

GAHC010107062019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3756/2019

BHUBAN CHANDRA GOGOI
S/O. LT. B.R. GOGOI, R/O. SANTI NAGAR, GUWAHATI-781019, DIST.
KAMRUP (M), ASSAM.

VERSUS

ASSAM POWER DISTRIBUTION COMPANY LTD. AND 2 ORS.
REP. BY ITS CHAIRMAN APDCL, PALTANBAZAR, GUWAHATI-781001, DIST.
KAMRUP (M), ASSAM.

2:BOARD OF DIRECTOR
ASSAM POWER DISTRIBUTION COMPANY LTD.
PALTANBAZAR
GUWAHATI-781001
DIST. KAMRUP (M)
ASSAM.

3:R. AGARWALA
MANAGING DIRECTOR
ASSAM POWER DISTRIBUTION COMPANY LTD.
4TH FLOOR
BIJULEE BHAWAN
PALTAN BAZAR

GUWAHATI-781001
DIST. KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR. R P HAZARIKA

Advocate for the Respondent : SC, APDCL

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

27.07.2023

Heard Mr. R P Hazarika, learned counsel for the petitioner and Mr. B Choudhury, learned Standing counsel, APDCL for the respondent Nos. 1 & 2.

- 2.** Mr. Choudhury has submitted that the respondent No. 3, the former Managing Director of the APDCL has retired from service.
- 3.** The petitioner served as the Deputy Accounts Officer in the respondent APDCL.
- 4.** The authorities in the APDCL, in its Lower Assam Electricity Distribution Company Limited, pursuant a disciplinary proceeding initiated against the petitioner, by order dated 31.10.2008 dismissed him from service.
- 5.** Against the said order of penalty of dismissal from service dated 31.10.2008, the petitioner preferred an appeal on 06.11.2008 and the authorities in the APDCL vide Office Order dated 02.03.2009 reduced the penalty imposed upon the petitioner from dismissal from service to compulsory retirement with pensionary benefits, partially modifying the earlier punishment order dated 31.10.2008.
- 6.** However, on approach of the petitioner and considering that gratuity is not admissible

as per Rule 40 (1) of the Liberalised Pension Rules under the Central Civil Services (Pension) Rules, 1972, the respondent authorities in the APDCL by order dated 12.12.2011 refused to grant him the benefit of gratuity with his pensionary benefits.

7. By filing a Writ Petition WP(C) No. 883/2012, the petitioner challenged the said order dated 12.12.2011. The Court after hearing the parties found that without giving any opportunity of hearing to the petitioner the respondent APDCL passed the said order dated 12.12.2011. As such the Court by order dated 26.11.2015 allowed the said WP(C) No. 883/2012, set aside the order of the respondent APDCL dated 12.12.2011 and remanded the matter back to the respondent APDCL directing it to take a fresh decision regarding entitlement of gratuity to the petitioner after giving him an opportunity of hearing.

8. Thereafter, on hearing the petitioner, the respondents in the APDCL by order dated 03.03.2016 granted gratuity to the petitioner w.e.f. 10.02.2016 and it was paid to him on 05.04.2016.

9. The petitioner on 08.03.2016 submitted a representation before the respondent authorities in the APDCL praying to release interest upon the belated payment of gratuity to him since the respondent authorities by Office Order dated 02.03.2009 compulsorily retired him from service w.e.f. 31.10.2008, whereas by order dated 03.03.2016 paid him the gratuity w.e.f. 10.02.2016, which was actually paid to him on 05.04.2016.

10. As the respondent authorities in the APDCL did not pass any order on his said representation, the petitioner preferred another writ petition being WP(C) No. 3328/2016 claiming interest on the amount of gratuity that was released to him on 05.04.2016 under the provisions of Rule 68 of the Central Civil Services (Pension) Rules, 1972.

11. By order dated 31.01.2019 while disposing of said WP(C) No. 3328/2016, the Court directed the respondent authorities in the APDCL to pass necessary order considering as to whether to grant interest on the belated payment of gratuity paid to the petitioner or not, by taking into consideration all the relevant factors in that regard and to undertake the exercise by the authorities of the APDCL within a period of four weeks from the date of receipt of the representation that may be submitted by the petitioner, affording him an opportunity of hearing for that purpose.

12. In terms of the said order of the Court dated 31.01.2019 passed in WP(C) No. 3328/2016 and after hearing the petitioner on 06.04.2019, the respondent APDCL vide No. MD/APDCL/Law Cell/28/2012/235 dated 10.04.2019 considered to pay interest for the belated payment of gratuity to the petitioner from 10.02.2016 i.e., the date from which the respondent APDCL granted him the gratuity to 05.04.2016, i.e., the date on which the gratuity was actually paid to him as per the applicable rate and the relevant Rules on the amount of gratuity that was paid to the petitioner on 05.04.2016.

13. Being aggrieved with the same, the petitioner filed a representation before the authorities in the APDCL on 29.04.2019 claiming interest on the amount of gratuity that was paid to him on 05.04.2016 amounting to Rs. 2,50,000/-.

14. However, the respondents in the APDCL rejected such claim of the petitioner regarding the belated amount of interest towards payment of gratuity paid to him beyond the period from 10.02.2016.

15. Hence, this writ petition by the petitioner, praying for a direction to the respondent authorities in the APDCL to dispose of the representation of the petitioner dated 29.04.2019 within a specific period as per Rule 68 of the Central Civil Service (Pension) Rules, 1972.

