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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 20.02.2023

+ W.P.(C) 2147/2023 & CM APPL. 8111/2023 -Stay., CM APPL. 8112/2023 -Ex.

MAHANAGAR TELEPHONE NIGAM LTD. Petitioner
Through: Mr.Chandan Kumar, Adv.

versus

OM PRAKASH Respondent
Through: Ms.Richa Sharma, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition preferred by the Mahanagar Telephone Nigam Ltd. seeks to assail the order dated 19.12.2022 passed by the learned Controlling Authority under the Payment of Gratuity Act(the Act).Vide the impugned order, the learned Authority has directed the petitioner to pay to the respondent, a sum of Rs.3,88,441/- along with interest @ 10% per annum w.e.f. 31.12.2018, towards his dues of gratuity
2. At the outset, it has been put to the learned counsel for the petitioner as to why the petitioner should not be relegated to the Appellate remedy under Section 7(7) of the Act. By placing reliance on the decision of a Co-ordinate Bench of this Court in *W.P.(C)No.128/2005* titled *Mahanagar Telephone Nigam Ltd. v. Smt. Shakuntla Rekhi &*

Anr., he submits that the Act itself is not applicable to the respondent and therefore the impugned order passed by the learned Controlling Authority under the Act was without jurisdiction. Furthermore, at the time of his absorption in the petitioner organization, the petitioner had clearly opted for being governed by the CCS (Pension Rules), 1972 and has already been paid gratuity as per these pension rules. His plea thus is that once the learned Controlling Authority had no jurisdiction to entertain the respondent's claim for gratuity, who was governed by the CCS (Pension Rules), 1972, the impugned order is liable to be set aside. He also places reliance on the decision of the High Court of Chhattisgarh in *Writ Appeal No.283/2016* titled *Dhansai Sahu vs. State of Chhattisgarh* to contend that when a person holds a public post under the Central Government or State Government, he would be governed by the Act/Rules of the Government dealing with gratuity and cannot therefore claim gratuity under the provisions of the Payment of Gratuity Act. He, therefore, contends that the petitioner has rightly approached this Court as the order passed by the learned Controlling Authority is wholly without jurisdiction.

3. He further submits that even otherwise, the remedy of appeal available under the Act would not be an efficacious remedy as the petitioner would be required to first deposit the entire sum of Rs. 3,88,341/- along with interest @ 10%. He, therefore, prays that instead of relegating the petitioner to the Appellate remedy under the Act, this Court may itself set aside the impugned order.
4. Having considered the submissions of the learned counsel for the petitioner, I find that while there is no denial by the petitioner to the

fact that a statutory appellate remedy under the Act is available to it, the only plea is that the appeal can be entertained only if the petitioner deposits the entire amount under the impugned order. The petitioner is a Public Sector Undertaking and nothing has been pointed as to why it cannot deposit this amount as a pre-condition for consideration of its appeal. I, therefore, find no merit in the petitioner's plea that the remedy of appeal, as available under the Act, would not be an efficacious remedy.

5. I have also considered the petitioner's plea that the impugned order is without jurisdiction. However, taking into account the fact that the petitioner is a Public Sector Undertaking and not the Central Government or the State Government, it cannot be *per se* said that the respondent is excluded from the ambit of the definition of an employee under Section 2(e) of the Act. Whether the Act would apply to the respondent is in my view, something, which would therefore be required to be determined by the Appellate Authority.
6. I have also considered the decision in ***Dhansai Sahu(supra)***, relied upon by the petitioner but find that the same is not applicable to the facts of the present case. The said decision pertained to a situation where the Court was dealing with the claim of a State Government employee for gratuity under the Act and held that such an employee, was specifically excluded from the definition of an employee as envisaged under Section 2(e) of the Act. Similarly, the decision in ***Shakuntla Rekhi (supra)***, wherein a Co-ordinate Bench was dealing with a challenge to the order passed by the Appellate Authority under the Act, is also not applicable to the facts of the present case. In the

said decision, the Court was dealing with a challenge to the order passed by the Appellate Authority under the Act. It was not a case wherein the petitioner had been permitted to bypass the appellate remedy under the Act.

7. Even though learned counsel for the petitioner is correct in urging that the availability of an appellate remedy is not an absolute bar to exercise of writ jurisdiction, the fact remains that this discretionary writ jurisdiction can be exercised only in extra-ordinary circumstances. In the present case, I am unable to find any special circumstances for this Court so as to entertain the writ petition despite the availability of an appellate remedy under the Act. In fact, I am of the view that there is no reason as to why the petitioner's plea that the Act was not applicable to the respondent, who had already received gratuity under the CCS (Pension Rules), 1972, cannot be examined by the Appellate Authority under the Act.
8. I therefore find no merit in the petition, which is accordingly, dismissed.
9. Needless to state, since this Court has not expressed any opinion on the merits of the petitioner's claim, it will be open for the petitioner to seek appropriate appellate remedy in accordance with law.

REKHA PALLI, J

FEBRUARY 20, 2023

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