

Krishan Kumar Kashyap Vs. The Appellate Authority Under Payment of Gratuity

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Court : Delhi

Decided On : Feb-23-2015

Judge : V.P.Vaish

Appellant : Krishan Kumar Kashyap

Respondent : The Appellate Authority Under Payment of Gratuity

Advocate for Def. : Mr. Samar Bansal, Mr. Vinayak Mehrotra

Advocate for Pet/Ap. : Mr. R.P. Sharma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

12. h February, 2015 Date of Decision:

23. d February, 2015 % + W.P.(C) 5209/2012 KRISHAN KUMAR KASHYAP
Through: Petitioner Mr. R.P. Sharma, Advocate. versus THE APPELLATE
AUTHORITY UNDER PAYMENT OF GRATUITY ACT AND ANR.
.....Respondents Through: Mr. Samar Bansal with Mr. Vinayak Mehrotra,
Advocates. CORAM: HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1 By way of the present petition the petitioner has assailed the order dated 12.07.2012 passed by learned Regional Labour Commissioner (Central) and Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the PG Act), New Delhi whereby the appeal filed by the petitioner against order dated 22.12.2011 passed by Controlling Authority under the PG Act and Assistant Labour Commissioner (Central), Delhi-110001 was dismissed.

2. Shorn off unnecessary details, the facts as set out in the present petition are that in the year 1967, the petitioner joined the respondent company as a clerk and he was confirmed as a permanent employee in the year 1970. In the year 1981, the respondent/management revised the wage scales of employees of the company as per recommendation of Paleker Award, but the petitioner was not given revised pay and was made to suffer a loss of Rs.250/- per month from the year 1981 onwards. Again in the year 1990, the pay scales of the employees were revised as per the recommendation of the Bachawat Award. However, the petitioner was again not given revised pay and again suffered a recurring loss of Rs.500/- per month. The management had also given promotion to other clerks who were junior to the petitioner debarring his seniority. The respondent issued a show-cause notice dated 16.08.1988 to the petitioner alleging that he was found talking to an outsider while on duty and for this, he was suspended for two days i.e. 20th and 21st October, 1989. The petitioner was put under suspension vide letter dated 10.12.1994 under the charge that he was not performing his duty properly, he was coming to office at 11.00 a.m. and he was signing advertisement without any valid instruction from the respondent. Pursuant to the said charges, a charge-sheet was issued against the petitioner on 29.12.1994 and thereafter a supplementary charge-sheet dated 12.01.1995 was also issued by the respondent. Subsequently, the services of the petitioner were terminated w.e.f. 15.02.1997. The petitioner challenged the same before the Labour Court and an award dated 18.10.2008 was passed, wherein the Labour Court came to the conclusion that the termination of the petitioner was illegal and unjustified. The Labour Court further granted a relief of a lump sum compensation of Rs. 2 lakhs (Rupees Two Lakhs) in lieu of reinstatement. Against the said award, the petitioner filed a writ petition bearing W.P.(C) No.90/2009 before this Court and the same is pending disposal.

3. The petitioner also filed a gratuity claim before the Controlling Authority under the PG Act, 1972 and vide order dated 22.12.2011, a sum of Rs.1,06,119/- (Rupees One Lakh Six Thousand One hundred and Nineteen) along with simple interest at the rate of 10% per annum as per sub-Section (3-A) of Section 7 of the PG Act from the date when the petitioner attained the age of superannuation i.e. from 06.01.2005 till the date payment is actually made to him.

4. Against the said order, the petitioner filed an appeal under Section 7(7) of the PG Act along with an application for condonation of delay of 139 days in filing the appeal. Vide impugned order dated 12.07.2012, the appeal was dismissed by learned Regional Labour Commissioner (Central) and Appellate Authority under the PG Act.

5. Feeling aggrieved by the impugned order, the petitioner has preferred the present petition.

6. Learned counsel for the petitioner urged that the power to condone the delay in filing an appeal within sixty days extendable to a further period of sixty days under the proviso to sub-Section 7 of Section 7 of the PG Act does not exclude the power of the Appellate Authority to condone the delay beyond 120 days. Though Section 7(7) of the PG Act deals with the period of limitation for filing an appeal and the period to which the same can be extended by the Appellate Authority, even then it does not exclude the applicability of provisions of Section 5 of the Limitation Act, 1963. The Payment of Gratuity Act is a special enactment and as per Section 29(2) of the Limitation Act and in the absence of express or implied exclusion of the applicability of Section 29 (2) of the Limitation Act, the same would apply to the Appellate proceedings under the PG Act.

