention as urged by the petitioner was to the effect, that the amount ought to have been deposited by the respondent at the time of the appeal being preferred. Further additional objections on behalf of the petitioner came to be submitted on 6 July, 2021, now raising an objection in regard to the correctness of the pay order, in contending that the pay order was valid for a period of ninety days and, therefore, a valid pre-deposit is not brought about. However, no averment was made that the pay order was not encashed. Mr. Zaveri would submit that the appellate authority did not appropriately consider such objection of the petitioner and/or has been erroneously dealt by the Appellate Authority in passing the said impugned order. He has drawn the Court's attention to the relevant findings in that regard as contained in paragraphs 25 to 27 of the impugned order.

11. Insofar as the entitlement of the petitioner to receive the gratuity amount is concerned, Mr. Zaveri would submit that the Appellate Authority has purely gone on the orders which are passed by the Supreme Court, in holding that by virtue of the said orders the Supreme Court, had put all claims of the petitioner to finality. In this regard, he has drawn the Court's attention to paragraph 21 of the impugned order.

12. I have heard Mr. Zaveri, learned Counsel for the petitioner. I have also perused the impugned order and the record.

13. At the outset, it is required to be observed that no fault could have been found in the view taken by the Appellate Authority considering the orders passed by the Supreme Court which observe that there was a full and final settlement between the parties in regard to "*all the dues*" and that the petitioner was not entitled to any other benefit on any count in respect of the services rendered by the petitioner. The orders passed by the Supreme Court clearly indicate that, it was a final settlement/compromise between the petitioner and the respondent to receive the amounts as set out in the said orders of the Supreme Court. Thus, the petitioner even if, had any legal rights, he had given up all the rights and waived his entitlement to receive any other amounts which would include his claim as made before the Controlling Authority under the P. G. Act. As rightly observed by the Appellate Authority, there could not have been any other reading of the orders passed by the Supreme Court. It appears that despite such clear orders of the Supreme Court, the petitioner without obtaining a leave/clarification of the orders passed by the Supreme Court, and having accepted such quietus on all the disputes in regard to "*any payment/benefits on any count*", intended to have a second bite at the cherry and, accordingly, moved an application before the Controlling Authority now claiming the payment of gratuity.

14. The Controlling Authority, in my opinion, and as rightly observed by the Appellate Authority, was in an error in granting the application as filed by the petitioner claiming the gratuity amount.

Such order was certainly in the teeth of the orders passed by the Supreme Court when, admittedly, the orders passed by the Supreme Court dated 8 February, 2016 were holding the field and were subsisting and operating *inter se* between the parties. Thus, no fault can whatsoever be found in the observations of the Appellate Authority observing that the petitioners claim itself was without any basis.

15. Insofar as the petitioner's objection on maintainability of the appeal as raised by the petitioner before the Appellate Authority on the issue of pre-deposit is concerned, in my opinion, there is no substance whatsoever in such objection. This, for the reason, sub-section (7) of Section 7 of the Act when it provides for a remedy of an appeal against an order passed by the Controlling Authority under sub-section (4) *inter alia* provides that such appeal needs to be preferred within sixty days from the date of receipt of the said order of the Controlling Authority. The first proviso under sub-section (7) provides for condonation of delay to provide that in the event, the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the period of sixty days, the said period can be extended by a further period of sixty days. Thus, initially, a period of sixty days is available to any person who is aggrieved by an order passed by the Controlling Authority to prefer the appeal and a further extended period of sixty days at the discretion of the authority on sufficient cause being shown in preferring the appeal beyond the revised period of sixty day, is categorically provided

16. Further, the second proviso to sub-section (7) ordains 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 an amount of gratuity required to be deposited under sub-section (4) or "deposits with the Appellate Authority", such amount.

