

The Commanding Officer Vs. the Appellate Authority Under the Payment of Gratuity Act

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Court : Kerala

Decided On : Mar-08-2004

Reported in : 2004(3)KLT43; (2005)ILLJ256Ker; 2005(2)SLJ53(Kerala)

Judge : R. Rajendra Babu, J.

Acts : [Payment of Gratuity Act, 1972](#) - Sections 7(1); Limitation Act - Sections 5

Appeal No. : O.P. 38739 of 2001

Appellant : The Commanding Officer

Respondent : The Appellate Authority Under the Payment of Gratuity Act

Advocate for Def. : V.R. Ramachandran Nair,; R. Premchand and; Dilsha A.

Advocate for Pet/Ap. : P.S. Sreedharan Pillai, SCGSC

Disposition : Petition dismissed

Judgement :

R. Rajendra Babu, J.

1. Smt. R.P. Vincent, the 3rd respondent, was working as part-time Civilian Nurse in the Family Clinic, Naval Base, Cochin. She was superannuated on 30th

September, 1999. As the gratuity amount due to her was not paid by the naval authorities, she filed an application before the Asst. Labour Commissioner (Central), Kochi, the authority under the Payment of Gratuity Act (hereafter referred to as the authority) for an order directing the petitioners herein to pay the gratuity. By Ext.P1 order dated 12th December, 2000, the authority allowed an amount of Rs. 36,260 towards gratuity and the naval authorities were directed to pay the amount. The 1st petitioner viz. the Officer-in-charge, Station Health Organisation, Naval Base, Kochi, challenged the above order by filing an Original Petition before this Court as O.P.2000/01. Along with the O.P. the 1st petitioner filed C.M.P.3400/01 for an interim order to stay all further proceedings in pursuance to Ext.P1 order and by Ext.P2 order dated 25th January, 2001 this Court passed an interim order of stay for two weeks. Thereafter by Ext.P3 Judgment dated 21st March, 2001 the O.P. was dismissed holding that the petitioner had a statutory remedy available under the Payment of Gratuity Act by preferring an appeal and hence the order of the controlling authority could not be challenged under Article 226 of the Constitution. Thereafter the petitioners filed an appeal before the Appellate Authority constituted under the Payment of Gratuity Act as G.A. No. 8/2001/B-1 with a petition for condoning the delay. The above petition for condoning the delay was dismissed by the Appellate Authority by Ext.P5 order holding that the Appellate Authority had no jurisdiction to condone the delay when the appeal was filed beyond 120 days from the date of service of the copy of the impugned order. Aggrieved by the above order, the petitioners have filed this O.P. challenging the above order.

2. Heard the learned Standing Counsel for the petitioners and the learned Counsel for the 3rd respondent.

3. The learned Counsel for the petitioners submitted that there was sixty-six days delay in filing the appeal and the delay was due to the prosecution of the Original Petition O.P. 2000/01 filed before this Court challenging Ext.P1 order passed by the Authority. It was submitted that O.P. 2000/2001 was filed before this Court for quashing Ext.P1 order and the petitioners were prosecuting the above matter in good faith and there was no wilful laches from their part in challenging Ext.P1 order and hence the Appellate Authority had jurisdiction and was competent to

condone the delay of the entire sixty-six days in preferring the appeal. The learned Counsel for the 3rd respondent submitted that in view of Section 7(7) of the Payment of Gratuity Act, an appeal has to be filed before the Appellate Authority within 60 days from the date of receipt of Ext.P1 order and the Appellate Authority can condone the delay of a period of 60 days and thus an appeal can be entertained by the Appellate Authority only if it is filed within 120 days. It was further submitted that when the statute has prescribed the period of limitation and also prescribed the period of time which can be condoned by the Appellate Authority, there is no scope or jurisdiction for condoning any further delay and there is an implied legislative prohibition to the Appellate Authority from admitting any appeal which is filed beyond the period of 120 days. Section 7(7) of the Act reads:

'7(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.'

A reading of the above provision would reveal that an appeal has to be filed within 60 days and if it is not filed within 60 days, the Appellate Authority has jurisdiction to condone the delay of 60 days when sufficient cause is shown. The learned Counsel for the 3rd respondent submitted that when a period has been prescribed in a special statute for filing an appeal, the same will have to be filed within that time and the provisions of the Limitation Act cannot have any application in

condoning the delay in filing the appeal. Reliance was placed on the decision of the Supreme Court in *The Commr. of Sales Tax v. Parson Tools and Plants, Kanpur* (AIR 1975 SC 1039). In paragraphs 17 and 18 of the judgment it was held:

'17. 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, then 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.

18. 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 of 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.'

