HC-KAR

NC: 2026:KHC:64888-DB
WA No. 1052 of 2024

CNR: KAHC010393442024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE K.S.BHARATH KUMAR

WRIT APPEAL NO. 1052 OF 2024 (L-PG)

BETWEEN:

1. THE DEPUTY COMMISSIONER
OF COMMERCIAL TAXES
(SIBBANDI-2), GANDHINAGAR,
BENGALURU-560 009.

2. THE COMMISSIONER OF
COMMERCIAL TAXES (KARNATAKA)
GANDHINAGAR,
BENGALURU-560 009.

3. THE PRINCIPAL SECRETARY
DEPARTMENT OF FINANCE,
GOVERNMENT OF KARNATAKA,
2ND FLOOR, VIDHANA SOUDHA,
BENGALURU-560 001.

...APPELLANTS

(BY SRI. SPOORTHY HEGDE, HCGP)

Digitally signed by SUMA B N
Location: HIGH COURT OF KARNATAKA

AND:

1. SHRI. M RAMANJINAPPA
S/O LATE T. MARIYAPPA,
AGE MAJOR,
LAKSHMIPUR, HINDIGANAL POST,

NANDAGUDI HOBLI,
HOSAKOTE TALUK,
BENGALURU RURAL.

2. THE LABOUR OFFICER AND THE AUTHORITY
UNDER PAYMENT OF GRATUITY ACT 1972,
SUB DIVISION-5, KARMIK BHAVAN,
BENGALURU-560 029.

3. THE ASSISTANT LABOUR COMMISSIONER
AND APPELLATE AUTHORITY UNDER
PAYMENT OF GRATUITY ACT 1972
KARMIK BHAVAN,
BENGALURU-560 029.

…RESPONDENTS

(BY SRI. GOVINDARAJ K., ADVOCATE FOR R1;
R2 AND R3- SERVED)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT, 1961 PRAYING TO SET ASIDE THE ORDER DATED 11.09.2023 PASSED BY THE HON'BLE LEARNED SINGLE JUDGE IN WP No.22324/2021 AND BE PLEASE TO ALLOW THE WRIT PETITION OF THE APPELLANTS.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE K.S.BHARATH KUMAR

ORAL JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

1. Heard learned High Court Government Pleader -HCGP appearing for the appellants and learned counsel appearing for respondent No.1. Though respondents No.2 and 3 are served, they are unrepresented.

2. This appeal is filed challenging the order dated 11.09.2023 passed by the learned Single Judge in W.P.No.22324/2021, dismissing the writ petition filed by the State against the order of the Controlling Authority under the Payment of Gratuity Act, 1972 (`Act' for short) on the ground the statutory remedy of appeal under sub-section (7) of Section 7 of the Act, has not been filed.

3. The learned HCGP submits that the order of the Controlling Authority was vitiated by complete want of jurisdiction and that the said aspect had not been considered. It is submitted that in view of the fact that the Controlling Authority did not possess the jurisdiction to pass an order at all, the learned Single Judge erred in holding that the matter ought to have taken up in appeal.

4. The learned counsel appearing for the respondent No.1, on the other hand, submits that the appellants had entered appearance before the Controlling Authority and had filed its statement of defence which was specifically taken note by the Controlling Authority. It is submitted that the issue of want of jurisdiction was not raised before the Controlling Authority and what was raised was only with regard to the counting of qualifying service for pension and gratuity in terms of Rule 248-A of the Karnataka Civil Service Rules -KCSR.

5. It is further contended that the appeal had, as a matter of fact, been filed as against the order of the Controlling Authority. However the appeal was not accompanied by the pre-deposit of the gratuity as provided under sub-section (7) of Section 7 of the Act and that the appeal had been dismissed on that ground by the appellate authority.

6. It is submitted that though the endorsement issued by the appellate authority was produced along with the writ petition, the same was not specifically stated in the

statement of facts of the writ petition. Further, it is contended that this appeal is hopelessly belated and no reason has been stated explaining the delay.

7. Having considered the contentions advanced, we notice that this appeal is preferred specifically stating that the contesting respondent No.1 was a Group `D' employee of the State Government by virtue of the order of regularization of his service. It is submitted before us that the definition of "employee" under Section 2(e) of the Act specifically excludes a person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

8. It is contended that respondent No.1 being a person who has been regularized as a Group `D' employee in Government Service is admittedly a "Government employee" who is excluded under Section 2(e) of the Act, and that the provisions as to gratuity of such an employee are governed by Rule 208 and Rule 248-A of the KCSR. It is therefore contended that the learned

Single Judge ought to have entertained the writ petition and considered the contentions on merits. However, we notice that the learned Single Judge had specifically considered that there is an appeal provided under the provisions of the Act itself.

9. Sub-Section (7) of Section 7 of the Payment of Gratuity Act, 1972 reads as follows:

> *"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 sub-section (4), or deposits with the appellate authority such amount."*

10. It is clear from the endorsement issued by the appellate authority that an appeal had, as a matter of fact, been preferred by the appellants. However, the same had not been considered since the pre-deposit as provided in the

proviso to sub-section (7) of Section 7 of the Act had not been complied with and the amount had not been deposited. The endorsement further states that in case document is furnished in proof of making the deposit of the amount with the Controlling Officer under the Act, further action would be initiated on the appeal.

11. In the facts and circumstances of the instant case, where the appellants had not complied with the condition of pre-deposit and when the appeal had been dismissed on the said count, we are of the opinion that the finding of the learned Single Judge that the writ petition cannot be considered since the appellate remedy had not been properly availed, cannot be assailed, especially at this distance of time, without a proper explanation.

12. In the above view of the matter, we are of the opinion that there is no merit in the appeal preferred by the appellants. The appeal accordingly fails and stands ***dismissed***.

All pending interlocutory applications shall stand disposed of.

SD/-
(ANU SIVARAMAN)
JUDGE

SD/-
(K.S.BHARATH KUMAR)
JUDGE

SBN
List No.: 1 Sl No.: 9