

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No.1483/2020
CM Nos.4927/2020,
7629/2020, 6708/2022 &
5775/2023

The Cooperative Market Society Limited Bishnah
through its Chairman Basant Saini, Age 61 years S/o
Sh. Kartar Chand R/o Arnia Tehsil Arnia District
Jammu.

...Petitioner(s)

Through :- Mr. Gagan Kohli, Advocate

V/s

1. Assistant Labour Commissioner
(Authority under Payment of Gratuity Act,
1972), Behind Shakuntla Theatre, B.C.Road,
Jammu
2. Chaman Lal Sharma S/o Sh. Gian Chand
Sharma R/o Village Karyal Brahmana Tehsil
Bishnah District Jammu
3. Central Bank of India, Branch Office Bishnah
Through its Branch Manager.
4. S.H.O., Police Station, Bishnah, District
Jammu

...Respondent(s)

Through :- Mr. Dewakar Sharma, Dy. AG for R-1 and 4
Mr. Irfan Khan, Advocate for-2

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

ORDER
19.02.2024

1. In this petition filed under Article 226 of the Constitution of India,
the petitioner has called in question following orders:-

- i) Order dated 21.10.2019, whereby respondent No.2 has been held entitled to a sum of Rs.5,02,740/- on account of withheld gratuity. The order further provides that in case amount of gratuity awarded is not deposited in the Court within a period of thirty days, the amount shall become recoverable along with compound interest @ 15% per annum.
- ii) Order dated 07.07.2020 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 [“the Controlling Authority”], whereby application filed by the petitioner-Society seeking setting aside of ex-parte award dated 21.10.2019 has been dismissed.
- iii) Order dated 27.08.2020 passed by the Controlling Authority, whereby the office of the petitioner-Society has been attached.

2. The impugned orders have been assailed by the petitioner primarily on the ground that the same have been passed without affording an opportunity of being heard to the petitioner. The order of attachment is challenged on the ground that the Controlling Authority has no power and jurisdiction to execute the award passed by it. It is submitted that the Controlling Authority can only issue a certificate of recovery and the order of attachment and other proceedings to recover the amount as arrears of land revenue are required to be taken by the Collector. It is submitted by the learned counsel for the petitioner that after passing of the award and in compliance of the order of this Court, a sum of Rs. 3.00 lakh has already been deposited with the Registry of this Court.

3. *Per contra*, learned counsel appearing for the respondent No.2 submits that the writ petition challenging the award passed by the Controlling Authority is not maintainable in view of the availability of an alternate statutory remedy of appeal before the Appellate Authority constituted by the

Government. He further submits that appeal before the Appellate Authority is entertainable only if appellant either produces certificate of the Controlling Authority to the effect that he has deposited with him an amount equal to the amount of gratuity required to be deposited as per the award passed by the Controlling Authority or deposits said amount with the Appellate Authority. Learned counsel for the respondent argues that the petitioner has filed the instant petition only with a view to avoid pre-deposit before the Appellate Authority, which is sine qua non for entertaining an appeal.

4. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that as against the award passed by the Controlling Authority under Section 7(4) of the Payment of Gratuity Act, 1972 [“the Act”] , an appeal lies before the Appellate Authority under Subsection (7) of Section 7 of the Act, which is required to be filed by the person aggrieved within a period of sixty days and must be accompanied by a certificate of the Controlling Authority to the effect that the person seeking to file appeal has deposited the amount awarded or else deposits the same with the Appellate Authority. The remedy provided under Section 7(7) of the Act is statutory and cannot be bypassed to avoid making pre-deposit, which is *sine qua non* for admission of appeal by the Appellate Authority. This issue has already been considered by a Division Bench of this Court in ***LPA No.235/2022 titled Badri Nath Koul v UT of Jammu & Kashmir and others decided on 9th December, 2022***. Paras 5 and 6 of the judgment of the Division Bench (supra) are relevant and are, therefore, reproduced hereunder:-

“5. It is true that, with a view to availing the remedy of appeal, the appellant is required to make a pre-deposit of an amount equal to the amount of gratuity required to be deposited under the orders of the

