

M/s Bharat Steel Fabricators and Engineers Vs The State of Punjab and others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 21, 2011

Acts Referred: Payment of Gratuity Act, 1972 â€” Section 7

Citation: (2012) 133 FLR 568 : (2012) 3 LLJ 584 : (2012) 166 PLR 124

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Mahesh Grover, J.

This order will dispose of above said two writ petitions bearing No. CWP No. 581 of 2010 and CWP No. 572 of

2010 as common question of law is involved therein. The facts are taken from CWP No. 581 of 2010. The petitioner is aggrieved by the order

dated 29.10.2009 (Annexure P-13), which has been passed by the Appellate Authority under the Payment of Gratuity Act, 1972. The respondent

No. 5 had filed an application for payment of gratuity under the Act against the petitioner by pleading that he was employed by the petitioner and

was working for it in its establishment. He was granted employment in the year 1989. His services were terminated on 24.06.2004 and after

rendering more than 16 years of service, he was eligible to claim the gratuity under the Act. In the proceedings before the competent authority i.e.

Assistant Labour Commissioner (hereinafter referred to as the "Controlling Authority"), the defence of the petitioner was struck off on 06.10.2006,

whereupon he filed an application against the said order for setting aside the order on 27.10.2006. The Controlling Authority passed the following

order:-

Present Counsel for the parties.

Arguments heard. The claim application stand allowed. At this stage the Counsel of the Respondent to play mischief with court moved an

application for setting aside the order by which the defence was struck off 6.10.06. As this Application lacks merit, accordingly stand disposed off

by my separate order as it lacks merit.

2. Vide detailed order passed separately on the same date, the claim of the respondent No. 5 was accepted and the said order is on record

(Annexure P-11).

3. Thereafter, the petitioner filed an appeal against the order of the Controlling Authority on 17.10.2007, which was decided on 29.10.2009. The

appeal was filed belatedly for the reason that the Controlling Authority dealing with the matter at that point of time, had not supplied copy of the

order, which the petitioner was to impugn, because he had retained the files at his residence, despite the fact that he was transferred from the post

of Assistant Labour Commissioner and despite, the fact that oral as well as written request had been made to him. The inquiry was conducted by

the Labour Commissioner, Punjab, in this regard and he returned the following findings:-

From the above position, it is clear that the copies of the orders sought by Shri N.R. Kaushal could not be given to him in time because these files

were kept by Shri Sidhu at his residence inspite of the fact that he was transferred from the post of Assistant Labour Commissioner Amritsar to

Jalandhar. Even the oral as well as written request made to him did not result in return of the files. The requisite files were only received on

09.05.2007. The delay in non-supply of the copies of the orders is therefore attributed to Shri S.S. Sidhu who did not return the files of the office

of Assistant Labour Commissioner, Amritsar. He is, therefore, held squarely responsible for the delay.

Shri N.R. Kaushal argued that the copies of the orders passed on 03.11.2006, 10.11.2006 and thereafter, have still not been supplied to him.

Inspection of the original files reveals that the cases were decided on 27.10.2006. However, Sh. N.R. Kaushal Advocate produced copies of

cause list dated 3.11.2006, 10.11.2006, 1.12.2006. These copies are certified and there is nothing on record to disbelieve their genuineness.

Perusal of these certified copies of the cause list dated 3.11.2006, reveals that cases titled Gurmukh Singh v. M/s Bharat Steel Fabricators and

Engineers, Jaspal Singh v. M/s Bharat Steel Fabricators and Engineers and Surta Singh v. M/s Bharat Steel Fabricators and Engineers were fixed

for hearing on this dated i.e. 3.11.2006. These cases were then adjourned to 10.11.2006. Perusal of the certified copy of the cause list dated

10.11.2006 reveals that these cases made mention in this cause list. Further perusal of certified copy of the cause list dated 1.12.2006 reveals that

it contained these cases. These cases were then adjourned to 15.12.2006 for arguments. It is, therefore, abundantly clear from these documents

that these cases were fixed for hearing on 3.11.2006, 10.11.2006, 1.12.2006 and 15.12.2006. The case files as proved in the foregoing

paragraphs were in the possession of Shri Sidhu even after his transfer from Amritsar and the other record like official copies of cause lists

remained with the office. Therefore, he was in a position to temper, destroy the record available with him but was not able to change or destroy the

other evidence like cause lists etc, because these were kept in the office. Sh. Sidhu who was present before me on 23.08.2007 was asked to

explain the position. He sought adjournment to file detailed reply and the adjournment was given. But he did not appear on the adjourned date