16. The petitioner has annexed copy of the order dated 31.01.2019 passed in WP(C) No. 3328/2016 (*Bhuban Chandra Gogoi -Vs.- Assam Power Distribution Company & 4 Others*), as Annexure-4 in the present petition that was preferred by him.

17. It is seen that the Court in the order dated 31.01.2019 passed in WP(C) No. 3328/2016 considered the provisions of Section 4 (1) (6) of the Payment of Gratuity Act, 1972 as well as the relevant provisions of Rule 68 of the Central Civil Services (Pension) Rules, 1972 pertaining to the grant of interest for the belated payment of gratuity and came to the finding that — “..... gratuity is payable to a person as a matter of right, who had rendered continuous service for not less than five years, upon his superannuation or retirement or resignation or on his death or disablement due to accident or disease, but it may be forfeited wholly or partially if the termination involves activities mentioned under Sub-Section 6 of Section 4.”

18. In the said order dated 31.01.2019 passed in WP(C) No. 3328/2016, the Court found that —

“..... if an employee is terminated from service on the ground that he committed an offence involving moral turpitude, which was committed in course of his employment, the right to get gratuity ceases to be a vested right and becomes a matter of discretion of the employer concerned to grant.

In other words, authority may withhold payment of gratuity wholly or partly depending on the circumstance of a case in respect of an employee whose services has been terminated on account of commission of an offence involving moral turpitude.”

19. The Court also found that the petitioner was imposed with the punishment of compulsory retirement on the ground of moral turpitude. As such, by the said order dated 31.01.2019, the Court expressed that the petitioner did not have the right to claim gratuity as a matter of right and could get it, only if offered by the employer, considering that as the petitioner was compulsorily retired on 31.01.2019 on the ground of moral turpitude, the payment of gratuity was not due to him, but it became due only from the date when the employer decided to grant him, i.e., w.e.f. 10.02.2016, as being considered by the APDCL in its order dated 10.04.2019, noted above.

20. Further, by the said order dated 31.01.2019 passed in said WP(C) No. 3328/2016, the Court found that the respondent authorities in the APDCL did not initially grant gratuity at the time of compulsory retiring the petitioner and to that extent it was refused. But the respondent APDCL decided to give gratuity only when the Court vide order dated 26.11.2015 passed in WP(C) No. 883/2012 interfered with the order of the respondent APDCL dated 12.12.2011 rejecting the payment of gratuity to the petitioner and as such by order dated 31.01.2019, the Court came to the conclusion that gratuity was not due to the petitioner at the time of his compulsory retirement and further, Rule 68 of the Payment of Gratuity Act, 1972 is not attracted in the case of the petitioner, as he did not have a vested right to claim gratuity and that gratuity was granted to the petitioner at the discretion of the respondent authorities in the APDCL in terms of Sub-Section 6 of Section 4 of the Payment of Gratuity Act, 1972.

21. The Court by order dated 31.01.2019 passed in WP(C) No. 3328/2016 specifically found that the petitioner did not have a vested right to claim interest on the belated payment

of gratuity as a matter of right since it was not 'due' to him when he was compulsorily retired on 31.01.2019 on the ground of moral turpitude, where Sub-Section 6 of Section 4 of the Payment of Gratuity Act, 1972 provides that it is the discretion of the employer to grant gratuity wholly or partly. Further, by the said order dated 31.01.2019 the Court categorically observed that it is at the discretion of the employer to grant interest for the belated payment or not for which Writ of Mandamus cannot be specifically issued directing the respondents to grant interest on the belated payment that is within the wisdom of the respondents to grant the same, if the petitioner so makes a request to the respondents for it.

22. Though the petitioner in terms of the said order of the Court dated 31.01.2019 passed in WP(C) No. 3328/2016 filed a representation for the belated payment of gratuity to him from the date of his compulsory retirement, i.e., w.e.f. 31.10.2008, but the respondent authorities in the APDCL vide order dated 10.04.2019, exercising its discretion, decided to grant such belated payment of gratuity only from the date it was given effect by the respondent APDCL on 10.02.2016 to the date in which it was actually paid to him on 05.04.2016, as noted above.

23. On being enquired, Mr. Hazarika, learned counsel appearing on behalf of the petitioner, on instruction submitted that the petitioner did not prefer any appeal/review before the appropriate forum with regard to the said order dated 31.01.2019 passed by a Co-ordinate Bench of this Court in WP(C) No. 3328/2016.

24. As such, the finding of the Court dated 31.01.2019 passed in said WP(C) No. 3328/2016 regarding the date 'due' from which interest on the belated payment of gratuity to the petitioner was left with the discretion of the department, i.e., respondent APDCL and not from the date when the petitioner was compulsorily retired from service on 31.10.2008, remained intact and the said order of the Court dated 31.01.2019 passed in WP(C) No. 3328/2016 in the meanwhile, attained finality.

25. For the reasons above, the Court is of the opinion that there is no such illegality and/or irregularity with the impugned order No. MD/APDCL/Law Cell/28/2012/235 dated 10.04.2019 of the respondent APDCL, whereby the petitioner was granted interest on the belated payment of gratuity from 10.02.2016 to 05.04.2016 as per the applicable rate and the

relevant Rules on the amount of gratuity that was paid to him on 05.04.2016 and it does not call for any interference.

26. Accordingly, this writ petition, being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant