

Neutral Citation No:2024:PHHC:019631
CWP-21120-2017(O&M) 1
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

103

CWP-21120-2017(O&M)
Date of Decision: 08.02.2024

PUNJAB WATER RESOURCE MANAGEMENT AND
DEVELOPMENT CORPORATION LTD. AND ANR

.....Petitioners

Versus

ADDITIONAL LABOUR COMMISSIONER, PUNJAB AND
CHANDIGARH-CUM-APPELLATE AUTHORITY UNDER THE
PAYMENT OF GRATUITY ACT, 1972 AND ORS

....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Simardeep Singh Bedi, Advocate for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

Mr. Ishan Gupta, Advocate for respondent No.3.

SANJAY VASHISTH, J.(Oral)

CM-13892-CWP-2023

Present application has been filed under Section 151
C.P.C. for seeking permission to place on record a copy of the order
dated 10.02.2016, passed by this Court in CWP-23236 of 2012 as
Annexure R-1.

For the reasons enumerated in the application, same is
allowed and order dated 10.02.2016 is taken on record. Registry is
directed to tag the same at an appropriate place.

CWP-21120-2017(O&M)

1. Petitioner/Manageent (Punjab Water Resource Management and Development Corporation Limited), has filed the present writ petition, challenging the order dated 07.04.2017 (Annexure P-3), whereby respondent No.1-Additional Labour Commissioner, Punjab-cum-Appellate Authority under the Payment of Gratuity Act, 1972, has dismissed the appeal on account of non-compliance of Section 7(7) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act of 1972') that is appellant failed in depositing the amount of interest, as ordered by the Controlling Authority-respondent No.2.

2. Respondent No.3-Tarsem Chand(employee) filed a claim application under the Payment of Gratuity Act, 1972, by submitting that he retired from the service on 30.11.2012 upon attaining the age of superannuation i.e. 58 years. A gratuity amount of Rs.10 lacs was paid to the employee on 06.02.2014 i.e. much after statutory period mentioned in the Act, therefore, for the period from 01.12.2012 to 05.02.2014, employee prayed for awarding of an interest @ 18% per annum due to delayed payment.

Thus, admittedly gratuity amount of Rs.10 lacs had been paid on 06.02.2014, but the issue involved before the Controlling Authority was regarding the interest for delayed payment.

3. While deciding the claim of respondent No.3(employee), Controlling Authority held that the applicant is entitled to the interest @ 12 % per annum on the amount of gratuity of Rs.10 lacs from

01.12.2010 to 05.02.2014, within two months from the date of passing of the order i.e. 08.11.2016. The said order was assailed by the petitioners-employer, but while dealing with the appeal, Appellate Authority (respondent No.1) found that as per Sub Section (3) of Section 7 of the Payment of Gratuity Act of 1972, appellant was required to make the payment to the respondent within one month of the retirement from service and qua that part learned Controlling Authority has already awarded interest for the delayed payment.

Learned Appellate Authority further examined Section 7(7) of the Act of 1972 and found that as per said provision of law, appellant was required to deposit the amount of interest with the Controlling Authority and the certificate issued in that regard is to be produced before it. However, Appellant neither deposited the amount; nor produced any receipt in token to prove that the same has been paid to the respondent No.3-employee. Thus, without much discussion about the merits, appeal was dismissed, same being not maintainable. Hence, petitioners-employer is before this Court under Article 226 of the Constitution of India.

4. Some dates are relevant to be highlighted here:

i) Employee retired on 30.11.2012; at the age of 58 years. For seeking retirement age to be of 60 years, one CWP-23236 of 2012 was pending, however, during the pendency of the said writ petition, the gratuity amount was paid to respondent No.3-employee on 06.02.2014 for being retired at the age of 58 years. Subsequently,

CWP-23236-2012 was allowed on 10.02.2016, thus, the actual retirement age of the petitioner was counted as 30.11.2014.

By that time, controlling Authority had decided the application for gratuity, which was filed on being retired at the age of 58 years i.e. before the decision of the writ petition on 18.11.2016. Infact, Controlling Authority observed that the employer was bound to pay the Gratuity amount within prescribed period, as per the retirement age, therefore, only the issue of causing delay in making the payment for the service rendered up till the age of 58 years was decided and the employee was held entitled for the interest amount claimed by him.

5. This Court has gone through the provision of the Act i.e. Section 7(7) of the Act of 1972 and finds that once the said provision of law is not complied with Appellate Authority is not bound to decide the issue raised before it on merits.

Broadly speaking, challenge before this Court is to the order passed by the Appellate Authority, whereby, statutory appeal has been dismissed on account of non-deposit of the amount ordered by the Controlling Authority. Counsel for the petitioner is unable to cite any provision of law or the judgment to show that in the writ jurisdiction under Article 226 of the Constitution of India, this Court can exempt the petitioners from depositing the amount ordered by the controlling Authority by granting exemption under Section 7(7) of the Act of 1972 or any other provision of law.

Thus, this Court is of the view that the prayer made by the petitioners is beyond the scope of writ jurisdiction, hence present writ petition is dismissed.

February 08, 2024	[SANJAY VASHISTH]
<i>rashmi</i>	JUDGE
Whether speaking/reasoned	yes/no
Whether reportable?	yes/no