

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5530 OF 2021

Laxman Lahanuji Rode __ Vs. __ Nagpur District Central Co.Op Bank and anr

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. J.L.Bhoot, Advocate for petitioner
Mrs. M.A.Barabe, AGP for Respondent No.2
Mr. V.D.Raut, Advocate for Respondent No.1

CORAM : AVINASH G. GHAROTE, J.
DATE : 16/02/2023

1] Heard Mr. Bhoot, learned counsel for the petitioner and Mr. Raut, learned counsel for respondent No.1. Learned AGP appears for Respondent no.2.

2] The petition challenges the judgment dated 3.2.2020 passed by the appellate authority under the Payment of Gratuity Act, 1972 (for short 'the PG Act), whereby the application for condonation of delay in filing an appeal in challenging the order dated 25.9.2017 by the Controlling Authority, has been allowed.

3] Mr. Bhoot, learned counsel for the petitioner submits that in view of the language of Section 7 (7) of the PG Act, there is no power in the appellate authority to condone the delay beyond 60 days as per the proviso thereto, for which he relies upon **Pharma Base India Pvt Ltd Mumbai vrs. State of Maharashtra and another, 2008 SCC Online Bom 1029**, (paras 11 & 12) and therefore, submits that there was no power vested in the

appellate authority to condone the delay, which is beyond the proviso as contemplated by Section 7 (7) of the PG Act.

4] Mr. Raut, learned counsel for respondent no.1 justifies the impugned order by contending that the copy of the impugned order was not supplied to the respondent no.1 and therefore, an application for grant of certified copy was made to the controlling authority and the appeal has been filed after receipt of the certified copy within the period as contemplated by Section 7(7) of the PG Act and therefore, the impugned order is justified.

5] Section 7(7) of the Payment of Gratuity Act reads as under;

Sec.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.]

6] A perusal of the aforesaid provision would indicate that an order passed by the Controlling authority under Section 7(4) of the PG Act is to be appealed within a period of 60 days from the date of receipt of the order. The proviso thereto permits the appellate authority to extend the period for filing the appeal on sufficient cause being shown, for a further period of 60 days.

7] In the instant case, the order by the Controlling authority under Section 7(4) of the PG Act was passed on 25.9.2017. The application for condonation of delay in filing the appeal came to be filed on 13.3.2019. The reason given as is discernable from para 2 is that the notice under Rule 17 of the Payment of Gratuity (Central) Rules, 1972, regarding passing of the order under Section 7(4) of the PG Act was received on 28.9.2017, thereafter the respondent moved an application for grant of certified copies of entire proceedings and Roznama on 6.10.2017, which were not delivered, as a result of which, again an application was made on 14.9.2018 whereupon photo copies of the order sheets were delivered. In the entire application there is no statement that the order dated 25.9.2017, was not received along with the notice under Rule 17 of the said Rules, nor does it make a statement that the certified copy of the order was ever applied for. The application for grant of certified copy dated 6.10.2017 (pg.69) also indicates that what was applied for was not the order dated 25.9.2017, but the order sheets/proceedings from

beginning to end. It is therefore apparent that there is no statement made that, (a) the copy of the order dated 25.9.2017 was not received and (b) that an application for the certified copy of the order dated 25.9.2017 was ever applied for and was received on any particular date. These particulars being absent, it is absolutely impossible to calculate the period of limitation as per the mandate of Section 7(7) of the PG Act.

8] What is also material to note is that in spite of the record being requisitioned, the certified copy of the order dated 25.9.2017 is not on record. What is on record is only photo copy of the order dated 25.9.2017 on record. Mr. Raut, learned counsel for respondent no.1, when asked to place on record the certified copy or for that matter the photo copy of the order dated 25.9.2017, which is purported to have been received by the respondent No.1 or obtained by the respondent no.1, he expressed his inability to do so. This would clearly indicate that there was no material on record before the appellate authority to discern whether the mandate of Section 7(7) of the PG Act including its proviso has been complied with. The judgment dated 3.2.2020 which condoned the delay does not consider this position at all, and the only reasoning reflected is in para 6 (pg.11) which is devoid of any date, considering which the impugned judgment dated 3.2.2020 cannot be sustained, the same is hereby quashed and set aside and the application for condonation of delay is dismissed.

(5)

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9] The petition is accordingly allowed in above terms. No costs.

JUDGE

Rvjalit