

Before Rajesh Bindal, J.

**GENERAL MANAGER, CENTRAL
COOPERATIVE CONSUMER STORE—Petitioner**

versus

**LABOUR COMMISSIONER-CUM-APPELLATE
AUTHORITY AND OTHERS—Respondents**

CWPNo. 6785 of 2011

November 15, 2012

Constitution of India, 1950 - Art. 226 - Payment of Gratuity Act 1972 - Practice and Procedure - Ex parte order - Setting aside of - Petitioner proceeded ex parte and direction issued for payment of gratuity to employee - Appeal filed by Petitioner dismissed on ground that Petitioner had not deposited amount of gratuity before filing appeal - Present petition filed - Petitioner proceeded ex parte by Controlling Authority after employee closed his evidence - 20 opportunities availed of by Petitioner to lead evidence - On account of non-representation, Petitioner proceeded against ex parte - Held, there is explanation for not leading evidence - No ground is made out for interference - Limit to contrl lapses committed by Public Authority cannot be open-ended.

Held, in the present case, undisputedly, the petitioner preferred appeal before the appellate authority without prior deposit of the amount with the appellate authority or the payment thereof to the concerned employee.

The appellate authority held that as the petitioner did not lead any evidence before the controlling authority despite grant of numerous opportunities and further there was noncompliance of mandatory condition of prior deposit of the amount of gratuity before filing the appeal, dismissed the appeal.

(Para 5)

Further held, that the plea sought to be raised by the petitioner that the amount in question has now been paid to the concerned employee, it may be given an opportunity to defend its case as the petitioner was proceeded against *ex parte* before the controlling authority and was not even heard at the stage of appeal, cannot be accepted as there is some limit to condone the lapses committed by public authority. Though in many cases considering bonafide of the party concerned, this court in exercise of its extraordinary jurisdiction grants such an opportunity to a party even if there is some delay in compliance of provisions of pre-deposit before filing appeal, but, the case in hand is not of the kind where on account of certain minor lapses considering the fact that the petitioner is a Cooperative Society such a concession is to be given.

(Para 6)

S.S Dalal, Advocate, *for the petitioner*:

A.P.S Sandhu, Advocate for respondent no.2. (In CWP No.6910 of 2011)

RAJESH BINDAL, J.

(1) This order will dispose of two petitions bearing *CWP Nos. 6785 and 6910 of 2011*. The facts have been extracted from CWP No.6785 of 2011.

(2) The petitioner has approached this Court for quashing the impugned order dated 11.2.2010 (Annexure P-3) passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (for short, 'the Act'), the order dated 31.5.2010 (Annexure P-5) dismissing the application filed by the petitioner for setting aside of *ex parte* order dated 11.2.2010 and the order dated 21.1.2011 (Annexure P-7) passed by Deputy Labour Commissioner-cum-Appellate Authority under the Act dismissing the appeal against the orders dated 11.2.2010 and 31.5.2010.

(3) Notice of motion in the present petition was issued on 16.9.2011. After service, contesting respondent no.2 was represented on 28.3.2012. However on the last date of hearing, none appeared for him. Today, as well the case was taken up twice. However, no one appeared for respondent no.2. Arguments of the learned counsel for the petitioner were heard.

(4) Learned counsel for the petitioner submitted that in the present case, the petitioner was proceeded against ex parte by the controlling authority and a direction was issued for payment of gratuity to respondent no.2-employee to which he was not entitled to. The appeal filed by the petitioner was dismissed by the appellate authority on the ground that the petitioner had not deposited the amount of gratuity before filing the appeal. As the petitioner has now paid the amount to respondent no.2-employee, the impugned orders passed by both the authorities be set aside and the petitioner be afforded an opportunity of presenting its case on merits before the controlling authority.

(5) After hearing learned counsel for the petitioner, I do not find any ground to interfere with the impugned orders. After respondent-employee filed an application before the controlling authority for payment of gratuity, notice was issued to the petitioner and in response thereto reply was filed. The case was listed for evidence of the respondent-employee. As is evident from the order passed in the appeal, the employee closed his evidence on 19.7.2008. Thereafter the case was fixed for the evidence of the petitioner. However, despite availing 20 adjournments, no evidence was led. On account of non-representation of the petitioner before the controlling authority, it was directed to be proceeded against ex parte on 19.1.2010. A perusal of the order dated 31.5.2010 (Annexure P-5) passed by the controlling authority dismissing the application filed by the petitioner for setting aside of ex parte order shows that the evidence was not led by the petitioner despite imposition of costs. The petitioner preferred appeal before the appellate authority. In terms of proviso of Section 7(vii) of the Act, no appeal by an employer can be admitted unless at the time of filing of the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited the amount with it or the same has been deposited with the appellate authority. In the present case, undisputedly, the petitioner preferred appeal before the appellate authority without prior deposit of the amount with the appellate authority or the payment thereof

to the concerned employee. The appellate authority held that as the petitioner did not lead any evidence before the controlling authority despite grant of numerous opportunities and further there was noncompliance of mandatory condition of prior deposit of the amount of gratuity before filing the appeal, dismissed the appeal.

(6) The plea sought to be raised by the petitioner that the amount in question has now been paid to the concerned employee, it may be given an opportunity to defend its case as the petitioner was proceeded against ex parte before the controlling authority and was not even heard at the stage of appeal, cannot be accepted as there is some limit to condone the lapses committed by public authority. Though in many cases considering bonafide of the party concerned, this court in exercise of its extraordinary jurisdiction grants such an opportunity to a party even if there is some delay in compliance of provisions of pre-deposit before filing appeal, but, the case in hand is not of the kind where on account of certain minor lapses considering the fact that the petitioner is a Cooperative Society such a concession is to be given.

(7) Hon'ble the Supreme Court in **Civil Appeal No.2474-75 of 2012-Office of the Chief Post Master General and others vs Living Media India Limited and another** while refusing to condone delay in filing of appeal by the State has observed that unless there is explanation for delay and a bonafide effort was made, there is no need to accept the usual explanation that the file was kept pending for several months/years on account of procedural red tape in the process. The Government Departments are under a special obligation to show that they perform their duty with diligence.

Relevant paras of the judgment are extracted below:

(12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be

condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

(13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

(8) In the present case as well it is not in dispute that the petitioner was represented through a counsel before the controlling as well as the appellate authority. There is no explanation for not leading evidence before the controlling authority on 20 dates of hearing granted to the petitioner and why the appeal was filed before the appellate authority when it was not even maintainable in the absence of prior deposit of the amount as per the

order passed by the controlling authority? In the claim petition filed by the respondent-employee in 2007, he concluded his evidence on 19.7.2008 but till such time, the petitioner was proceeded against ex parte on 19.1.2010 despite availing 20 adjournments, no evidence was led. On account of absence of its counsel, the petitioner was proceeded against ex parte.

(9) The manner in which the case was dealt with before the authorities below shows as if none was responsible to take care of the case. This is one of the main reason on account of which State or the public authorities/bodies loose cases in Courts, which some times results in loss of lacs/crores of rupees. Time has come to make everyone responsible/accountable for his work. The authority/State should not be made to suffer on account of casualness on the part of its employees. After all they are getting paid for the work and are not working for charity.

(10) In view of the aforesaid discussions, I don't find any merit in the writ petitions, the same are dismissed.

(11) The petitioner shall be at liberty to fix the responsibility of the guilty persons who had failed to defend or prosecute the case of the petitioner before the authorities below and recover the amount of loss, if any, from them.

S. Gupta