

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 317 of 2021

Date of Decision: 08.03.2024

1. Shri. Tikendra Singh
2. Shri. W.C.Pakyntein
3. Shri. A.A.Sangma
4. H.B.Passah
5. Shri. Sravan Sonal
6. Shri. Benjamin Khyriem
7. Shri. Mingnan Marak
8. Shri. R.H. Kharpran
9. Shri. Nazrul Islam
10. Shri. T.S.Marwein
11. Smti. Edencia Pathaw
12. Shri. Johny M.R.Marak
13. Shri. Lumlang Kynter
14. Shri. Elias Lamare
15. Smti. Music Nongtdu
16. Shri. Synran Sohtun
17. Smti. Womra Mukhim
18. Shri. Sisir Kumar Das Roy
19. Shri. Robert M Jyrwa
20. Smti. Phidiar Kharjana
21. Smti. Ambrosina Ksing
22. Shri. Jogodish Momin

23. Smti. Phinolis Khyriem
24. Smti. Maffulda Sohklet
25. Shri. Phormimg Lyngdoh
26. Smti. Monica Shullai
27. Smti. Bonsimai Kharmuti
28. Smti. Litri Shabong
29. Smti. S. Shangdiar
30. Shri. Gohen Sangma
31. Smti. Pilorina Sangma
32. Shri. Jinathson A Sangma
33. Smti. Andromery Rodborne
34. Shri. Peterson Sangma
35. Shri. Biren Lamin
36. Shri. Rorence Marak
37. Shri. Joslin Sangma
38. Shri. Niralsan Marak
39. Shri. Kallendra Marak
40. Shri. Stanford Phanwar
41. Shri. Ruseng Marak
42. Shri. Blinder Marak
43. Shri. Supendra R. Marak
44. Smti. Midil Dkhar
45. Smti. Rita Ch. Marak
46. Smti. Hatmon Lyngdoh
47. Shri. Jrim S. Nongdhar
48. Smti. Jentilia Sangma
49. Shri. Sonaki Kyndiah
50. Shri. G.D. Koch
51. Smti. Abrilla B. Marak
52. Shri. Samuel Reenborne

53. Smti. Kalpana Momin
54. Smti. Sujola Marak
55. Shri. Devaswar Sarkar
56. Shri. Akramuz Zaman
57. Shri. A.K. Marbaniang
58. Shri. Fristhing Marak
59. Smti. Pdianglin Phanbuh
60. Smti. Millianda Shylla
61. Smti. Amy.H. Syiem
62. Smti. Marlyn Kharumlong
63. Smti. Justina Nongkynrih
64. Smti. Dorisnora Lyngdoh
65. Smti. Esther Dkhar
66. Shri. Bosterwell Marbaniang
67. Smti. Monica Pohrmen
68. Shri.Khlainbor B Palle
69. Smti. Perinda Mukhim
70. Smti. Mildred Kharmuti
71. Shri. Sunolsing Sangma
72. Smti.Geovita Bamon
73. Shri.A.H.Lyngdoh
74. Shri. Wilzeng M Sangma
75. Shri. Wanbha Kharumnuid
76. Shri. Ivanhoe Dkhar
77. Shri. Wilson Lamare
78. Shri. Kishan Sonar
79. Smti. Deborah Betsy Giri
80. Smti. Pramita Shabong w/o (Lt) Theopilus Langstieh
81. Smti. Edwa F. Jyrwa D/o(Lt) Switlina Jyrwa
82. Smti. Miracle Paswet D/o.(Lt.) Diangtimon Paswet

83. Smti. Miracle Lyngwa S/o.(Lt) M.K. Raswai
84. Smti. Henantha N. Marak Successor of (Lt.)Winder Sangma
85. Smti. Rani W/o.(Lt.) N.Nongseij
86. Smti. Sirbilis Syiemlieh W/o.(Lt) Dmut Mawlong
87. Smti. Philomina Nongsieij W/o.(Lt.) Arsetsing Kharumnuid
88. Smti. Nasib Bany Nongbet D/o. (Lt.)Md. Mohammed Azam
89. Smti. S.Ch. Marak W/o.(Lt.)Pranton Sangma
90. Smti. Kynti Mary Marwein W/o. (Lt.)Willis Wahlang
91. Smti. Tina Rani W/o.(Lt.)Narbir Chettri
92. Smti. R. Dkhar W/o (Lt.) Ram Bahadur Mongor
93. Smti. Dipali Nag W/o.(Lt.) Sunal Nag
94. Deovalenty Lyngdoh D/o.(Lt.) Elbina Lyngdoh
95. (Lt.) Arsent Ch. Marak

All Care of M/s MECOFED, Lumdiengjri and represented by Shri. Tikendra Singh presently residing at Umpling, East Khasi Hills District, Shillong

:..... **Petitioners**

-VERSUS-

1. State of Meghalaya represented by the Commissioner and Secretary, Cooperation Department, Govt. of Meghalaya.
2. Managing Director, Meghalaya Cooperative Marketing and Consumer Federation (MECOFED), Lumdiengjri, Shillong.
3. The Registrar of Co-operative Societies, Govt. of Meghalaya, Shillong.