7. Rebutting the contentions raised by the petitioner, counsel for the respondent submitted that Section 7(7) of the PG Act specifically prescribes the period of limitation for filing an appeal as well as the maximum limit to which it can be extended and, therefore, the competent authority is excluded of its power to condone the delay beyond the period of sixty days. Merely because the PG Act is a special enactment, it cannot be presumed that the provisions of the Limitation Act can be invoked in the PG Act by virtue of Section 29(2) of the Limitation Act.

8. I have bestowed my thoughtful consideration to the submissions made by learned counsel for the parties and perused the records.

9. The pivotal issue that whether the Appellate Authority under the PG Act can entertain an appeal beyond 120 days from the date of receipt of the order needs careful consideration.

10. Before examining the facts of the present case, it is necessary to consider relevant provisions of the PG Act. Sections 7 (7) of the PG Act read as below:

Section 7 - Determination of the amount of gratuity. (7) Any person aggrieved by an order under subsection (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.].

11. On a plain reading of Section 7(7) of the PG Act, it is manifestly clear that an appeal under sub-Section 7 of Section 7 of the PG Act can be filed within a period of sixty days from the date of receipt of the order passed under sub-Section 4 of Section 7 of the said Act and the Appellate Authority has power to extend the said period of sixty days by a further period of sixty days, if it is satisfied that the Appellant was prevented by sufficient cause from instituting the appeal within the said period of sixty days. Therefore, a person aggrieved by any order regarding determination of the amount of gratuity or a claim in that regard in exercise of powers under Section 7(4) of the PG Act by a Controlling Authority can file an appeal to the Appellate Authority, but such an appeal has to be filed within sixty days from the date of such order. Further, the proviso to Section 7 empowers the

Appellate Authority to extend the period of sixty days. The said proviso gives discretion to the Appellate Authority to extend the period of limitation by another period of sixty days in case sufficient cause is shown by not filing an appeal within the prescribed period of sixty days.

12. Now the question which comes up for determination is whether Section 5 of the Limitation Act is applicable to the appeals under the PG Act in view of specific provision providing for condonation of delay in filing an appeal under the PG Act.

13. The PG Act is a complete code in itself and provides for a complete mechanism for determination and discharge of liability relating to gratuity. The said Act deals with the process and the proceedings relating to the subject of gratuity payable by an employer to its employees. All the material provisions of law covering the aspect of its determination, including the process of adjudication of all disputes relating thereto with finality attached to the decision in respect thereof with all necessary checks by authoritative review of the decision are prescribed under the PG Act. Further, the scheme of the PG Act reveals that the liability regarding the payment of gratuity is to be determined in accordance with the method prescribed under the PG Act and should be paid as soon as it becomes payable. In noncompliance of it, the employer is liable to incur a further liability of payment of interest as well as is liable to prosecution, besides penalty.

14. Section 29(2) of the Limitation Act , 1963 envisages that where any special or local law prescribes for any suit, appeal or application a period of limitation, different from the period prescribed by the Schedule of the Limitation Act, the provisions of Section 3 shall apply to such a special or local law as if such period were the period prescribed by the said Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 and 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

15. Undoubtedly, the PG Act is a special law within the meaning of the said expressions under the provisions of the Limitation Act. In view of the provisions of Section 29(2) of the Limitation Act, the applicability of the Limitation Act is subject

to three conditions, firstly, the Special Act must have provisions prescribing limitation for filing appeal there under, secondly, the period so prescribed should be different from the one prescribed under the Schedule to the Limitation Act; and thirdly, the provisions of law contained in that regard in the said Act should not expressly or by necessary implication exclude the applicability of all or any of the provisions of Sections 4 to 24 of the Limitation Act to the proceedings under the said Act. A perusal of the PG Act shows that there is no specific provision under the said Act that excludes the applicability of the Limitation Act. However, the applicability of the Limitation Act can also be excluded by necessary implication. For this, it is necessary to determine, from the overall reading of the PG Act, whether and to what extent the said enactment excludes the provisions of the Limitation Act.

