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NIKITA KAILAS DARADE
Digitally signed by NIKITA KAILAS DARADE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11908 OF 2023

The Secretary Administrative Officer Shree Warana Vaibhav Shikshan Mandal and Anr. … Petitioners

V/s.

Ravindra Tanaji Patil … Respondent

Mr. Prathamesh Bhargude a/w Dnyanesh Patil i/b Mr. Aditya Raktade for the Petitioner.

Mr. Yashodeep Deshmukh a/w Ms. Vaidehi Pradeep a/w Mr. Ameya Tawade for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 9, 2024

P.C.:

1. The petition is taking exception to the order dated 12th July 2023 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 refusing to register the petitioners' appeal along with the application for condonation of delay on the ground of non-compliance of provisions of Sub-section(7) of Section(7) of the Payment of Gratuity Act, 1972 (Gratuity Act).

2. The respondent retired on 31st August 2020. The Respondent on 18th December 2021, filed an application P.G.A. No.96 of 2021 for adjudication of dispute of Payment of Gratuity under the provisions of payment of the Gratuity Act.

3. According to the respondent he worked with the petitioners from 5th August 1989 to 31st August 2020. Applicability of provisions of payment of the Gratuity Act is not in dispute. According to the respondent, he was entitled to receive the amount of Rs.20,00,000/- towards gratuity however, the petitioner paid Rs.10,00,000/-. The respondent issued notice to the petitioner on 20th November 2021 claiming the balance amount of gratuity and on the failure of the petitioners, he applied to the Authority.

4. The petitioners appeared before the Authority however, failed to file its written statement. The Authority based on material produced by the respondent recorded a finding that the respondent is entitled to receive Rs.20,00,000/- from the opponent and, therefore, directed the opponent to pay the balance amount of Rs.10,00,000/- along with interest at 10% per annum from the date it becomes due, till its realization. The judgment by the Competent Authority is dated 27th February 2023.

5. The petitioners filed an appeal on 11th July 2023. The Registrar of the Appellate Authority objected that the petitioners have failed to deposit the mandatory amount as per Sub-section (7) of Section (7) of the Gratuity Act. The Appellate Authority granted the opportunity of hearing both sides. The Appellate Authority relies on the judgment of this Court in **Pharma Base India P. Ltd. Vs. State of Maharashtra** (2009) 1 Mh.L.J. 688, and **Chagunbai Sambhaji Gaware Vs. Kapus Visheshadnya and Anr.** in WP No.1237 of 2015 refused registration of the delay condonation application along with the appeal. The petitioners have, therefore, challenged the order of Appellate Authority.

6. The learned counsel for the petitioner relying on the judgment of the Apex Court in the case of **S.E. Graphics (P) Ltd. Vs. State of Telangana** (2020) 14 SCC 521 submitted that the Apex Court while interpreting similar provisions under the provisions of Andhra Pradesh General Sales Tax Act, 1957 held that the expression used in second proviso will have to be construed as analogous to entertain and, therefore, it is open for the appellant to deposit dues in respect of which the appeal is preferred at the time of entertainment of appeal.

7. Per contra, learned counsel for the respondent relying on the judgment in the case of **Pharma Base India P. Ltd.** (supra) submitted that the second proviso to Sub-section (7) of section(7) of the said Act, requires the production of a certificate or deposit at the time of "preferring the appeal". He submitted that the expression at the time of preferring the appeal is absent in Andhra Pradesh General Sales Tax Act, 1957. Therefore, the judgment of **S.E. Graphics (P) Ltd.** (supra) has no application. He placed reliance on another judgment of the Single Judge of this Court in the case of **Chagunbai Sambhaji Gaware** (supra) wherein this Court followed the judgment in the case of **Pharma Base** (supra) and held that the amount needs to be deposited before the registration of appeal.

