



Serial No.01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No. 48 of 2024

Reserved on: 13.08.2024
Pronounced on: 16.08.2024

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1. Shri. Tikendra Singh
 2. Shri. W.C. Pakyntein
 3. Shri A.A. Sangma
 4. H.B. Passah
 5. Shri. Sravan Sonar
 6. Shri. Benjamin Khyriem
 7. Shri. Mingnan Marak
 8. Shri. R.H. Kharpran
 9. Shri. Nazrul Islam
 10. Shri. T.S. Marwein
 11. Shri. Edencia Pathaw
 12. Smti. 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 Sohket
 25. Shri. Phorming 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
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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
81. Smti. Edwa F. Jyrwa
82. Smti. Miracle Paswet
83. Smti. Miracle Lyngwa
84. Smti. Henantha N. Marak
85. Smti. Rani
86. Smti. Sirbilis Syiemlieh
87. Smti. Philomina Nongsiej
88. Smti. Nasib Bany Nongbet
89. Smti. S. Ch. Marak
90. Smti. Kynti Mary Marwein
91. Smti. Tina Rani
92. Smti. R. Dkhar
93. Smti. Dipali Nag
94. Deovalenty Lyngdoh
95. (Lt.) Arsent Ch. Marak

...Appellants

- 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 S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Appellants	: Mr. A. Khan, Adv. Mr. S.A. Sheikh, Adv.
For the Respondents	: Mr. N.D. Chullai, AAG with Mr. E.R. Chyne, GA [For R 1&3] Mr. P. Yobin, Adv. [For R 2]

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

J U D G M E N T

(Made by Hon'ble, the Chief Justice)

This appeal has been preferred against the judgment and order dated 08.03.2024, passed by the learned Single Judge in WP(C) No. 317 of 2021, by which the request of the employees for payment of interest on the delay of payment of gratuity, was negative.

2. It is the case of the Employees/Appellants herein that they had approached the Controlling Authority under the Payment of Gratuity Act, 1972 [in short 'the PG Act'] and after hearing the parties,



the Controlling Authority ordered gratuity payable to the employees. Aggrieved by the said order, the employer preferred a review before the Controlling Authority without filing an appeal and the review was ordered.

3. In terms of Section 7(7) of the PG Act, the employer should have preferred an appeal. Unfortunately, the Controlling Authority has allowed the review and deprived gratuity to the employees. Since the order was blatantly illegal, the employees have approached this Court by way of WP(C) [SH] No. 154 of 2012 challenging the order of the Controlling Authority in reviewing the order-in-original dated 30.07.2010. The writ petition was allowed and the employer was directed to pay gratuity. The employer was unsuccessful in the intra-court appeal and the matter went up to the Supreme Court. Before the Supreme Court, the employer had agreed to pay gratuity and the same was recorded in the order dated 02.04.2018 in SLP (Civil) Diary No.35923/2017, which is extracted hereinunder:

“Delay in filing the Special Leave Petition is condoned.

Mr. Vijay Hansaria, learned Senior Counsel appearing for the petitioner states that the petitioner-company shall pay the amount of gratuity to the persons who have sought Voluntary Retirement under the Voluntary Retirement Scheme/Golden Handshake Scheme.

This statement is recorded.



In respect of leave encashment, notice is issued.

Notice is accepted by Mr. Gaurav Agrawal, learned counsel for the respondents. He may file reply within three weeks.

Rejoinder affidavit may be filed within a week thereafter.

List immediately thereafter.

The payment of leave encashment shall not be made for a period of six weeks.

However, the amount of gratuity shall be paid to the respondents within a period of one month from today.”

4. After the order of the Supreme Court, the employer had paid gratuity to the employees. Since the payment of interest was not given by the employer, the employees have demanded interest and they have approached this Court by way of WP(C) No. 317 of 2021 which was rejected by the learned Single Judge on the ground that there is no satisfactory explanation on the delay in filing such petition and also on the ground of delay and laches, holding that after receipt of money in the year 2018, the writ petition was filed in 2021. Aggrieved by the order dated 08.03.2024 passed by the learned Single Judge, the instant Writ Appeal has been preferred.

5. Before going into the merits of the matter, we feel it appropriate to extract the relevant portions of Section 7(3A) and Section 8 of the PG Act are extracted below:



“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) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined.

(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.”

“Notification under Section 7(3-A) of the Payment of Gratuity Act: S.O. 874--In exercise of the powers conferred by subsection (3A) of Section 7 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies ten percent per annum at the rate of simple interest payable or the time being by the employer to his employees in cases where the gratuity is not paid within the specified period. This Notification shall come into force on the date of its publication in the



Official Gazette (vide the Gazette of India, Extraordinary, P.II, Section 3(i) dated 1st October, 1987 at p.2)”

“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.”