:..... **Respondents**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A. Khan, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Mr. E.R. Chyne, GA (For R 1 & 3)
Mr. P. Yobin, Adv. with
Ms. I. Laloo, Adv. (For R 2)

i)	Whether approved for reporting in Law journals etc.:	Yes/No
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ii)	Whether approved for publication in press:	Yes/No
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J U D G M E N T

1. This is an application under Article 226 of the Constitution of India with a prayer for necessary directions to the respondent authorities to pay interest on delayed payment of gratuity which was received by the petitioners and/or their legal heirs.

2. Mr. A. Khan, learned counsel for the petitioners has submitted that the petitioners No. 1 to 79 are retired employees and the petitioners No. 80 to 95 are the legal heirs of some of the deceased employees of the respondent No. 2/MECOFED.

3. According to the learned counsel, the background fact situation of the case is that the Government of Meghalaya has formulated a scheme called the "Voluntary Retirement Scheme/Golden Handshake Scheme" for the employees of the MECOFED which was duly accepted by the petitioners herein.

4. It is also submitted that the petitioners then claimed for gratuity and leave encashment which was denied to them. Being aggrieved, the petitioners then filed two writ petitions, being WP(C) No. 320(SH) of 2010 for grant of leave encashment and WP(C) [SH] No. 154 of 2012 for payment of gratuity under the Payment of Gratuity Act, 1972.

5. The Hon'ble Gauhati High Court (Shillong Bench) [as this Court then was] disposed of WP(C) [SH] No. 154 of 2012 with a finding that the Payment of Gratuity Act, 1972 is applicable to the MECOFED and the respondents therein were accordingly directed to make payment of the same to the petitioners therein, who are also the petitioners herein.

6. The decision in WP(C) [SH] No. 154 of 2012 was assailed before the Division Bench of this Court, after which on being denied relief, a Special Leave Petition (Civil) Dairy No. 35923/2017 was preferred before the Hon'ble Supreme Court and the same was disposed of vide order dated 02.04.2018 when an assurance was given that those persons who have sought voluntary retirement under the Voluntary Retirement Scheme/Golden Handshake Scheme will be paid gratuity.

7. The learned counsel has further submitted that the Government has accordingly sanctioned the amount payable as gratuity to the petitioners on the strength of a communication from the Deputy Secretary to the Govt. of Meghalaya to the Registrar of Cooperative Societies, Meghalaya, dated 02.05.2018, following which the amount due was received by them.

8. The learned counsel has, however, submitted that since there was a delay in the payment of gratuity to the petitioners, they are accordingly

entitled to interest on such period of delay as it is the statutory right provided under Section 7 (3A) of the Payment of Gratuity Act, 1972. The period of delay, if calculated would come to about 15 years, that is, from the date of their being entitled to the same.

9. In support of his contention, the learned counsel has placed reliance on the case of Abdul Kazi Rahman v. GHADC wherein vide judgment dated 18.04.2017 this Court in WP(C) No. 324 of 2016 at para 4, 9, 16, 18 and 19, in the facts and circumstances of the case, has observed and held that the petitioners are entitled to interest on the delayed payment of gratuity as provided under Section 7 (3-A) of the Payment of Gratuity Act.

10. The learned counsel has also cited the following authorities in support of the case of the petitioners:

- i. A.J. Randhawa Supdg. Engineer(Retd.) v. State of Punjab and Others, (1997) 2 CLJ(Service) 324, para 10, 11, 12, 13, 14, 17 & 18;
- ii. Karnail Singh v. The General Manager Bishrampur Area of SECL & Ors., Writ Appeal No. 56 of 2017, order dated 17.03.2017 passed by the High Court of Chhattisgarh, para 3.1, 3.2, 3.3, 3.4, 3.5, 8, 9, 10, 11, 12, 16, 17, 22, 29, 30, 31 & 33.

11. Per contra, Mr. P. Yobin, learned counsel for the respondent/MECOFED, the principal respondent herein would submit that firstly, there has never occasioned any delayed payment of gratuity to the petitioners herein inasmuch as the direction of the Hon'ble Supreme

Court vide its order dated 02.04.2018 in Special Leave Petition (Civil) Dairy No. 35923 of 2017 has directed that the payment of gratuity to the petitioners herein amongst others, be made within one month of the said order. The said direction was duly complied with, the same being admitted by the petitioners and as such, there is no issue of payment of interest on the alleged delayed payment of such gratuity.

12. Another contention raised by the learned counsel for the respondent/MECOFED is that the petitioners, except the petitioner No. 1, who has accepted the payment made under the golden handshake scheme under protest, have all done so without any protest and with a written undertaking that they have voluntarily accepted the same without any conditions.

