

(2006) 08 P&H CK 0213

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Haryana Minerals Limited

APPELLANT

Vs

Regional Labour

Commissioner-cum-Appellate
Authority under the Payment of
Gratuity Act etc.

RESPONDENT

Date of Decision: Aug. 21, 2006

Acts Referred:

- Payment of Gratuity Act, 1972 - Section 7, 7A

Hon'ble Judges: Kiran Anand Lall, J; J.S. Khehar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

J.S. Khehar, J.

The controversy raised in the instant writ petition pertains to the payment of gratuity to respondent No. 3. It is the contention of the petitioner Management that the gratuity was payable to respondent No. 3 in terms of the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as the 1972 Act) subject to a maximum amount of gratuity not exceeding 20 months pay or Rs. 50,000/- whichever is less. According to the learned Counsel for the petitioner management gratuity calculated under the 1972 Act has actually and factually been released to respondent No. 3. Respondent No. 3, however, claimed gratuity in terms of service bylaws of the Haryana Minerals Limited which had adopted the bylaws of the Haryana State Industrial Development Corporation.

2. Since the claim made by respondent No. 3 was not accepted by the Haryana Minerals Limited the issue under reference came up for consideration before the Controlling Authority under the 1972 Act. The Controlling Authority by its order dated 27.1.2004 arrived at the conclusion that the rules of the Haryana State Industrial Development Corporation regarding payment of gratuity would be

applicable to respondent No. 3. The aforesaid rules envisage the payment of gratuity at the rate of one months pay for every completed year of service subject to a maximum of 20 months salary. Having arrived at the aforesaid conclusion, the Controlling Authority under the 1972 Act, allowed the claim of respondent No. 3.

3. Dis-satisfied with the order passed by the Controlling Authority, the petitioner Management i.e. Haryana Minerals Limited, preferred an appeal u/s 7(7) of the 1972 Act. The appeal preferred by the petitioner Management was rejected as not maintainable on account of the fact that the petitioner Management had not deposited the gratuity payable to respondent No. 3, in terms of the order passed by the Controlling Authority dated 27.1.2004, either with the Controlling Authority or with the Appellate Authority, under the 1972 Act.

4. Learned Counsel for the petitioner vehemently contests the determination of the Appellate Authority (through its order dated 13.7.2004). It is submitted by the learned Counsel for the petitioner management that the Appellate Authority had seriously erred in concluding that the appeal in question was not maintainable.

5. In order to arrive at a conclusion whether or not the appeal preferred by the petitioner Management was maintainable, we would have to interpret Section 7(7) of the Payment of Gratuity Act, 1972. For the aforesaid purpose, we consider it just and appropriate to extract hereunder Sub-sections (4) and (7) of Section 7 of the 1972 Act:

(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in Clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under Clause (a), the controlling authority shall pay the amount of the deposit:

- (i) to the applicant where he is the employee; or
- (ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

xxx xxxx

xxx xxxx

(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.

6. In our considered view, the second proviso u/s 7(7) of the 1972 Act, envisages that no appeal at the hands of a employer would be admitted, unless the appellant demonstrates by producing a certificate of the Controlling Authority that the appellant has deposited with the Controlling Authority the amount of gratuity required to be deposited u/s (4) of Section 7, or in the alternative, deposits the aforesaid amount with the Appellate Authority. The question, therefore, to be examined on the issue of maintainability is whether the petitioner Management has deposited the amount of gratuity payable u/s 7(4) of Payment of Gratuity Act, 1972. According to the learned Counsel for the petitioner, the petitioner-management has done so, by paying respondent No. 3 the amount of gratuity calculated in terms of the provisions of the 1972 Act (as detailed in para 1 of this order).

7. We have examined Section 7(4) of the 1972 Act, its perusal reveals that it envisages deposits of two amounts, the first, u/s 7(4)(a) of the 1972 Act, and the second, u/s 7(4)(c) of the 1972 Act. In as much as an employer has to deposit with the Controlling Authority, gratuity which the employer unilaterally acknowledges as payable to the concerned employee. This deposit is envisaged under the mandate of Section 7(4)(a) of the 1972 Act. If the amount determined as payable, on account of gratuity, to the concerned employee, by the Controlling Authority is more than the deposit made by the employer (under Section 7(4)(a) of the 1972 Act), the employer

is required to pay the enhanced amount (after deducting the amount already paid). This payment is to be made under the mandate of Section 7(4)(c) of the 1972 Act. The acknowledged factual position in the instant case is that the petitioner Management has already paid to respondent No. 3 the payment envisaged u/s 7(4)(a), whereas it has not made any further payment to respondent No. 3 u/s 7(4)(c) of the Act, in spite of the determination of the Controlling Authority that a further amount was payable to respondent No. 3.

8. In view of the aforesaid undisputed factual position, we are satisfied that the appeal preferred by the petitioner management could not have been admitted by the Appellate Authority, because the petitioner Management did not deposit an amount equal to the amount of gratuity "required" to be deposited with the Controlling Authority or with the Appellate Authority u/s 7(4) of the 1972 Act. The payment made by the petitioner Management to respondent No. 3 in the instant case was the deposit envisaged u/s 7(4)(a) of 1972 Act. The said deposit alone, would be insufficient for the maintainability of an appeal. The appeal would be maintainable if the petitioner management had made a further payment/deposit u/s 7(4)(c) of the 1972 Act, in consonance of the determination of the Controlling Authority, vide its order dated 27.1.2004.

9. For the reasons recorded above, it is not possible for us to accept the contention of the learned Counsel for the petitioner or to find any fault with the impugned order dated 13.7.2004 passed by the Appellate Authority.

10. It is surprising that the petitioner management has impugned the order dated 13.7.2004 after a lapse of more than two years. The factum of having impugned the order passed by the Appellate Authority dated 13.7.2004 in this Court after a lapse of more than two years, necessarily leads to the inference that the order passed by the Controlling Authority dated 27.1.2004 has not been complied with till date. In the peculiar circumstances of this case, we consider it just and appropriate to impose costs on the petitioner. The instant writ petition is accordingly dismissed with costs which are quantified at Rs. 2000/-. The aforesaid costs will be deposited by the petitioner management with the Secretary, Legal Services Authority, Haryana, within one month from today, and a receipt thereof, shall be placed on the record of this case within the time mentioned above failing which the matter will be relisted for motion hearing for recovering the costs.