The question whether the Appellate Authority under the Payment of Gratuity Act can condone the delay beyond the period of 120 days was considered by a learned Single Judge of the Madras High Court in *Special Officer, Salem Co-op. Primary Land Development Bank v. Dy. Commr. of Labour* (1998 III L.L.J. (Supp.) 1168). There, the question for consideration was whether the delay in filing the appeal could be condoned under Section 5 of the Limitation Act when it was filed beyond the period of 120 days prescribed under Section 7(7) of the Payment of Gratuity Act. There the learned Single Judge held that the maximum period allowable for filing an appeal as per Section 7(7) of the Act was 120 days and Section 5 of the Limitation Act cannot have any application in condoning any further period of delay. It was further held that the Appellate Authority under the Payment of Gratuity Act was not a Court and the provisions of the Limitation Act cannot be invoked in condoning the delay. A learned Single Judge of the High Court of Andhra Pradesh in *Warangal District Co-op. Society Ltd. v. Appellate*

Authority Under The Payment of Gratuity Act (2002 III LLJ 616) held that the Limitation Act cannot have any application as the period of limitation has been specifically prescribed under Section 7(7) of the Payment of Gratuity Act which was a later enactment wherein the period of limitation has been specifically provided. In paragraph 11 of the Judgment it was observed:

'However, the difficulty in this case is that the limitation prescribed under the Payment of Gratuity Act, once again an enactment made by Parliament is only 60 days for the purpose of preferring an appeal. Under the proviso to Section 7, Sub-section (7), the Appellate Authority is empowered to 'extend the period' of limitation by another sixty days. In other words, the Appellate Authority is empowered to condone the delay to upper limit of another sixty days beyond the prescribed period of limitation. No doubt, the Payment of Gratuity Act does not expressly exclude the operation of the Limitation Act, but the fact remains that the Payment of Gratuity Act is of the year 1972 where as the Limitation Act is of the year 1963. The settled principle of interpretation of statutes is that if there are two mandates by the sovereign Legislature, the later of the two shall prevail. Therefore, the fact that there was no express exclusion of Section 5 of the limitation under the Payment of Gratuity Act makes no difference while construing the scope of the power of the Appellate Authority constituted under the Payment of Gratuity Act to condone the delay in preferring the appeals.'

The Payment of Gratuity Act had prescribed the period of limitation in filing an appeal as 60 days. The statute further conferred jurisdiction on the Appellate Authority to condone the delay of 60 days in preferring the appeal when sufficient cause was shown for the delay. The Limitation Act prescribes the time for filing suits, appeals and applications. Section 5 of the Limitation Act empowers the Court to condone the delay in filing applications and appeals when sufficient cause has been shown to the satisfaction of the Court. Such a power has been specifically given to the Appellate Authority under the Payment of Gratuity Act also to condone the delay of 60 days when sufficient cause is shown to the satisfaction of the Appellate Authority. 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 60 days, the same authority cannot extend the time or condone the delay of any

further period by invoking Section 5 of the Limitation Act. The Payment of Gratuity Act is a subsequent legislation passed in 1972 whereas the Limitation Act was passed in 1963. The settled principle of interpretation of statutes is that when there are two mandates in two statutes, the provision in the later statute would prevail. When the period of limitation has been specifically prescribed in the subsequent statute viz. the Payment of Gratuity Act and the Appellate Authority has been given jurisdiction to condone the delay of a specified period on establishing sufficient cause, there is an implied prohibition from invoking the provisions under the Limitation Act for condoning the delay. There is an implied bar in invoking Section 5 of the Limitation Act and as such I am in full agreement with the views taken by the High Court of Madras and Andhra Pradesh. The Appellate Authority under the Payment of Gratuity Act cannot condone an application for condonation of delay beyond the period of 60 days as contemplated under Section 7(7) of the Act.

4. Another argument was advanced by the learned Counsel for the petitioners was that the petitioners were prosecuting the matter before the High Court by filing a writ petition in good faith and as such the entire period during which the matter had been pending before this Court had to be excluded under Section 14 of the Limitation Act. It was an admitted fact that the petitioners challenged the order of the controlling authority by filing a Writ Petition before this Court and that was dismissed holding that there was provision in the statute for filing an appeal and a writ would not lie. A Division Bench of this Court in Nachimuthu Gounder v. State of Kerala (1980 KLT SN 21 C.No. 53) held that in appropriate cases a suitor was entitled, under Section 14 of the Limitation Act to exclude the period during which he was unsuccessfully prosecuting the remedy before the High Court under Article 226 of the Constitution. The provision in Section 14 of the Limitation Act is to furnish protection against the bar of limitation to a person who honestly and diligently prosecutes a trial on merits in a forum having no jurisdiction and which forum cannot afford him such a trial. The application of Section 14(2) also had been considered by the Supreme Court in The Commr. of Sales Tax, U.P. v. Parson Tools and Plants, Kanpur (AIR 1975 SC 1039). There it was held that when the special statute provided a period of limitation, Section 14(2) of the Limitation Act also could not be invoked for exclusion of the period during which

proceedings had been pending before any other authority or Court for an identical relief. Moreover, Section 14 would apply to suits and the jurisdiction to exclude the period during which the proceedings had been pending before another Court or authority was vested with the Civil Court when a suit was filed. In fact Section 14(2) of the Limitation Act also cannot be invoked for exclusion of the period during which proceedings has been pending before this Court. The Appellate Authority under the Payment of Gratuity Act had no jurisdiction either to condone the delay or to order exclusion of the period of time during which proceedings has been pending before this Court and the rejection of the appeal due to the delay in filing the appeal beyond the period of 120 days was proper and I find no reasons for interfering with the above order. Hence this O.P. has only to be dismissed.

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