IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

958 WRIT PETITION NO. 8291 OF 2020

THE MAHARASHTRA AGRO INDUSTRIES DEVELOPMENT CORPORATION LTD., AND ANOTHER
VERSUS
KRUSHNA LAXMAN WADNERE
...
Advocate for the Petitioners : Mr. Amit S. Savale
Advocate for the Sole Respondent : Mr. H. P. Randhir
...

CORAM : ARUN R. PEDNEKER, J.
DATE : 16th OCTOBER, 2024

PER COURT:

1. Heard.

2. The petitioners / employer are challenging the order dated 23.01.2020, passed by the Member, Industrial Court, Jalgaon in an Appeal under Section 7(7) of the Payment of Gratuity Act, 1972 ***(for brevity "the Act")***, and order dated 09.05.2019 of the Controlling Authority under Payment of Gratuity Act, 1972 & Judge, Labour Court, Jalgaon ***(for brevity "Controlling Authority")*** thereby, interest is granted on the payment of gratuity to the respondent employee. The orders of the Controlling Authority, so also, of the Industrial Court is challenged under the present writ petition.

3. It is the contention of the learned counsel for the petitioners that the respondent employee retired in the month of March-2013. He submits that the application for payment of gratuity ought to have been made as on the date of retirement and, in any event, the said application should have been made at least until April-2013 i.e. within one month of the date of retirement. He submits that the application for payment of gratuity was made in June-2014, as such, he submits that the interest for this period ought not to have been granted, as the employee himself has not applied within time and he is responsible for the delay. He also submits that by notices dated 08.05.2013 and 26.02.2014; two notices; the employer had called upon the employee to file the necessary application for payment of gratuity and that after the application being made the amount is paid.

He further submits that Rule 7 of the Act provides for detailed procedure as regards the payment of gratuity. He submits that the application has to be filed by the employee or authorized person in writing within 30 days of the date that gratuity becomes payable. He submits that the employee had retired in March-2013, as such, an application should have been filed within 30 days i.e. in April-2013. He submits that application is delayed, no such interest ought to have been granted to the employee.

4. Per contra, the learned counsel appearing for the employee submits that he had applied earlier while he was in service on 07.02.2013 and, thereafter, again on 13.06.2014. However, the learned counsel for the petitioners has disputed the application dated 07.02.2013 but has admitted the application dated 13.06.20014. The learned counsel for the respondent employee submits that, although, the applications are made well in time and, since, first application is not admitted by the employer, the respondent / employee has filed the application dated 13.06.2014.

5. The learned counsel for the respondent employee has pointed out Section 7 of the Act. Section 7 is noted below for ready reference:-

> ***"(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.***
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> ***(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.***
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> ***(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.***
>
> ***(3A) 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.

(4) (a) If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

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(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.]

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit--

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:--

(a) enforcing the attendance of any person or examining hi m on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228 , and for the purpose of section 196 , of the Indian Penal Code (45 of 1860).

(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 hi m an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the decision of the controlling authority."

6. The learned counsel for the respondent employee submits that as soon as the gratuity becomes payable to any person, who is eligible to payment of gratuity under the Act to apply within such time as may be prescribed. In terms of Sub-section 2 of Section 7 i.e. 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.

7. The learned counsel for the respondent employee submits that no such information is given to the employee in terms of Section 7(2) of the Act, after the gratuity has become payable. It is payable on the date of retirement of the employee. He also submits that Section 3A of the Act provides for amount of gratuity payable under Sub-section (3) of Section 7 of the Act 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. The proviso further provides 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.

The learned counsel for the respondent employee submits that the petitioners have not fulfilled the proviso also.

8. Considering the submission of the petitioners and from the record it is apparent that the petitioners have not obtained permission in writing from the Controlling Authority for the delayed period, so also, as regards Sub-section 2 of Section 7 of the Act is concerned there is also no record after the gratuity amount is determined and notice is given in writing to the respondent / employee to whom the gratuity is payable and also to the Controlling Authority; specifying the amount of gratuity so determined.

9. In view of the non following of the provision of Section 7(2) of the Act and proviso to Section 3A of the Act, there is default committed by the employer. As such, the petitioners are liable to pay the interest. In view of the same, I see no reason to interfere in the matter.

10. The amount deposited here is permitted to be withdrawn by the respondent / employee.

11. The Writ Petition stands dismissed.

[ARUN R. PEDNEKER, J.]

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