

**113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM-4404-CWP-2023 in/and
CWP-4598-2023**

Date of decision : 15.03.2023

M/s Meyer Apparel Ltd. and another

...Petitioners

Vs.

**The Appellate Authority under the Payment
of Gratuity Act, 1972 Gurugram and others**

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

**Present: Mr. Sukhwinder Sudan, Advocate
for the applicant-petitioners.**

MANOJ BAJAJ, J.

CM-4404-CWP-2023

This application is for pre-poning the date of hearing of the main petition to an early date, which is fixed for 09.08.2023.

For the reasons mentioned in the application, same is allowed and the date of hearing of the main petition is pre-poned to today.

Main case

By means of this writ petition filed under Article 226 Constitution of India petitioners have prayed for issuance of a writ in the nature of certiorari for quashing the recovery certificate No.889 dated 03.03.2022 (Annexure P-1) issued by respondent No.2 as well as the order dated 16.08.2022 (Annexure P-3), whereby cost of Rs.5,000/- per employee has been imposed on employee of petitioner No.1.

Learned counsel contends that the ex-employees brought separate

applications claiming gratuity and the said cases were clubbed and were decided *ex parte* through decision dated 21.10.2021 (Annexure P-6) by respondent No.1-Controlling Authority, Under the Payment of Gratuity Act, 1972-Gurugram and pursuant to the said decision, the recovery certificate was issued on 03.03.2022 (Annexure P-1). Learned counsel submits that the petitioner had moved an application dated 15.11.2021 (Annexure P-7) seeking setting aside of the *ex parte* order and the said prayer was accepted vide order dated 16.08.2022 (Annexure P-3) subject to payment of costs of Rs.5,000/- to each of the applicants/employees. Against this order also the petitioners moved an application for recalling the costs part only, however, the said application was dismissed by the controlling authority on 25.08.2022 (Annexure P-17).

Learned counsel submits that the petitioners carried an appeal before the appellate authority against orders dated 16.08.2022 and 25.08.2022, and vide decision dated 10.11.2022 (Annexure P-2), the appellate authority proceeded to remand the case before the controlling authority, and strangely at the same time it noticed the facts of some other case and decided that case also. He submits that once the ground pleaded by the applicants for recalling the *ex parte* order was accepted to be sufficient, the costs could not have been imposed upon the petitioners, and the appellate authority without assigning any valid reason instead of deciding the said costs part, proceeded to remit the case before the controlling authority. He prays that in these given facts, the interference by this Court is warranted under Article 226 Constitution of India.

Upon hearing learned counsel and considering the material on record, it transpires that the impugned *ex parte* order was passed on 21.10.2021 and immediately the application was moved on 09.11.2021 by the petitioners,

and it was accepted by the controlling authority vide order dated 16.08.2022 (Annexure P-3). A perusal of the order dated 16.08.2022 shows that the prayer was not opposed by the employees. Once the controlling authority thought it proper to give an opportunity to the petitioner-employer to effectively contest the claim of the ex-employee, it erroneously imposed extremely heavy costs upon it thereby actually defeating the purpose of recalling the *ex parte* order.

Considering the totality of the circumstances as well as stand of the ex-employees, who never opposed the prayer for recalling of the *ex parte* order, this Court is not inclined to issue any notice in this petition as no material rights of the parties are being adjudicated as those would be decided by the controlling authority after hearing both the parties. However, as a caution liberty is granted to any aggrieved person to seek recalling of this order in case any prejudice is suffered by any one of them.

Resultantly, while exercising the writ jurisdiction under Article 226 Constitution of India, the petition is allowed and the impugned order dated 10.11.2022 (Annexure P-2) passed by the appellate Court is set aside. Further, the order dated 16.08.2022 (Annexure P-3) is modified and the costs imposed by controlling authority is set aside.

The parties are directed to appear before the controlling authority on 25.04.2023.

(MANOJ BAJAJ)
JUDGE

15.03.2023

vanita	Whether speaking/reasoned :	Yes	No
	Whether Reportable :	Yes	No