8. Rival contentions followed for consideration. Based on the material on record, it is not in dispute that there was a delay in filing the appeal under Section 7 of the Act. It is also not in dispute that the appellant needs to deposit the amount as required by Section (7)(4) of the Act. The impugned order was dated 27th February 2023. The period of 60 days under Sub-section (7) of Section (7) expired on 13th May 2023, period of 120 days expired on 13th July 2023. The petitioner filed an appeal on 11th July 2023.

9. The question, therefore, arises whether the amount as required under Section 7(4) needs to be deposited before registration of appeal or at the time of entertainment of appeal. In my opinion, the said issue is no longer *res integra* in view of the Division Bench judgment of this Court in the case of **Pharma Base India P. Ltd.** (supra). The Division Bench of this Court was faced with the same argument as is made by the petitioner in the present petition. The Division Bench noted such submission in paragraph No.6 of this judgment, whereby the petitioners raised the contention that the requirement of compulsory deposit as contemplated by the proviso of Sub-section (7)of section (7) of the Act is at the time of admission of appeal and not at the time of preferring of appeal. Dealing with such contention, the Division Bench in paragraph No.14 observed as under:

> "**14.** The petitioner's second submission namely the production of a certificate from the controlling authority or deposit of the amount of gratuity as contemplated under 2nd proviso of section 7(7) required to be complied with at the time of admission of the Appeal and not at the time of institution of Appeal also devoid of merit, <u>in view of the specific provisions of 2nd Proviso of section 7(7) that the abovesaid Certificate is to be produced or deposit is to be made at the time of "preferring the Appeal</u>".

10. Therefore, in my opinion, the observations made by the Division Bench leave no scope for this Court to deviate from the view taken by the Co-ordinate Bench of this Court.

11. Insofar as the judgment in the case of **S.E. Graphics (P) Ltd.** (supra) is concerned, the provision which the Apex Court considered for its interpretation was under Andhra Pradesh General Sales Tax Act, 1957. The said provision reads as under:

> "**19 *Appeals*.**-- (1) Any dealer objecting to any order passed or proceeding recorded by any authority under the provisions of the Act other than an order passed or proceeding recorded by an Additional Commissioner or Joint Commissioner, or Deputy Commissioner under sub-section (4-C) of Section 14 may within thirty days from the date on which the order or proceeding was served on him, appeal to such authority as may be prescribed:
>
> Provided that the appellate authority may within a further period of thirty days *admit* the appeal preferred after a period of thirty days if he is satisfied that the dealer had sufficient cause for not preferring the appeal within that period:
>
> <u>Provided further that an appeal so preferred *shall not be admitted* by the appellate authority concerned unless the dealer *produces proof of payment* of tax admitted to be due, or of such instalments as have been granted, and the proof of payment of twelve-and-half per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant, for the relevant assessment year, in respect of which the appeal is preferred</u>."

12. Section (7)(7) of payment of Gratuity Act reads as under:

"**<u>7. Determination of the amount of gratuity</u>**.—

(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.

13. On comparison of both provisions, it is evident that there is a marked distinction in the second proviso of both provisions. Under the second proviso to Sub-section (7) of Section (7) of the Act, the expression at the time of preferring appeal' finds its place. However, in the second proviso of Andhra Pradesh General Sales Tax Act, 1957 the expression 'at the time of preferring of appeal' is absent. Therefore, in my opinion, accepting the petitioners' contention would render the expression "at the time of preferring of appeal" otiose. If the legislature intended the appellant under the provisions of the Gratuity Act to deposit the amount under Section 7(4) at the time of entertainment of appeal as opposed to admission of appeal under the second proviso to Andhra Pradesh Sales Tax Act, 1957, it would have stated so in the statute.

14. Learned counsel for the petitioners further placed reliance on judgment in the case of **Commissioner of Income Tax (Central) Calcutta Vs. B.N. Bhattacharjee and Anr.** AIR 1979 SCC 1725.

