

(2016) 06 KAR CK 0155

KARNATAKA HIGH COURT

Case No: Writ Petition Nos. 33233 and 33234 of 2016 (L-PG).

The Assistant Executive
Engineer, Cauvery Neeraj Vari
nigam Limited, Kikkeri, Mandaya
District and another - Petitioners
@HASH The Deputy Labour
Commissioner and Appellant
Authority, Bangalore and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: June 21, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Limitation Act, 1963 - Section 5
- Payment of Gratuity Act, 1972 - Section 7(7)

Citation: (2016) 6 KantLJ 345

Hon'ble Judges: Aravind Kumar, J.

Bench: Single Bench

Advocate: Sri K.S. Bheemaiah, Advocate, for the Petitioners; Sri D. Ashwathappa, Additional Government Advocate, for the Respondent Nos.1 and 2

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Aravind Kumar, J. - Heard Sri K.S. Bheemaiah, learned Counsel appearing for petitioners. Perused the records.

2. The only issue which arises in these writ petitions is:

Whether Appellate Authority was justified in refusing to entertain the appeal on the ground of delay and it was barred by limitation?

3. Respondent-workman filed an application for grant of payment of gratuity. Controlling Authority by Order dated 11-9-2015 - Annexure-A allowed the application and directed writ petitioners herein to pay a sum of Rs. 2,12,100-00 with interest at 10% quantified at Rs. 22,372-00 and in all petitioners herein were directed to pay a sum of Rs. 2,34,472-00 to respondent-workman.

4. Being aggrieved by this order, an appeal came to be filed by writ petitioners before Appellate Authority. By impugned endorsement dated 10-5-2016 - Annexure-B, Appellate Authority rejected the appeal on the ground that it has been filed beyond the prescribed period of 120 days and Section 7 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the "Act" for short) does not empower Appellate Authority to extend the limitation or condone the delay in filing the appeal.

5. Co-ordinate Bench of this Court in the case of **Bangalore Metropolitan Transport Corporation v. The Deputy Labour Commissioner and the Appellate Authority under the Payment of Gratuity Act Bangalore and Others ILR 2009 Kar. 717**, while examining similar question has held that payment of gratuity rules, do not vest any power to the Appellate Authority to extend the time beyond the period prescribed by the proviso to sub-section (7) of Section 7 of the Act and Legislature had wilfully omitted to incorporate the applicability of Section 5 of the Limitation Act, 1963.

6. Sri K.S. Bheemaiah, learned Counsel appearing for petitioners would draw attention of this Court to the fact that amount as determined by the Controlling Authority, has already been deposited before the Controlling Authority itself, which shows the bona fides of writ petitioners/employer and petitioners having very good case on merits and as such Appellate Authority could not have dismissed the appeal.

7. A bare reading of proviso to Section 7(7) of the Act would indicate that appeal has to be filed within 60 days from date of order or receipt of communication of order of Controlling Authority and for sufficient cause being shown, further 60 days delay can be condoned. Thus, Appellate Authority has no power to condone the delay beyond 120 days. Mere depositing the amount would not enlarge the scope of proviso to sub-section (7) of Section 7 of the Payment of Gratuity Act, 1972. As such, contention of Sri K.S. Bheemaiah, learned Counsel for petitioners deserves to be rejected and accordingly it stands rejected. Hence, I do not find any good ground to entertain these writ petitions and it deserves to be dismissed for reasons assigned by the Co-ordinate Bench of this Court in BMTC's case referred to supra. Accordingly, the writ petitions stands rejected.

8. Ordered accordingly.