

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-9230-2023

Date of Decision: 12.10.2023

Mahender Kumar Shukla @ Mahender Kumar @ Mahendra Kumar

..... Petitioner

Versus

SKH, Magnet Marelli Exhaust Systems Pvt. Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Dharamvir Sharma, Advocate
for the petitioner.

HARSH BUNGER J.

1. Petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking setting aside of order dated 28.03.2022 (Annexure P-5) passed by the learned Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter to be referred as 'the 1972 Act'), whereby the claim of petitioner for gratuity has been rejected on the ground of jurisdiction.

Petitioner further seeks setting aside of order dated 04.10.2022 (Annexure P-7) passed by the Appellate Authority under the 1972 Act, whereby the appeal of petitioner against order dated 28.03.2022 (Annexure P-5) has also been dismissed.

2. Briefly, petitioner herein filed an application under Section 7(3) of the 1972 Act before the Controlling Authority at Gurugram, claiming gratuity amount on the plea that he was employed on 01.10.2013 on the post of Technician with respondent No.2-Company – Finearc Systems Private

Limited, Pune. As per petitioner, the said company was supplying machines to various companies, including respondent No.1-Company (S.K.H., Magnet Marelli Exhaust Systems Private Limited, Plot No.23, Sector 3-A, I.M.T. Manesar, District Gurugram). Petitioner is stated to have handled the machine as per the instructions of his employer Company – Finearc Systems Private Limited as Technical Customer Support. Petitioner claims that on 18.08.2021, an accident had occurred, whereupon he had suffered severe injuries and his right eye was injured due to an iron chip hitting his eyes and he was advised to take rest. Petitioner further claims that when he again tried to join his services on 02.09.2021, both the Companies, i.e. respondent No.1 and respondent No.2, refused to take him back in services; and consequently, the petitioner left the service on 16.09.2021. As per the petitioner, he had rendered regular satisfactory service of around eight years, w.e.f. 01.10.2013 up to 16.09.2021 and he was drawing salary of Rs.18,000/- per month. Since petitioner was not paid the gratuity amount by the respondent-Company, accordingly he instituted an application under Section 7(3) of the 1972 Act before the Controlling Authority at Gurugram, seeking payment of gratuity.

3. Respondent No.2-Company (Finearc Systems Private Limited) filed an application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure before the Controlling Authority under the 1972 Act, seeking rejection of the claim application filed by petitioner, on the plea that since petitioner was appointed by respondent No.2-Company, which is located at Pune, therefore, the Controlling Authority in the said case would be of the State of Maharashtra, located at Pune, and the claim of petition under Section 7(3) of the 1972 Act would not fall under the jurisdiction of Controlling Authority at Gurugram. It was stated that as per records of the

Company at Pune, petitioner was absenting from duties since 17.09.2021. It was further stated that even a charge sheet had been sent to the petitioner *via* mails as well as on his address, however, he did not participate in the enquiry proceedings.

The sum and substance of the objections raised by respondent No.2-Company was that since the company was located at Pune; petitioner was appointed at Pune location; all the petitioner's records with the company were at Pune; the company had no other Branch in India; and as the petitioner had been deputed at respondent No.1-Company only for the purpose of correction of machines (outdoor duty), accordingly he could not raise dispute and file application under Section 7(3) of the 1972 Act before the Controlling Authority at Gurugram.

4. The aforesaid application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, seeking dismissal of the petitioner's application filed under the 1972 Act, was contested by petitioner by filing his reply, wherein he stated that he had come in the employment of Finearc Systems Private Limited, Pune on 01.10.2013 and was working at Gurugram as per the instructions of the said company.

5. The Controlling Authority vide order dated 28.03.2022 (Annexure P-5) decided the aforesaid application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure by holding that said Authority had no jurisdiction to try and decide the case/claim of the petitioner. Relevant extract thereof reads as under:

“A careful perusal of the record file as well the contents made in application, I found that the applicant attached his salary slip with his claim application in which it is proved that the applicant is running on the roll of Respondent No.2 company at Pune where as the undersigned has got territorial

jurisdiction under Section 3 of the Payment of Gratuity Act, 1972. Accordingly the application is hereby allowed.

In view of the discussion made above the undersigned court has got no jurisdiction to try and decide the instant case, the claim application of the applicant is thus dismissed but without cost.”

6. Being dissatisfied with the aforesaid order dated 28.03.2022 (Annexure P-5), petitioner preferred an appeal bearing No.392 of 2022 before the Appellate Authority under the 1972 Act, which was also dismissed vide order dated 04.10.2022 (Annexure P-7), by holding as under:-

“I have gone through the case file very carefully and minutely. It is clear that the appellant was appointed at Pune. If for sake of argument it is presumed that he was sent to Gurugram to work it does not mean he became the employee of Gurugram. He himself stated that he had worked with SKH Magnet Company. The employer can send his worker to work any place where machines are installed, it does not mean that he became worker of that place. I find no infirmity in the order dated 28.03.2022 passed by Controlling Authority under the Payment of Gratuity Act, Circle-VI, Gurugram.