15. The Apex Court in the said judgment was considering the effect of Sub-section (1) of Section 245 (m) which reads as under:

> "245M. Certain persons who have filed appeals to the Appellate Tribunal entitled to make application to the Settlement Commission-
>
> (1) Notwithstanding anything contained in this Chapter, any assessee who has filed an appeal to the Appellate Tribunal under this Act which is pending before it shall, on withdrawing such appeal from the Appellate Tribunal, be entitled to make an application to the Settlement Commission to have his case settled under this Chapter:
>
> Provided that no such assessee shall be entitled to make an application in a case where the Income-tax Officer has preferred an appeal under sub-section (2) of S. 253 against the order to which the assessee's appeal relates."

16. In the context of interpreting the proviso that the Apex Court was considering therein, Sub-section (1) confers the right of the assessee to withdraw their appeal to approach the settlement commission. However, proviso to Sub-section (1) restricts the assessee's right to apply to the settlement commission in the cases where the Income Tax Officer prefers an appeal under Sub-section (2) of Section 253 against which order the appeal is rejected. The context of the proviso to sub-section (1) of Section 245 (M) concerned the assesses rights to approach the settlement commission. Such right is conferred on the assessee in case no adjudicatory proceedings about the quantum of tax are pending and the assessee submitted himself to the jurisdiction of the settlement commission for adjudication of the demand of tax. Filing of an appeal by the Department (revenue) amounts to a dispute in relation to tax demand and in that context, the assessee's power to approach the settlement commission was taken away. Moreover, the language used in the proviso of Sub-Section (2) of section 253 is distinct from the language of the second proviso under Sub-section (7) of Section (7) of the Gratuity Act. On a plain reading of Sub-section (7), the statute intended to operate at the stage of preferring of appeal in contra-distinction with the proviso to Section (1) of Sub-section 245 (M). In the context of said proviso, the Apex Court was considering the purport of the word "preferred". However, in the facts of the case, the second proviso to Sub-section (7) of Section (7) of the Gratuity Act, clarifies the expression 'preferred' by the prefix at the time of preferring' of appeal. Therefore, the judgment has no application in the facts of the case.

17. The next judgment relied on by the learned counsel for the petitioners is in the next of **Manik Lal Majumdar and Ors. Vs. Gouranga Chandra Dey and Ors.** (2005) 2 SCC 400. The Apex Court was considering provisions of Section (13) of the Tripura Building (Lease and Rent Control) Act, 1975. The Apex Court was considering the interpretation of the expression "preferred an appeal" under Section 13 of the said Act. The Apex Court in the context of such expression held that the expression "preferred an appeal" cannot be interpreted to mean the filing of memorandum of appeal, but it needs to be interpreted to mean prosecute or effectively pursue the proceedings. The context of Section (13) conferred right on the tenant to prefer an appeal against the order of eviction subject to payment of arrears is based on the rationale that on passing of decree against the tenant his status becomes that of the trespasser. The protection from payment of agreed or standard rent extinguishes. Once the protection comes to an end, his right to challenge the order of eviction is subject to a provision that entitles him to file an appeal. Unlike the second proviso of Sub-section (7) of Section (7) of the Gratuity Act which contains the expression "at the time of appeal". The expression under Section (13) is "to prefer". Therefore, the use of words at the time of preferring of appeal needs to be interpreted to mean that such a deposit has to be made before the registration of appeal. The Apex Court in the said case was considering the interpretation of the expression 'to prefer' and in the context of said Act, it is held that if the expression preferred an appeal carrying in Section (1) of Section (13) is interpreted to mean the filing of a memorandum of appeal, it may result in extreme hardship to the tenant or it may result in taking away right to appeal. The interpretation by the Apex Court was in the context of a statute protecting the tenants which on the date of enactment was governed by the social and economic policy of the State. The purpose of the payment of the Gratuity Act is to provide benefits to the employees and, therefore, the interpretation that is in favour of employees needs to be preferred. Therefore, in my opinion, the judgment in the case of **Manik Lal Majumdar** (supra) has no application.

18. Therefore, in my opinion, in view of the judgment of the Division Bench of this Court, the view adopted by the Appellate Authority of refusal of registration of appeal need not be interfered with. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)