



2025:DHC:5737



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 11.07.2025

+ **W.P.(C) 1019/2024**

AGV ALFAB LIMITED

.....Petitioner

Through: Mr. Pulkit Prakash, Mr. Anjum Mohan, Ms. Arushi Sharma and Ms. Ankita Sinha, Advocates.

versus

ARUN GULIANI

.....Respondent

Through: Mr. Anshuman Ashok, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present petition, the petitioner/management seeks setting aside of the order dated 22.08.2023 passed by the Ld. Appellate Authority in Gratuity Appeal No. 36(25)2023.DYC and orders dated 28.11.2022 and 02.12.2021 (hereinafter, '*impugned orders*'), passed by the Ld. Controlling Authority and Assistant Labour Commissioner (C), Delhi, respectively, under the Payment of Gratuity Act, 1972 (hereinafter, '*The Act*').
2. Briefly stated, as per the claim filed by the respondent before the Controlling Authority, he was employed w.e.f. 12.02.2006 in the tenders department of the petitioner, and his last drawn wage was Rs.50,000/- per month. On 06.09.2020, the services of the respondent was terminated, following which he filed an application under Section 7(4) of the Act seeking release of gratuity. The respondent also preferred an application



under Section 21(3) of the Delhi Shops and Establishments Act, 1954, before the Office of the Ld. Labour Commissioner, Hari Nagar, New Delhi, claiming outstanding wages, *inter alia* other remedies.

3. The petitioner failed to appear before the Controlling Authority despite service of notice and was proceeded *ex parte* vide order dated 02.12.2021 wherein petitioner was directed to pay the respondent/employee an amount of Rs.2,50,962/- towards gratuity along with 10% simple interest p.a. Aggrieved by the same, petitioner filed an application seeking setting aside of the *ex parte* order, which was dismissed vide order dated 28.11.2022. The petitioner also approached this Court in W.P (C) No. 834/2023 titled as 'AGV Alfab Limited v. Arun Guliani', which vide order dated 23.01.2023 was dismissed as not pressed with liberty to approach the Appellate Authority. Finally, the Appellate Authority also dismissed the petitioner's appeal vide order dated 22.08.2023.

4. Before this Court, learned counsel for the petitioner has raised three-fold contention; *firstly*, that it was wrongly proceeded *ex parte* vide order dated 02.12.2021, as the notices could not be received due to office closure amidst the nationwide lockdown during the Covid-19 pandemic. *Secondly*, the Appellate Authority ought to have condoned the delay in filing the appeal against the impugned orders dated 28.11.2022 and 02.12.2021 as the petitioner was exercising its rights by approaching this Court in W.P. (C) No. 834/2023. It is further submitted that since the limitation period to file an appeal is 60 days as prescribed under Section 7(7) of the Act, which is further extendable by 60 days, even if the limitation period is calculated from, 28.11.2022, i.e., the order dismissing the application seeking setting aside of the *ex-parte* order, the delay will be of 102 days, which is



condonable by the Appellate Authority. *Thirdly*, the Controlling Authority failed to even frame the issue concerning the legality of the termination and ought to have considered that the respondent was not terminated and in fact had abandoned the services without any prior intimation.

5. *Per Contra*, learned counsel for the respondent, at the outset, submits that the notice concerning the application seeking release of gratuity was duly sent to the respondent via speed post on 18.10.2020, which was delivered on 22.10.2022, and the respondent was further informed vide email dated 22.10.2022, and the tracking report and copy of the email have been placed on record. Learned counsel for the respondent vehemently argued that despite the issuance and service of notices, the petitioner/management failed to appear and therefore the Controlling Authority has rightly passed the *ex-parte* impugned order. It is submitted that the application of Limitation Act has been excluded by the Act and thus Section 14 of Limitation Act would be of no avail. It is further submitted that even otherwise, the limitation period must be computed from the date of the first *ex-parte* order dated 02.12.2021 and not the order of this Court dated 23.01.2023 or the order of the controlling authority dated 28.11.2022. It is contended that the appeal was filed on 09.02.2023, much after the maximum prescribed period of 120 days from the first *ex-parte* order.

6. I have heard learned counsel of the parties and gone through the record.

7. The first contention of the petitioner that the Controlling Authority wrongly proceeded *ex-parte* was also raised when the Authority was hearing its application to set aside the *ex-parte* order. The Controlling Authority in the order dated 28.11.2022 categorically holds that the notices were properly



addressed, prepaid and duly sent in accordance with the rules. It was also noted that the Postal Department had confirmed the service of notices. The petitioner has failed to make any specific averment to assail this finding. Moreover, a perusal of the application for setting aside the order would reveal that the petitioner had only taken the ground that it was not served and did not mention anything about its offices shutting on account of the Covid-19 pandemic. Therefore, the plea that proceedings were not within the knowledge of the petitioner is not tenable.

8. Insofar as the second contention regarding the limitation period is concerned, Section 7(7) of the Act which is the applicable provision lays down two requirements. One, that an appeal has to be filed within 60 days from receipt of the order, extendable by another 60 days if sufficient cause is shown for the delay. Second, the sub-section mandates the deposit of the gratuity amount or the production of a certificate confirming such deposit before the appeal is admitted. For convenience, the provision under Section 7(7) of the Act is provided hereinunder:

“7 (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 subsection (4), or deposits with the appellate authority such amount.”