16. In *Hukumdev Narain Yadav vs. Lalit Narain Mishra*, (1974) 2 SCC133 the three Judges Bench of the Honble Supreme Court while examining whether the Limitation Act would be applicable to the provisions of the Representation of the People Act, 1951 observed as under:

17. Though Section 29(2) of the Limitation Act has been made applicable to appeals both under the Act as well as under the Code of Criminal Procedure, no case has been brought to our notice where Section 29(2) has been made applicable to an election petition filed under Section 81 of the Act by virtue of which either Sections 4, 5 or 12 of the Limitation Act has been attracted. Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under Section 81 of the Act, Section 29(2) would be attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition. It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone

should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. The provisions of Section 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in Section 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117. It will be seen that Section 81 is not the only Section mentioned in Section 86, and if the Limitation Act were to apply to an election petition under Section 81 it should equally apply to Sections 82 and 117 because under Section 86 the High Court cannot say that by an application of Section 5 of the Limitation Act, Section 81 is complied with while no such benefit is available in dismissing an application for noncompliance with the provisions of Sections 82 and 117 of the Act, or alternatively if the provisions of the Limitation Act do not apply to Section 82 and Section 117 of the Act, it cannot be said that they apply to Section 81. Again Section 6 of the Limitation Act which provides for the extension of the period of limitation till after the disability in the case of a person who is either a minor or insane or an idiot is inapplicable to an election petition. Similarly, Sections 7 to 24 are in terms inapplicable to the proceedings under the Act, particularly in respect of the filling of election petitions and their trial.

17. Thus, principle that emerges is that if the Legislature in a special statute prescribes a certain period of limitation for filing a particular appeal or application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, to the maximum, only upto a prescribed time-limit then the Appellate Authority concerned has no jurisdiction to extend the limitation beyond such maximum time-limit.

18. The PG Act is a subsequent legislation passed in 1972 whereas the Limitation Act was passed in 1963. It is a settled principle of interpretation of statutes that when there are two mandates in two statutes, the provision of latter statute would prevail. When a period of limitation has been specifically prescribed in a subsequent statute, i.e., PG Act and the Appellate Authority is given a power to condone a delay, provisions of the Limitation Act for condoning delay would not apply in such a case. When the legislature has limited the jurisdiction of the Appellate Authority to condone the delay in filing an appeal only to a limited period of sixty days, the same authority cannot extend the time or condone the delay for any further period by invoking Section 5 of the Limitation Act.

19. In *The Commissioner of Sales Tax, U.P. Lucknow vs. M/s. Parson Tool and Plants, Kanpur*, (1975) 4 SCC22 the Apex Court held:

22. Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, than the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act.

23. We have said enough and we may say it again that where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver; more so if the statute is a taxing statute. We will close the discussion by recalling what Lord Hailsham At p. 11 in *Pearl Berg v. Varty* [1972]. 2 All E. R. 6 has said recently, in regard to importation of the principles of natural justice into a statute which is a clear and complete Code, by itself : It is true of course that the courts will lean heavily against any construction of a statute which would be manifestly fair. But they have no power to amend or supplement the language of a statute merely because in

one view of the matter a subject feels himself entitled to a larger degree of say in the making of a decision than a statute accords him. Still less is it the functioning of the courts to form first a judgment on the fairness of an Act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgment.

24. For all the reasons aforesaid, we are of the opinion that the object, the scheme and language of Section 10 of the Sales-tax Act do not permit the invocation of Section 14(2) of the Limitation Act, either, in terms, or, in principle, for excluding the time spent in prosecuting proceedings for setting aside the dismissal of appeals in default, from computation of the period of limitation prescribed for filing a revision under the Sales-tax. Accordingly, we answer the question referred, in the negative.

20. In the instant case, the Controlling Authority passed an order under Section 7(4) of the PG Act on 22.12.2011. The petitioner preferred an appeal under Section 7(7) of the said Act along with an application for condonation of delay of 139 days in filing the appeal. Admittedly, the appeal under Section 7(7) of the PG Act was not filed within a period of 120 days from the date of receipt of the order under sub-Section 4 of Section 7 of the Act. Therefore, the Appellate Authority/Controlling Authority under the PG Act was not empowered to condone the delay beyond the total period of 120 days from the date of receipt of the order.

21. Thus, there is no infirmity or illegality in the impugned order dated 12.07.2012 passed by learned Regional Labour Commissioner (Central) and Appellate Authority under the PG Act. Consequently, the petition is devoid of any merit and the same is hereby dismissed. (VED PRAKASH VAISH) JUDGE FEBRUARY23d, 2015 gm

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