Therefore, in the light of discussion above, the appeal of the appellant is hereby dismissed.”

7. In the aforementioned circumstances, petitioner has filed the instant writ petition before this Court.

8. I have heard learned counsel for the petitioner and gone through the paper book with his able assistance.

9. Apparently, the application filed by the petitioner under Section 7(3) of the 1972 Act before respondent No.4 – Controlling Authority, Gurugram was rejected vide order dated 28.03.2022 (Annexure P-5) on the ground of territorial jurisdiction and an appeal filed against the said order

was also dismissed by the Appellate Authority vide its order dated 04.10.2022 (Annexure P-7).

10. Section 1 of the 1972 Act delineates the extent and applicability of 1972 Act. Section 2(a) defines “appropriate government” and Section 2(d) defines “Controlling Authority” to mean authority appointed by appropriate government under Section 3 of 1972 Act. Further Section 7(7) of 1972 Act provides for filing of appeal before the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf. The relevant provisions read as under:-

“1. Short title, extent, application and commencement .-

(1) This Act may be called the Payment of Gratuity Act, 1972.

(2) It extends to the whole of India:

Provided that insofar as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

(3) It shall apply to-

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

(3-A) A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.

(4) It shall come into force on such date as the Central

Government may, by notification, appoint.

2. Definitions .-In this Act, unless the context otherwise requires,-

(a) "appropriate Government" means,-

(i) in relation to an establishment-

(a) belonging to, or under the control of, the Central Government,

(b) having branches in more than one State,

(c) of a factory belonging to, or under the control of, the Central Government,

(d) of a major port, mine, oilfield or railway company, the Central Government,

(ii) in any other case, the State Government;

(d) "**controlling authority**" means an authority appointed by the appropriate Government under section 3;

Section 3. Controlling authority. -The appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.

Section 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.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity, within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3-A) If the amount of gratuity payable under sub-section (3) is

not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify: Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

XXX XXX XXX

(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...

A perusal of the above extracted provisions would manifest that Section 2(d) defines "**controlling authority**" to mean an authority appointed by the appropriate Government under Section 3. In terms of Section 3, the "appropriate government" is bestowed the power to appoint any officer as a "Controlling Authority", by way of a notification. Section 3 further provides that the appropriate government may appoint different controlling authorities for different areas.

As per Section 2(a) "appropriate government" means Central Government in relation to an establishment – (a) belonging to, or under the control of, the Central Government; (b) having branches in more than one State; (c) of a factory belonging to, or under the control of, the Central Government; (d) of a major port, mine, oilfield or railway company. However, in any other case, the "appropriate government" means the State Government.

Section 3 further envisages that the notified Controlling

Authority, is responsible for the administration of the Payment of Gratuity Act, 1972 within its area.

Further, in terms of section 7(7) of 1972 Act, an appeal against the order passed by the Controlling Authority lies to the appropriate government or such other authority as may be specified by the appropriate Government in this behalf.

11. It is apposite to state here that if the amount of gratuity payable under Sub-section (3) of Section 7 is not paid by the employer within the period specified in Sub-section (3), the employer is liable to pay simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify. The aforesaid interest is payable by employer from the date on which the gratuity becomes payable to the date on which it is paid. However, in terms of proviso to Sub-section 3A of Section 7, no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

12. Coming to the case in hand, it has come on record that the petitioner was appointed with respondent No. 2 – Company (Finearc Systems Pvt. Ltd.) at Pune and the said company is located at Pune and it does not have any other branch in India. To be precise, the respondent No. 2 – Company raised the following objection as regards jurisdiction of Controlling authority at Gurugram:-

“13. That keeping in view of the above submission, dismiss the present application / captioned case in hand for claim of applicant / complainant under Payment of Gratuity Act, 1972 along with other complaints. It is again may be noted that

Company located at Pune and Mr. Mahender Kumar Shukla was appointed at Pune Location & all the records with Company at Pune. It is also pertinent to mention here that Company has not any Branch in India. He was deputed only for corrections in machine for few days on OD (OUTER DUTY). So, he cannot file any complaint in Gurugram because litigation, if any, it should be filed or consider in location of Pune – Maharashtra.”

13. Learned counsel for the petitioner has been unable to controvert the above extracted stand of respondent No. 2 – Company, either before the Authorities below or even before this Court.

14. Considering the totality of circumstances, once it is not disputed that petitioner was appointed with respondent No. 2 – Company (Finearc Systems Pvt. Ltd.) at Pune and the said company is located at Pune and it does not have any other branch in India; accordingly, in terms of section 2(a) of 1972 Act, the appropriate government in this case would be the State Government of Maharashtra. Apropos, the claim for gratuity (if any) by petitioner would lie before the concerned Controlling Authority for the area of Pune, as appointed by the State Government of Maharashtra. Therefore, there is no illegality or perversity in the impugned orders passed by the Authorities under the 1972 Act, consequently, the instant petition fails and the same is dismissed.

15. All pending application(s), if any, shall also stand closed.

12.10.2023

Apurva

**(HARSH BUNGER)
JUDGE**

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| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |