

MHIC18- 000002-2018

Presented on	:-	29/03/2018
Registered on	:-	24/04/2018
Decided on	:-	25/07/2018
Duration	:-	00Yr.03 M.01 D.

IN THE INDUSTRIAL COURT, DHULE AT DHULE
(Presided over by S. E. Bangar, Appellate Authority under the
Payment of Gratuity Act, 1972 & Member, Industrial
Court, Dhule)

Misc. Application (PGA) No.1/2018

Maharashtra State Road Transport Corporation,
Through its
Divisional Controller, Dhule.

-- Appellant.

Vs.

Shri. Madhukar Nattu Ahire.
Age- Major. Occ: Nil,
R/o- Shingave, Tal: Shirpur,
Dist: Dhule.

-- Respondent.

Advocates appeared :-

Shri. Shivdas B. Patil for Appellant.

Shri. S.R. Khairnar for Respondent.

[In the matter of condonation of delay.....]

J U D G M E N T

(Dated- 25th July, 2018)

1] This is an application for seeking the condonation of delay, caused in preferring an appeal against the findings of the Controlling Authority-cum-Judge, Labour Court, Dhule, rendered on 06/02/2017 in Application (PGA) No. 5/2013.

2] The facts in brief are as under:

[I] The Respondent was an employee with the Appellant-Maharashtra State Road Transport Corporation, who had joined their services as a Conductor since 1989. He was terminated from the services on the ground of proved misconduct on 22/08/2007. His pay was Rs.8,500/- at the time of termination from service. He had served Respondent for a continuous period from the year 1989 till 22/08/2007 and was eligible for payment of gratuity as contemplated under the

Payment of Gratuity Act, 1972. The Appellant is liable to pay an amount of Rs.87,230/-to the Applicant towards gratuity after expiry of 30 days from 22/08/2007 with interest at the rate of 20% per annum till the realization of the said amount. He had issued a notice to the Appellant on 12/03/2012 and called upon to pay him gratuity amount. However, the Appellant has not complied with the said notice.

[ii] Being aggrieved by the refusal of the Appellant to pay the amount of gratuity as well as by the delay caused in payment of gratuity, upon it having become payable, the Respondent did prefer an application PGA No.5/2013 before the Controlling Authority-cum-Judge,Labour Court,Dhule, claiming interest on the amount of gratuity, sought for, as well as delay caused in payment of gratuity when it became payable. After serving notice upon the Appellant and affording opportunities of hearing, Application

was partly allowed by the Judgment and Order dt.6/2/2017 by holding that, the Respondent/original Applicant has proved that, the Appellant – original Respondent delayed the payment of gratuity without any sufficient cause and that they refused to pay him gratuity. Hence the Respondent-original Applicant is entitled for receiving Rs.60,313/-towards gratuity with interest at the rate of 12% per annum from 22/09/2007 till the realization and the costs of Rs.5000/-.

[iii] The Appellants ought to have preferred an Appeal, being aggrieved by the findings recorded by the Learned Controlling Authority-cum-Judge, Labour Court,Dhule, within a period of 60 days from the date of the Judgment and Order of the Controlling Authority, as contemplated under Section-7, Sub-Section-7. However, they have presented an appeal on 24/4/2018 after a delay of about 11 months and 24 days from 6/2/2017 and have

sought condonation of delay and the direction to the office of this Court – cum – Appellate Authority, to admit and register the Appeal.

[iv] The original Respondent has cited the ground of delay in securing the approval of head office of the Appellant Corporation which is at Mumbai as the ground of delay. It is only after the receipt of the approval from superior authority, the Respondent has stepped up to prefer an appeal, which was not purposeful and deliberate. Contending that, the delay of 11 months, 24 days is procedural delay and the Appellant is a public-semi Government Authority and if the delay is not condoned, they would suffer irreparable loss, which would not be compensated in monetary terms and the attempt to prefer an appeal would be futile, they have sought condonation of delay and an opportunity to contest Appeal on merits. It is further contended that, the amount of Rs.60,313/-is deposited on 15/6/2017 in Labour

Court, as per the Judgment and Order passed in P.G.A.No.5/2013. Hence it is prayed to allow the application for condonation of delay and the Appeal may be registered as per the Law.

3] The Respondent – original Applicant has resisted the Application for condonation of delay, by filing submitting its reply in writing at Exh. C-1 itself . It is alleged that, the Appeal is not filed within limitation and hence the same may be rejected.

4] From the rival contentions and hearing of the parties, the following Points arise for determination. I proceed to record my findings with the reasons herein-below :-

<u>Sr No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Do the Applicants show good and sufficient reasons for the delay caused in filing Appeal(PGA) against the Respondent ?	--In the Negative.
2.	Whether the delay is liable to be condoned ?	--In the Negative.
3.	What order ?	..Application is rejected.

REASONS

10] It would be convenient to discuss both the points together for disposal of this Application, since neither of the parties have adduced any oral evidence. Instead, they have filed joint pursis at Exh.UC-1 that, they do not want and wish to adduce any oral evidence.

11] Admittedly, the findings of the Controlling Authority -cum-Judge, Labour Court, Dhule have been rendered on 6/2/2017 in Application (PGA) No. 5/2013 preferred by the Respondent- original Applicant. According to the provisions of Section-7 Sub Section-7 of the Payment of Gratuity Act, 1972, any person aggrieved by the order under Section-4, may, within 60 days from the date of 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.

12] The Appellant ought to have had preferred the Appeal within the period of 60 days concluding on 6/2/2017. The present Application along with the Appeal Memo, have been presented on 24/04/2018 i.e. after 1 year, 2 months, 18 days.

13] According to the provisions of Proviso to the Sub-Section-7 of Section-7 of the Payment of Gratuity Act, 1972, the appropriate Government or the Appellate Authority, as the case may be, may, if it is specified that, the Appellant was prevented by sufficient cause from preferring the appeal, within the said period of 60 days i.e. a period of 60 days as contemplated under the Sub-Section-7 of Section-7 of the said Act, extend the said period for a further period of 60 days.

14] In view of the said provisions this Court, Appellate Authority, could have condoned the delay of further 60 days out of the delay which has been caused. Even after condonation of delay of 60 days, out of delay of 443 days, the delay of 383 days still remains unexplained.

15] According to the observations in the case of **Western Coalfields Ltd. Vs. Controlling Authority 2000 III C.L.R. 399 (M.P.H.C.)** - “ the Act is a special statute and there is provision for condonation of delay by extending period of 60 days by another 60 days. There is no provision for further condonation of delay. In the absence of conferment of jurisdiction to condone further delay, the statutory authority which is quasi judicial

authority cannot condone the delay or extend the period of limitation. Thus, the Appellate Authority has been precluded from condoning the delay caused, beyond the period of 120 days, for preferring an appeal against the findings and orders of the Learned Controlling Authority. The delay caused in the instant case obviously exceeding the permissible limit, cannot be condoned.”

16] It is pertinent to note that, it has been contemplated by the **second proviso** to the **Sub-Section-7 of Section-7 of the Payment of Gratuity Act, 1972** 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 appellant authority such amount.

17] In the case in hand, it is an admitted fact that, the amount of final gratuity determined by the appellants, -original Respondents was, of Rs.60,313/-. It was payable within a period of 30 days from 22/08/2007 i.e.from the date of termination of the Respondent-original Applicant. Therefore, the Appellant has

been held to be liable to pay interest at rate of 12% p.a. from 22/09/2007 till realization of the amount of gratuity. The Appellant has deposited the amount of Rs.60,313/- with the Controlling Authority-cum-Judge, Labour Court, Dhule, on 15/6/2017, but has not deposited the amount along with interest at the rate of 12% p.a. as well as costs of Rs.5000/- as directed by the Learned Controlling Authority-cum-Judge, Labour Court, Dhule in the impugned Judgment and Order.

18] In view of the observations in the case of **Gloster Jute Mills Ltd. Vs. Deputy Secretary, Labour Department & Ors. 2002 III C.L.R. 393 (Cal. H. C.)**, “as per **Section 4(a) of the Payment of Gratuity Act, 1972**, employer is required to deposit such amount as he admits to be payable as gratuity and failure to deposit the interest amount over and above the amount of gratuity, has led to dismissal of the Appeal under **Section 7(7) of the Act.**”

19] The Appellants have not explained reasonably and sufficiently that, they had good reasons for having been prevented from preferring the Appeal within period of 60 days from 06/02/2017 i.e. from the date of Judgment and Order of the Controlling Authority-cum-Judge, Labour Court, Dhule

in Application (PGA) No. 5/2013, or at least for further period of 60 days. The Appellant has not produced on record any document or material to ascertain their bonafides and truthfulness. It would not be just and proper to condone the delay beyond the specified period of total 120 days and the Authority cannot travel beyond it, as contemplated under the provisions of **Sub-Section(7) of Section-7 of the Payment of Gratuity Act, 1972.**

20] Moreover, as discussed in the preceding paragraphs, the Appellants have not deposited the amount of interest on the amount admitted to be payable over and above the gratuity to the Respondent-original Applicant, either before the Controlling Authority-cum-Judge, Labour Court, Dhule or before this Appellate Authority. Hence the request and prayer of the Appellants cannot be accepted and the delay having not being explained with sufficient cause, I record my findings to the above both the Points in the negative.

21] Consequent to the foregoing discussion and observations, this application is liable to be rejected. There would be no purpose in saddling costs upon the Appellant for the delay since they would be required to pay amount of interest as

directed by the Learned Controlling Authority -cum- Judge, Labour Court, Dhule by the Judgment and Order dated 06/02/2017 in Application (PGA) No. 5/2013. Hence the parties can be directed to bear their respective costs while disposing the application by the following Order:-

ORDER

- [1] The Misc. Application (PGA) No.1 of 2018 stands rejected.
- [2] Parties to bear their respective costs.

Place : Dhule

Sd/-xxx

(S. E. BANGAR)

Date : 25/07/2018

Appellate Authority under the
Payment of Gratuity Act, 1972 &
Member,
Industrial Court,Dhule

Kad/-