13. Apart from the fact that the petitioners have concealed this information about them having received the money without any conditions, they have also since retired from service from the year 2004 after opting for the Voluntary Retirement Scheme/Golden Handshake Scheme. Thereafter, having approached this Court for grant of gratuity, which matter have travelled right upto the Supreme Court, throughout the 18 years of litigation, there was no prayer or whisper for grant of interest on such alleged delayed payment of gratuity.

14. The claim of interest after a lapse of 18 years is accordingly hit by the principle of delay and laches and under such circumstances, the principle of constructive resjudicata will operate against the petitioners, further submits the learned counsel.

15. Mr. N.D. Chullai, learned AAG appearing for the State

respondents No. 1 and 3 respectively has effectively endorsed the submission of the learned counsel for the respondent/MECOFED.

16. This Court has given careful consideration of the case of the parties presented herein. As could be understood, the petitioners have admitted to have received the gratuity after it was sanctioned on 02.05.2018, pursuance to the order of the Hon'ble Supreme Court dated 02.04.2018. The petitioners have now approached this Court with a demand for payment of interest on delayed payment of gratuity.

17. The observation of the Apex Court in the case of State of Kerela & Ors. v. M. Padmanabhan Nair reported in (1985) 1 SCC 429 at para 1 would be relevant in the context of the case of the parties before this Court. The same reads as follows:

“1. Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.”

18. In the case of payment of gratuity, the provisions of the Payment of Gratuity Act, 1972 being applicable an employee on his retirement becomes entitled to retiral benefits, gratuity being one of such benefits. In this regard, the provision of Section 7, particularly sub-Section 3 and (3A) is required to be looked into, the provision is therefore reproduced as follows:

*“7. **Determination of the amount of gratuity.**—(1) A person who is eligible for payment of gratuity under this Act or any person*

authorised, in writing to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) ...

[(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify: Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]”

19. It may also be pointed out that the proviso to sub-Section (3A) of Section 7(supra) speaks of two exceptions upon which payment of interest will be denied, the first being the fault of the employee for the delay of such payment and the second is if the employer has obtained permission from the controlling authority for the delayed payment.

20. As has been recounted by the petitioners, the claim of gratuity dates back to the year 2004, when related representation was filed before the appropriate authority claiming payment of gratuity. Without going into details as to what transpired thereafter, suffice it to say that after a long drawn legal battle reaching upto the Supreme Court, apparently, on a concession by the respondent/MECOFED, the Hon’ble Supreme Court was pleased to pass the order dated 02.04.2018 directing that the amount of gratuity be paid within a period of one month from the date of such order.

21. It is also an admitted fact that the amount meant for payment of gratuity to the petitioners herein was sanctioned by the concerned authority and was communicated vide letter No. COD.55/2004/Pt./1294 dated 02.05.2018, which was duly received by the petitioners.

22. What is observed herein is that the petitioners are party and were also present or duly represented in the proceedings before this Court as well as before the Hon'ble Supreme Court when the issue of payment of gratuity was under consideration by the courts. Crucially, on the date of hearing before the Hon'ble Supreme Court, that is, on 02.04.2018, when direction for payment of gratuity was issued, that date is seen as the day on which the order for payment of gratuity was issued. That the appropriate authority made payment of the same about a month or so later, thus complying with the direction of the Hon'ble Supreme Court, it can safely be assumed that there was no delay in such payment of gratuity. In fact, by making payment within the stipulated one month's period, the provision of Sub-Section 3 of Section 7 of the Payment of Gratuity Act has been complied with.

23. Even if the above is found not tenable, the other factor that has to be considered is that during the hearing of the matter before the High Court or even before the Supreme Court, the petitioners have not made any prayer for grant of interest on any alleged delayed payment of gratuity. After having received the amount of gratuity in the year 2018, the petitioners have approached this Court with a prayer for grant of such interest only in the year 2021, without any explanation of why they have approached this Court after three years. Though there is no limitation period for filing of a writ petition under Article 226 of the Constitution of

India, yet if there is no satisfactory explanation of the delay in filing such petition, the principle of delay, laches and acquiescence will come into play, which is seen in the case herein.

24. Though there is no quarrel as regard the applicability of the provision of Section 7(3) and (3A) of the Payment of Gratuity Act, 1972 as to its mandatory and statutory nature, however, from what has been indicated hereinabove regarding the conduct of the petitioners throughout the related proceedings, the first exception found in the proviso to sub-Section (3A) of Section 7 pointing to the fault of the employee can be deemed to be applicable in this instant case.

25. The authorities relied upon by the petitioners are valid and could not be controverted as to the law and ratio laid down therein, however, the same could not be applied to the case in hand under the peculiar facts and circumstances present.

26. This Court is, therefore, in agreement with the contention and submission of the learned counsel for the respondent/MECOFED and accordingly, no merit is found in this case. The same is hereby dismissed.

27. Petition disposed of. No costs.

Judge

Meghalaya
08.03.2024
"Tiprilynti-PS"