14.9.2007 and also did not send any written reply. Further, there is also nothing on the record to explain as to how the final order in all the three

cases were passed on back date i.e. 27.10.2006, when the cases had been fixed for 3.11.2006, 10.11.2006, 1.12.2006, 15.12.2006. Under

such circumstances it is proved that proceedings of the cases continued even after 27.10.2006 and interlocutory orders were passed on

3.11.2006, 10.11.2006, 1.12.2006, 15.12.2006. Since the proceedings dated 3.11.2007, 10.11.2006, 1.12.2006, 15.12.2006 are missing in the

cases files, therefore, Shri N.R. Kaushal has been deprived of his legal right from obtaining copies of these proceedings. The matter as to why the

files were kept by Shri S.S. Sidhu at his residence even after his transfer and as to how the proceedings dated 3.11.2006, 10.11.2006,

1.12.2006, 15.12.2006 are missing from the files showing the orders as if these were passed on 27.10.2006 need further probe. The matter

pertains to tampering and destroying of the record, is serious in nature and needs inquiry by the Administrative Department against Shri S.S. Sidhu.

A copy of this order may be sent to Principal Secretary to Govt. of Punjab, Department of Labour for getting the matter inquired.

4. Thereafter, against the order of the Appellate Authority (Annexure P-13) dated 29.10.2009, the instant writ petition has been filed with the

limited prayer that the facts which have been detailed in this writ petition revealed only one fact that the petitioner has been deprived of his right to

project his case effectively.

5. It has been stated before this Court that the petitioner has since deposited the amount so determined by the Controlling Authority and as

confirmed by the Appellate Authority. While rejecting the appeal filed by the petitioner, the Appellate Authority observed that the appeal was

belated and has been filed without compliance of the provisions of Section 7 of the Act, which requires that the entire amount, so determined, be

deposited by the appellant before filing of the appeal which was a prerequisite condition to the filing of such an appeal. It has not been disputed

before this Court that the amount in dispute has been deposited by the petitioner and the same has been paid to the respondent-workman subject

to furnishing his surety bond. The equities, therefore, this case stands settled.

6. Upon due consideration of the matter and on perusal of the material on record, it transpires that the controlling authority in the first instance by

virtue of his order has deprived the petitioner of fair and proper opportunity of hearing. It was on 06.10.2006, the defence of the petitioner had

been struck off and an application for setting aside the same had been filed on 27.10.2006, which was prompt enough. In these circumstances, the

controlling authority ought to have met the application by giving reasons. Rather, the application was dismissed at the threshold and even before

deciding the application, the claim application of the respondent-workman was answered. In the detailed order passed on 27.10.2006, the reason

given by the controlling authority was that he should have filed the revision against the order dated 06.10.2006. Be that as it may, the fact remains

that the petitioner has been prejudiced as the controlling authority in the first instance decided the matter in few days and disposed of the claim of

the applicant, simultaneously. What is more intriguing is the fact that the said authority retained the file with itself and did not supply copy of the

order to the petitioner, thereby indicating either untoward intention or the undue interest towards the claimant. The inquiry conducted by the

Labour Commissioner categorically holds and details the irregularity committed by the Assistant Labour Commissioner i.e. Controlling Authority.

There is sufficient suspicion created in the mind of the Court that because of the unwarranted action and attitude of the Controlling Authority, the

petitioner has been deprived of his right to project his case appropriately.

7. For the said reason as also for the reason that the amount in question has been paid to the respondent-workman, I am of the opinion that the

impugned orders deserve to be set aside and the matter be remitted back to the Controlling Authority for decision afresh in accordance with law,

after giving proper opportunity to both the sides. Since the matter has already been delayed, the Controlling Authority shall dispose of the matter

within a period of six months from the date of receipt of the copy of the order. The parties shall appear before the said Controlling Authority on

05.07.2011. It is made clear that the parties shall not be granted any unwarranted adjournment.

Before parting with the order, the Court takes a serious view of the conduct of the Controlling Authority (Sh. S.S. Sidhu), as he stands indicted by

the Labour Commissioner in his inquiry. Perusal of the order of the said authority reveals that it was specifically directed that an inquiry be

conducted against the said officer and its necessary intimation be sent to the Principal Secretary to Government of Punjab, Department of Labour.

A report shall therefore be submitted to this Court separately by the Principal Secretary to Government of Punjab, Department of Labour

apprising this Court, what has transpired in this enquiry and as to whether the said officer has been proceeded against or not. Report be submitted

within a period of two months from today.

Writ petitions stands allowed. The impugned orders dated 27.10.2006 and 29.10.2009 are set aside.