

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV

ON THE 02nd OF MARCH, 2022

WRIT PETITION No. 11936 of 2016

Between:-

**M.T.I LOGISTIC TECH PVT. LTD THROUGH
MANAGING DIRECTOR, LEKHRAJ RAWAL
S/O ARJUNDAS RAWAL, AGED ABOUT 65
YEARS, R/O RAWAL COMPLEX, MOTI
JHEEL, A.B ROAD, GWALIOR (M.P.)**

.....PETITIONER

(BY SHRI RAMAKANT PATEL, ADVOCATE)

AND

**RAMKUMAR GUPTA S/O LATE SHRI
KASTOOR CHAND GUPTA, AGED ABOUT 65
YEARS, R/O 14/22, GALI NO. 2, NEAR
KANCHAN VIHAR ROAD, VIJAY NAGAR,
JABALPUR (M.P.)**

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI, ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

The petitioner-employer is aggrieved by order dated 07.06.2016 (Annexure P/6) passed by the Appellate authority under the Payment of Gratuity Act, 1972 and Deputy Chief Labour Commissioner (Central), Jabalpur, in case No.PGA-12/2016, whereby, the appeal preferred by the employer under Section 7(7) of the Payment of Gratuity Act, 1972 (hereinafter referred to as "The PG Act, 1972), has been dismissed on the ground of delay.

2. The employee-respondent approached the Controlling Authority under the PG Act, 1972 vide application dated 17.12.2009 under sub-Rule (1) of Rule 10 of the Payment of Gratuity (Central) Rules, 1972 (hereinafter referred to as "The PG Rules, 1972) for issuance of appropriate directions for the payment of gratuity.

3. The case of the employee was that he was working with the employer-petitioner as Clerk and had discharged his services from the year 1976 to October, 2009. Since the admissible payment under the provisions of the PG Act, 1972 and the rules made thereunder were not made to the employee, hence, the Controlling Authority vide order dated 03.01.2011, directed the employer to pay the amount of gratuity of Rs.74,250/- as per last drawn salary of the employee for 33 years service along with interest at the rate of 10% from the due date till the date of actual payment. The employer challenged the said order in appeal under Section 7(7) of the PG Act, 1972 and the appellate authority vide impugned order has dismissed the same on the ground that the appeal should have been preferred within a period of 60 days from the date of receipt of copy of the order and the maximum period of 60 days can be extended in case of sufficient reason. Since the appeal was filed after expiry of about five years, therefore, a period beyond 60 days cannot be condoned.

4. The learned counsel appearing for the petitioner-employer submits that neither the employer was aware of the limitation nor he was aware of the appropriate remedy, where, the appeal should have been preferred and, therefore, when the execution proceedings were started, he

approached this Court. He filed writ petition before this Court, which was dismissed, thereafter, he approached the appellate court. Such a period of about five years is not inordinate and the same is also not deliberate. Hence, the appellate authority has erred in passing the impugned order.

5. The learned counsel for the employee-respondent submits that *firstly*, the petitioner's conduct has to be seen as he has suppressed the material fact at all stages. The first stage where he has suppressed the material fact is the stage when he approached the appellate authority without disclosing the fact that before approaching the said authority, the writ petition filed by the employer was already dismissed by the High Court. Even thereafter, when he filed the present writ petition, he has not disclosed the fact that earlier also he filed Writ Petition No.7153 of 2016 and the same was dismissed by this Court on 29.04.2016. He further submits that not only on account of suppression of the material fact but even on merits also, the petitioner does not have any case as it is a settled legal position that once the authority is not conferred with the power to condone the delay, the delay beyond the prescribed time cannot be condoned. He places reliance on a decision of the Hon'ble Supreme Court in the matter of **Ravi Khullar and other Vs. Union of India and others**¹.

6. In response to the aforesaid submission, the learned counsel appearing for the petitioner tried to explain his conduct by placing reliance on rejoinder and he states that the employer had only come to know about passing of the said order when RRC was issued and, therefore, he

¹ (2007) 5 SCC 231

approached this Court. Since no relief was granted by this Court in the earlier writ petition, therefore, he had to approach the appellate forum against the main order. Since this Court in earlier round did not adjudicate the matter on merit, therefore, the aforesaid fact was not material and, hence, his conduct should not be doubted on that ground.

7. Taking into consideration the aforesaid facts and circumstances of the case, this Court is of the opinion that the petitioner in all fairness should have clearly stated in his petition about the order dated 29.04.2016 passed in earlier writ petition No.7153 of 2016. The said petition was against the proceedings of RRC and between the same parties. It would be for the Court to examine as to whether the said fact was having any bearing on the merits of the case or not, but to say that the disclosure of the aforesaid fact was not necessary, is not acceptable. Be that as it may.

8. So far as the challenge to the order passed by the appellate authority dated 07.06.2016 is concerned, the order is also in accordance with the mandate of Section 7(7) of the PG Act, 1972. The first proviso of sub-Section 7 of Section 7 clearly stated that if the appropriate Government or the appellate authority is satisfied that the appellant was prevented by sufficient cause for preferring the appeal within the period of sixty days, the said authority can extend the period of sixty days by a further period of sixty days. Meaning thereby the total period available for the appeal is 60 days + 60 days i.e. 120 days from the date of receipt of the order.

9. In the present case, it is not the case of the petitioner that the copy of the order passed by the competent authority, was not received by

him. Rather the perusal of the order clearly shows that the order dated 03.01.2011 was a *bi-parte* order.

10. This court in the matter of **Western Coalfields Fields Limited Vs. Controlling Authority under Payment of Gratuity Act, 1972, Jabalpur and others**² has considered the provisions of Section 7(7) of the PG Act, 1972 and has held that the authority is only empowered to extend the limitation by 60 days after the expiry of initial 60 days prescribed for invoking the said remedy. It has been held that the order of rejection of application for condonation of delay of more than 120 days was proper. The Hon'ble Supreme Court in the matter of **Oil and Natural Gas Corporation Limited Vs. Gujarat Energy Transmission Corporation Limited and others**³ had considered the provisions of Section 125 of the Electricity Act, 2003 and has held that delay beyond maximum statutory period of 60 days is non-condonable. It has been held that the Electricity Act, 2003 is a special legislation within meaning of Section 29(2) of the Limitation Act. Hence, prescription of limitation under the said Act has binding effect and the same has to be followed regard being to its mandatory nature. The Hon'ble Supreme Court in the matter of **Bengal Chemists and Druggists Association Vs. Kalyan Chowdhury**⁴ had occasion to consider words such as "not exceeding" or "but not thereafter" in the context of the Companies Act, 2003. Such words were considered to be mandatory and it has been held that any other interpretation to condone the delay would render such time

² 2000 Lab IC 3458 (MP)

³ (2017) 5 SCC 42

⁴ (2018) 3 SCC 41

limit as otiose. In the case of **P. Radha Bai v. P. Ashok Kumar**⁵, the Hon'ble Supreme Court while interpreting Section 34(3) of the Arbitration and Conciliation Act, 1996 held that where the legislature prescribed an outer limit for condonation of delay, then delay for period beyond the prescribed limit cannot be condoned.

11. In view of the aforesaid, I am of the view that the order of the appellate authority declining to condone the delay beyond 120 days does not call for any interference by this court. . Hence, the present writ petition is dismissed.

(PURUSHAINDR KUMAR KAURAV)
JUDGE

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⁵ (2019) 13 SCC 445