Controlling Authority. In this regard, the appellant shall either produce a certificate of the Controlling Authority to this effect or deposit the amount before the Appellate Authority. This salient provision is introduced in the Act of 1971 to achieve an avowed object. The said Act is a sort of social welfare legislation aimed at providing remedy to the employees who, despite having rendered dedicated services to their employer for a long period, are deprived of their gratuity when they leave the services or their services otherwise get terminated for any reason. The pre-deposit provision contained in Section 7(7) of the Act is to ensure that, during the pendency of the appeal against an order of the Controlling Authority directing the payment of gratuity in favour of the employee, the amount which may be ultimately payable to the employee is secured and he may not have to file the execution proceedings even after the order passed by the controlling authority in his favour is affirmed by the Appellate Authority.

6. The employer cannot be permitted to circumvent the procedure provided under Section 7(7) of the Act and approach the High Court by invoking its extraordinary writ jurisdiction under Article 226 of the Constitution to avoid pre-deposit before the Appellate Authority. The remedy as it is provided under the Act is required to be availed by the appellant. The entitlement of the appellant to gratuity and other such please taken by him before us, are matters of determination by the competent Authority under the Act on the touch stone of evidence and record before it and cannot be made subject matter of adjudication in writ jurisdiction.”

5. In view of the aforesaid settled legal position, this petition as against the award dated 21.10.2019 and subsequent order dated 07.07.2020 passed by the Controlling Authority is not maintainable and the petitioner is liable to be relegated to the statutory remedy of appeal available under the Act. However, so far as challenge to the order of attachment is concerned, same needs to be examined in the light of the provisions of Section 8 of the Act, which, for facility of reference, is set out below:-

“8. **Recovery of gratuity.**---If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to

the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

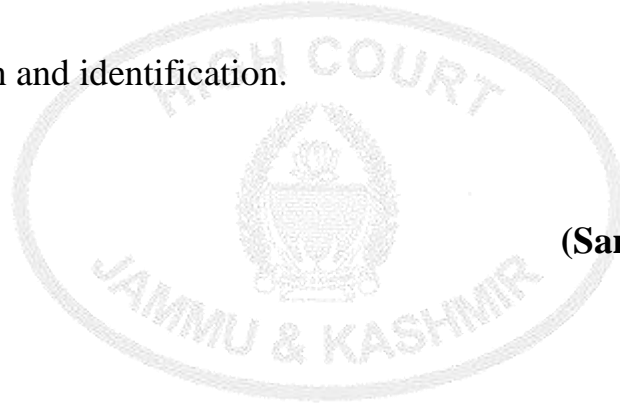
Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.

6. From a plain reading of Section 8 of the Act, it clearly transpires that if the amount of gratuity payable under the Act, which would necessarily include the payment of gratuity awarded by the Controlling Authority after adjudication, is not paid within prescribed time, the Controlling Authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector. The Collector shall then recover the same along with compound interest thereon at such rate as the Central Government may, by notification specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.

7. The proviso appended to the Section, however, provides that before issuing certificate of recovery under Section 8 of the Act, the Controlling Authority shall provide a reasonable opportunity to the employer of showing cause against the issue of such certificate. From a reading of the impugned order dated 27.08.2020 passed by the Controlling Authority, it clearly comes out that the order of attachment has not been passed by the Collector on the basis of the certificate issued in this behalf by the Controlling Authority nor any opportunity of being heard has been provided to the petitioner before issuing

such certificate. For this purpose only, this petition is entertained and allowed to the limited extent. The impugned order of attachment passed by the Controlling Authority is quashed. However, quashing of the order of attachment shall not come in the way of the Controller in following due procedure as prescribed under Section 8 of the Act for recovery of the outstanding gratuity, if any, from the petitioner.

8. Accordingly, this petition is allowed only to the limited extent as stated above and the same is dismissed insofar as challenge to the award dated 21.10.2019 and order dated 07.07.2020 passed by the Controlling Authority is concerned. The petitioner is relegated to the remedy of appeal in terms of Section 7(7) of the Act. The amount of Rs.3.00 lakh deposited by the petitioner with the Registry of this Court shall be released in favour of respondent No.2 after due verification and identification.



(Sanjeev Kumar)
Judge

Jammu:
19.02.2024
Vinod, PS

Whether the order is reportable: Yes