17. Thus, considering the scheme of Section 7 of the P. G. Act, in my opinion, the provision is required to be holistically read. The first and the second proviso below sub-section (7) cannot be read disjunctively. The consequence as brought about by these proviso's is to the effect that a person aggrieved by an order passed by the Controller, is granted an opportunity to prefer an appeal within sixty days from the date of receipt of the order passed under sub-section (4) and further an extended period of sixty days (i.e. the period after the expiry of the first sixty days) by condoning a delay by the Appellate Authority, if it is satisfied that the aggrieved person was prevented by sufficient cause from preferring the appeal within the initial period of sixty days. Insofar as the second proviso is concerned, it provides that while preferring an appeal, the appellant needs to produce a certificate of the Controlling Authority to the effect that the appellant has deposited the amount of gratuity ordered to be paid or deposit's with the Appellate Authority such amount. In a given case, it may certainly happen that the appeal itself is preferred belatedly during the extended period, and at the time of preferring such appeal (on which delay can be condoned) such deposit is sought to be made. There can be a converse situation, as in the present case, that first the appeal is filed and the deposit is being made before the appeal is admitted. It may also happen that the deposit is made in a given case before the appeal is admitted, however such deposit is made within the extended period of sixty days as the first proviso below sub-section (7) provides. Thus, on a holistic and meaningful reading of sub-section (7) of Section 7 of the P. G. Act and as applicable to the facts of the present case, the respondent had admittedly preferred an appeal which was certainly within the prescribed limitation for filing of an appeal. As provided for in the first proviso, additional sixty days were also available to the respondent which would permit the respondent to prefer the appeal along with depositing the amounts demanded with the Appellate Authority. It is thus clear that the sixty days period from the date of the order of the Controlling Authority, dated 24 December, 2020, would expire on 24 February 2021, and the extended period of limitation of further sixty days, would expire on 24 April, 2021. The respondent deposited the amount prior to the appeal being admitted, which was made by the respondent on 26 March, 2021.

18. The object behind the second proviso below sub-section (7) being that the aggrieved party who intends to prosecute an appeal, cannot do so without making the deposit of the ordered amount, prior to the appeal being admitted. Thus, Mr. Zaveri's contention in regard to the second proviso to sub-section (7) of the Act being not complied by the petitioner, is not well founded. This view is also supported in a decision of a coordinate Bench of this Court in **Pharma Base India Pvt. Ltd. vs. State of Maharashtra & anr.,**[1] in which in a similar situation as in the present case the Court observed that the pre-deposit as ordered was mandatory and the Appellate Authority had no power to admit the appeal unless such deposit was made either at the time of preferring the appeal or at the most before expiry of the extended

1 2008 (2) Mh.L.J. 462

period of sixty days as contemplated by the first proviso of sub-section (7) of Section 7 of the Act. The relevant observations of the Court in paragraph 12 are required to be noted, which reads thus :

> "12. The Legislature by the second proviso to section 7(7) of the Act has imposed fetter on the right of the appellant to file appeal. It' clearly provides a pre-condition of deposit of the amount ordered by the controlling authority to entertain the appeal. In other words, right to appeal under section 7(7) becomes vested right only when pre-condition of deposit is complied with. The Appellate /Authority is not to admit the appeal 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 the authority. an amount equal to the amount of gratuity required to be deposited under section 7(4) or deposit with the Appellate Authority such amount. The second proviso to section 7(7) leaves no manner of doubt that the Appellate Authority has no discretion to admit/accept the appeal unless it was preferred with deposit of an amount equal to the amount of gratuity ordered by the controlling authority. The appellant, therefore, must deposit the said amount while preferring an appeal and in any case before expiry of the limitation prescribed under section 7(7) of the Act. Outer limit for such deposit would be the extended period of 60 days, if the appellant satisfies that he was prevented by sufficient cause from preferring the appeal within first 60 days. The pre-condition of the deposit, in my opinion, is mandatory and the Appellate Authority has no power to admit the appeal unless such deposit is made either at the time of preferring the appeal or at the most before expiry of the extended period of 60 days as contemplated by the first proviso to section 7(7) of the Act." (Emphasis supplied)

19. Insofar as reliance of Mr. Zaveri in regard to another judgment of the Division Bench of this Court in **Pharma Base India Pvt. Ltd., Mumbai vs. State of Maharashtra & anr.**[2], it was a case that appellant therein had neither produced certificate of Controlling Authority to the effect that it had deposited with him an amount equal to an amount of gratuity required to be deposited under Section 7(4) of the Act nor it had deposited the said amount before the Appellate Authority. Such is not the situation in present case. Thus, the reliance on this decision is not well founded.

20. In the above circumstances, looked from another angle, the petition is without merit. It is accordingly rejected. No costs.

G. S. KULKARNI, J

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA Date: 2022.12.23 20:39:38 +05'30'

2 2009 (1) Mh.L.J. 688