IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-12054-2017 (O&M)
Date of decision :17.07.2023

THE MANAGING DIRECTOR, THE HARYANA STATE FEDERATION OF CONSUMERS CO-OP. WHOLESALE STORES LTD. (CONFED) AND ANOTHER

- …Petitioners

Versus

APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT 1972-CUM-DEPUTY LABOUR COMMISSIONER, ROHTAK AND OTHERS

…Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vishal Garg, Advocate
for the petitioners.

None for respondents No.1 and 2.

Mr. ChiragKundu, Advocate
for respondent No.3.

HARSH BUNGER, J. (ORAL)

Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the order dated 29.05.2012 (Annexure P-3) passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (for short `the Act, 1972') and also the order dated 16.08.2016 (Annexure P-5) passed by the Appellate Authority under the Act, 1972.

2. Briefly, respondent No.3-Workman (Azad Singh) filed an application under the Act, 1972 against the present petitioners, seeking a direction to them to make the payment of gratuity amount of Rs.80,810/-

with interest @ 12% p.a. w.e.f. 05.11.2001 till realization. It was the case of respondent No.3 that he had worked as a Salesman with the Haryana State Federation of Consumers Co-op. Wholesale Stores Limited (CONFED) from 13.08.1981 upto 05.11.2001, when his services were terminated. It was claimed that no amount of gratuity had been paid to him and his last drawn salary was Rs.6670/- per month. Accordingly, he filed a petition under the Act, 1972.

3. The aforesaid application was contested by the petitioners herein, *inter alia*, on the plea that respondent No.3 was charge-sheeted vide letter dated 14.05.1998 for remaining absent from his duties without leave and also that he had committed fraud/dis-honesty during performance of his duties and was accordingly dismissed from the services due to his illegal acts and conduct. It was submitted that since respondent No.3 was dismissed vide order dated 05.11.2001; accordingly, he is not entitled for any gratuity amount.

Another plea regarding maintainability of the application was also taken.

4. On the basis of the pleadings of the parties, the Controlling Authority under the Act, 1972 framed the following issues :-

> *(1) Whether this petition is not maintainable ?*
> *(2) Whether applicant is entitled for gratuity, if so to what extent ?*
> *(3) Relief, if any ?*

5. After considering the material/evidence on the record, the Controlling Authority under the Act, 1972, vide order dated 29.05.2012 (Annexure P-3) held that the petition was maintainable and respondent No.3 was entitled to gratuity under Section 4(1)(b) of the Act, 1972. Respondent

no.3 was further held entitled to Rs.80,810/- as gratuity amount along with interest @ 10% p.a., by holding as under :-

> *"8. The applicant is entitled to gratuity amount of Rs.80,810 (Eighty Thousand Eight Hundred and Ten) alongwith interest at the rate of ten per cent per annum as the rate of simple interest for the period from 05.12.2001 till the payment is made by the respondents. Both the respondents are jointly and severally liable to make the payment. The issues, as such, is decided accordingly.*

6. Being dis-satisifed with the afore-said order dated 29.05.2012 (Annexure P-3), the petitioners herein filed an appeal No.001 of 2016 under Section 7(7) of the Act, 1972, on 08.02.2016; accordingly, application for condonation of delay was also filed, which was contested by respondent No.3. The Appellate Authority under the Act, 1972, Rohtak vide order dated 16.08.2016 dismissed the application filed by the petitioners herein for condonation of delay in filing the appeal. Accordingly, the appeal was also dismissed.

7. In the afore-mentioned circumstances, the petitioners have filed the instant writ petition before this Court.

8. Learned counsel for the petitioners submits that the learned Appellate Authority under the Act, 1972, has erred in law and facts in dismissing the appeal only on the aspect of limitation and that too without considering other aspects/merits of the matter.

9. On the other hand, learned counsel representing respondent No.3, while referring to the provisions of Section 7(7) of the Act, 1972, has submitted that the appeal filed by the petitioners herein before the Appellate Authority below, was barred by limitation and the Appellate Authority does not have the jurisdiction to condone the delay beyond the period as

mentioned in the proviso to Sub-section (7) of the Section 7 of the Act, 1972. Accordingly, it is submitted that the appeal was rightly dismissed on the ground of limitation and there is no merit in the instant petition; hence, prayer for dismissal of the writ petition has been made.

10. I have heard learned counsel for the parties and have perused the paper book with their able assistance.

11. The issue for consideration is as to whether an appeal filed under Section 7(7) of the Act, 1972, can be entertained by the Appellate Authority by condoning the delay beyond the maximum specified period.

12. Concededly, the application filed by respondent No.3 under the Act, 1972 was allowed by the Controlling Authority vide order dated 29.05.2012 (Annexure P-3), whereby he was held entitled to gratuity. Apparently, the petitioners, herein, have filed an appeal against the aforesaid order dated 29.05.2012 (Annexure P-3) on 08.02.2016.

13. Sub-section (7) of Section 7 of the Act, 1972, reads as under :-

> *"(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."*

A perusal of the above extracted provision would leave no manner of doubt that the period of 60 days has been provided for filing an appeal against the order passed by the competent authority from the date of the receipt of the same to the appropriate Government or such other authority specified by the appropriate Government in this behalf. As per the first proviso to the said sub-section (7) of Section 7 of the Act, 1972, the appellate authority, if satisfied, that there was sufficient cause which prevented the appellant to prefer an appeal within a period of 60 days, could extend the period for further 60 days, thus, the appellate authority could condone the delay of 60 days beyond the period already specified. Therefore, the total period, within which the appellate authority could entertain an appeal, would be 120 days and not beyond it. Accordingly, if an appeal is preferred beyond the period of 120 days from the date of receipt of the order passed by the competent authority, the appellate authority had no option but to dismiss the same as not maintainable or being barred by limitation.

14. Coming to the facts of this case, since the order was passed by the Controlling Authority on 29.05.2012 (Annexure P-3) and the appeal was filed on 08.02.2016; thus, it was clearly beyond the period of 120 days. Accordingly, this delay, which is apparently more than 120 days, could not have been condoned by the Appellate Authority in the light of the specific provisions as provided in sub-section (7) of Section 7 of the Act, 1972, as it did not have the jurisdiction to do so.

15. It is well settled law that the provisions of the Limitation Act would apply to the Local/General of Special Act when no provision for limitation has been provided by such Act, but where certain limitation period has been prescribed by the Special Law or the Local or General Law, it would prevail over the limitation period prescribed in the schedule of the Limitation Act. It is also well settled that where the Special Law or the Local Law provides an outer limit for condonation of delay and further qualifies that it cannot be condoned beyond that particular period, then the said period cannot be extended.

16. In the case of ***HSMITC Ltd. vs M.R. Arora and others (CWP-21545 of 2015***, decided on ***19.08.2019***), this Court has held that the provisions of Limitation Act, 1963, would not be applicable to the appeal filed under sub-section (7) of Section 7 of the Act, 1972 as the Special Act will have precedence and would apply over the General Act. It was held that the Appellate Authority cannot entertain an appeal filed under Section 7(7) of the Act, 1972, by condoning the delay beyond the maximum specified permissible period provided therein.

17. Learned counsel for the petitioners has not shown any law to the contrary.

18. In view of the above, there is no merit in the instant writ petition and the same is accordingly dismissed.

19. All pending application/s, if any, shall stand closed.

July 17th, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

GURPREET KAUR
2023.07.25 19:25
I attest to the accuracy and
authenticity of this order/judgment