9. On the aspect of limitation, it is noted that the prevailing position in law is that when a statute prescribes a strict time limit, and also specifies the maximum period for which the time may be extended, then the tribunal cannot condone delay beyond this extended period by resorting to Section 14 of the Limitation Act. The Supreme Court in CST v. Parson Tools and Plants, reported as (1975) 4 SCC 22, while dealing with Section 10(3B) of the U.P. Sales- Tax Act, 1948, which provided for a similar scheme for limitation as applicable in the present case, held as follows:-

11. The material part of Section 10 runs thus:

“(3)(i) The revising authority ... may, for the purpose of satisfying itself as to the legality or propriety of any order made by any appellate or assessing authority under this Act, in its discretion call for and examine, either on its own motion or on the application of the Commissioner of Sales tax or the person aggrieved, the record of such order and pass such order as it may think fit.

* * *

(3-B) The application under sub-section (3) shall be made within one year from the date of service of the order complained of, but the revising authority may on proof of sufficient cause entertain an application within a further period of six months.”

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13. The three stark features of the scheme and language of the above provision, unmistakably show that the legislature has deliberately excluded the application of the principles underlying Sections 5 and 14 of the Limitation Act, except to the extent and in the truncated form embodied in sub-section (3-B) of Section 10 of the Sales Tax Act. Delay in disposal of revenue matters adversely affects the steady inflow of revenues and the financial stability of the State. Section 10 is therefore designed to ensure speedy and final determination of fiscal matters within a reasonably certain time-schedule.

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15. Be that as it may, from the scheme and language of Section 10, the intention of the legislature to exclude the unrestricted application of the principles of Sections 5 and 10 of the Limitation Act is manifestly clear. These provisions of the Limitation Act which the legislature did not, after due application of mind, incorporate in the Sales Tax Act, cannot be imported into it by analogy. An enactment being the will of the legislature, the paramount rule of interpretation, which overrides all others, is that a statute is to be expounded “according to the intent of them that made it”. “The will of the legislature is the supreme law of the land and demands perfect obedience” [See Maxwell on



Interpretation of Statutes, 11th Edn., pp. 1, 2 and 251] . “Judicial power is never exercised”, said Marshall, C.J. of the United States, “for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the legislature; or in other words, to the will of the law”.

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22. Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act.

10. Insofar as the condition of pre-deposit of gratuity amount is concerned, the law is well settled that the twin conditions as specified in section 7(7) of the Act are both mandatory, and in the absence of compliance with even one of the said conditions, the appeal filed by the appellant shall not be maintainable. Thus, non-deposit of the aforesaid amount would lead to the non-acceptance of the appeal. A Coordinate Bench of this Court in Morgan Travel And Transport Corp. vs Govt. Of N.C.T. Of Delhi And Ors., in **WP(C) No.6536/2005** decided on 01.03.2006, held that:

“8. It is therefore the legislative mandate that no appeal filed by an employer shall be admitted unless the same is accompanied with a certificate of the controlling authority to the effect that the appellant had deposited an amount equal to the amount of gratuity which was required to be deposited. Liberty is given to to employer to deposit such amount even with the Appellate Authority.

9. In the present case, the admitted position is that the petitioner has not complied with this mandatory provision and its appeal was not accepted for this reason. The order passed by the Appellate Authority is therefore in consonance with the requirement of Section 7(7) of the Payment of Gratuity Act, 1972 and therefore cannot be faulted.”

A reference in this regard may also be made to the recent decision of



the Coordinate Bench of this Court in Public Welfare Department vs. Smt. Malti Devi in **WP(C) No.18002/2024** decided on 07.01.2025, wherein it was held that:

“4. Clearly, the legislature in its wisdom decided to impose two pre conditions in order to grant admission of the appeals under Section 7(7) of the Act, stipulating that the appellant by the time of institution of the appeal had deposited the impugned amount of gratuity with the Controlling Authority or with the Appellate Authority; and that the appeal was filed within a period of 60 days from the date of receipt of the impugned order of the Controlling Authority, which period can be extended by a further period of 60 days provided the appellant is able to satisfy the Appellate Authority as regards the sufficiency of cause of delay. Both conditions are necessary.”

11. The Appellate Authority rightly noted that the petitioner failed to deposit the gratuity amount awarded vide order dated 02.12.2021 or to produce the certificate of the Controlling Authority, thus failing to comply with the second proviso to sub section 7 of the Section 7 of the Act and therefore the appeal was held to be not admissible on this count alone and the question of limitation was not required to be gone into. It is clear that the approach of the Appellate Authority was in consonance with the settled legal position and merits no interference.

12. Insofar as the third contention is concerned, the proceedings seeking unpaid dues by the respondent is already pending adjudication before the Competent Authority under the Delhi Shop and Establishment Act, 1954. The question pertaining to the termination of the respondent and whether he has voluntarily abandoned his service is a separate issue open to be raised in those proceedings.

13. Therefore, considering the aforesaid and the fact that the employer-employee relationship not in dispute. I find no ground to entertain the



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present petition. Accordingly, the same is dismissed.

MANOJ KUMAR OHRI
(JUDGE)

JULY 11, 2025/rd
(corrected and released on 17.07.2025)