IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3864 OF 2024

M/s. Sara Research and Development
Through Its Director Akshay Arora **... Petitioner**

Versus

Shivaji Shantaram Mahajan **... Respondent**

Mr. Prathmesh Seth for the Petitioner.

CORAM : SANDEEP V. MARNE, J.

DATE : 23 JULY 2024.

P.C. :

1) By this Petition, Petitioner has challenged the Order dated 6 March 2019 passed by the Controlling Authority-cum-IVth Labour Court, Thane allowing Application (PGA) No. 63 of 2017 filed by Respondent and directing payment of Rs.4,59,864/- to the Respondent towards gratuity along with interest at the rate of 10% per annum from 30 October 2016. It is Petitioner's grievance that when Appeal was sought to be filed before the Appellate Authority-cum-Industrial Court against the Order dated 6 March 2019, the registry of the Industrial Court has refused to accept and register the Appeal on the ground of same being barred by limitation.

2) I have heard Mr. Seth the learned counsel appearing for Petitioner and have considered the submissions canvassed by him.

3) It is Petitioner's contention that though the Order was passed by the Labour Court on 6 March 2019, the said order was never communicated to the Petitioner and that it acquired knowledge about the same on 11 March 2020, when copy thereof was served upon it. It is further sought to be pointed out that on account of various orders passed by the Apex Court, the period from 15 March 2020 till 28 February 2022 was excluded from computation of period of limitation and in that view of the matter, the Industrial Court ought to have accepted, entertained and decided the Appeal that was sought to be lodged by the Petitioner.

4) Under provisions of Section 7(7) of the Payment of Gratuity Act 1972 (**the Act**), Appeal against order passed by the Controlling Authority is required to be filed before the Appellate Authority within a period of 60 days. First proviso to Section 7(7) permits filing of Appeal within further period of 60 days upon showing sufficient cause for not filing the Appeal within the original period of 60 days. Thus, the maximum time limit during which the Appeal can be filed under Section 7(7) of the Payment of Gratuity Act is 120 days.

5) Petitioner's grievance with regard non service of copy of Labour Court's Order dated 6 March 2019 cannot be accepted in the light of the fact that after receipt of summons in the application, Petitioner appeared through its authorised representative Mr. Kashinash D. Pawar. Petitioner was thus

aware about filing of the application by Respondent and was represented by its representative. It was therefore, the duty of Petitioner to find out the outcome of Application (PGA) No. 63 of 2017. What was served on Petitioner on 11 March 2020 is a notice in Recovery Application (PGA) No. 01 of 2020 for execution of the Order dated 6 March 2019. Therefore, the date of 11 March 2020 has no relevance for the purpose computing the period of limitation. The period of limitation for filing Appeal under Section 7(7) of the Act commenced from 6 March 2019. Petitioner had one full year before outbreak of COVID-19. The subsequent event COVID-19 outbreak from 15 March 2020 therefore becomes irrelevant for the purpose of computing the period of limitation. In my view, therefore, it was impermissible for Petitioner to file Appeal under Section 7(7) of the Act after expiry of period of 120 days.

6) So far as merits of the case are concerned, though the same cannot strictly be considered after holding that the Appeal cannot be entertained due to delay, I have still heard Mr. Seth to find out whether on merits any case exists to Petitioner. He would essentially raise two grievances. He would submit that under the terms and conditions of appointment order, it was incumbent for the Respondent to serve advance notice of one month before resigning from service and that Respondent simply sent an email dated 28 January 2017 tendering resignation from the job. In my view this is an irrelevant factor so far as liability of the Petitioner to pay gratuity to the Respondent is concerned. The second grievance raised by Mr. Seth is about the quantum of gratuity decided by the Controlling Authority. According to him, the basic pay drawn by Respondent at the time

of cessation of his service was 28,065 and therefore gratuity ought to have been determined on the amount of basic salary whereas the Controlling Authority has taken into consideration erroneous figure of Rs.53,140/-. Perusal of finding recorded by the Controlling Authority in para 8 of its order would indicate that Respondent produced salary slip at the time of cessation of his services indicating his monthly wages of Rs.53,140/-. Despite being represented by representative, Petitioner failed to produce any evidence to show that the salary drawn by Respondent was not Rs.53,140/-. Petitioner cannot now be permitted to rely upon salary certificate which is sought to be produced at Exhibit 'C' to the Petition indicating a different amount than the one reflected in salary slip relied upon by Respondent before the Labour Court. Thus even on merits, there is no case for Petitioner. This is yet another factor for not entertaining Appeal sough to be filed by Petitioner.

7) Considering the overall conspectus of the case, I do not find any reason to entertain the Petition. Writ Petition is accordingly rejected.

[SANDEEP V. MARNE, J.]