“Notification under Section 8 of the Payment of Gratuity Act:- S.O.1032(E). - In exercise of the powers conferred by Section 8 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies 15 per cent per annum as the rate of compound interest, recoverable by the Collector for the time being, along with the amount of gratuity and payable to the person entitled thereto. This notification shall come into force on the date of its publication in the Official Gazette.”

6. A reading of Section 7(3A) of the PG Act makes it clear that, the employer will have to pay interest @ 10% p.a., in case the amount is not paid within the stipulated time, namely, 30 days. The employees can



approach the Controlling Authority for determination of the payment of gratuity payable to them, in case of no response on the application made by them or after getting a reply from the employer.

7. In the case on hand, the factum of payment of gratuity is admitted, which had also attained finality. Though it has been contended by the employer that the employees ought to have approached the Controlling Authority for the purpose of claiming interest without prejudice to their rights and according to the employer, there is no need to pay any interest for the reason that the employees have already given up their right in claiming interest.

8. We are not inclined to accept the said contention of the employer for the simple reason that as when there is an admitted fact with regard to payment of gratuity, there is no need to relegate the employees to go before the Controlling Authority after a lapse of 20 years, as the gratuity was due as early as in 2004 itself.

9. Mr. P. Yobin, learned counsel for the employer/R2 herein contended that the application for payment of gratuity had been filed with a delay of five years and when there was no plea with regard to payment of interest at any point of time, the claim of the employees seeking payment of interest is not justified. Learned counsel, in support



of his contention, has relied upon a judgement of the Madras High Court dated 28.07.2021 made in the case of ***The Management of Jaigopal Garodia Vivekananda Vidyalaya v. R. Poornachandran & anr*** passed in ***W.P.Nos.15871 and 15872 of 2020***, in which one of us (CJ) is a party, wherein, the claim of interest was deprived.

10. Learned counsel for the employees/appellants herein submitted that gratuity had been directed to be paid in terms of Section 7 and the entire Section is required to be read as a whole and not in isolation and upon going by a harmonious reading, gratuity has to be necessarily paid in accordance with the provisions of the PG Act.

11. A reading of the order dated 28.07.2021 of the Madras High Court in the case of ***The Management of Jaigopal Garodia Vivekananda Vidyalaya (supra)***, would reveal that the order of the Controlling Authority was challenged and the matter has been remanded back to the Controlling Authority and the Court has held that the employees cannot treat the Court as a gambling place to get the benefit. The issue of laches was considered by the Court and the matter was remanded to the Controlling Authority in that case. However, the order of the Madras High Court may not be applicable to the facts of the present case, more so, in the light of the judgment of the Supreme Court



in *D.D. Tewari v. Uttar Haryana Bijli Vitran Nigam Limited* reported in (2014) 8 SCC 894.

12. It is no doubt true that in case there is a delay in filing application, claiming gratuity, interest can be deprived and in terms of Section 7 of the PG Act, once the Controlling Authority passed an order, the employees are entitled to gratuity along with interest. In this case, the Controlling Authority has reviewed the order filed by the employer, which, according to the employees, is not sustained.

13. The provisions of Rule 18(5) of the Payment of Gratuity (Central) Rules, 1972 read as under:

“18. (5) Within 14 days of the receipt of the copy of the Memorandum of appeal, the opposite party shall submit his comments of each paragraph of the Memorandum with additional pleas, if any, to the appellate authority with a copy to the appellant.”

14. The parties are entitled to raise additional pleas before the Appellate Authority. In this case, admittedly, both parties have not approached the Appellate Authority either aggrieved by the original order of the Controlling Authority or against the order of review and strangely, the employees have directly invoked Article 226 of the Constitution of India by filing a petition before this Court. If the contention of the employer is accepted that the matter may be remanded



back to the Controlling/Appellate Authority to decide the issue of payment of interest, it will not serve any purpose for the reason that it would amount to multiplicity of proceedings one by one before the Controlling Authority, Appellate Authority, High Court and thereafter Supreme Court. Ultimately, the employer, after conclusion of proceedings before all the Forums, will be forced to deposit the interest amount only in the coffins of the employees and not into the accounts of the employees, which is not the intent of the welfare legislation.

15. The Apex Court in its judgment reported in *(1999) 4 SCC 450* held that when the facts are not in dispute, relegating to an alternate remedy is not required. Payment of gratuity to the employees is a duty cast upon the employer provided the Act is applicable. In this case, the Act is applicable to the employees, which is not disputed by the employer too. The statutory interest payable automatically follows in the absence of payment of gratuity by the employer to the employees within the stipulated time. Gratuity is not a gratis or a bounty, and it has to be paid to the employees for the services rendered by them in case they complete more than five years of continuous service in terms of the PG Act.



16. In terms of Section 7 (3A), the interest on payment of gratuity is 10% per annum from the date it become due till it is actually paid. Section 8 of the PG Act deals with inquiry proceedings and the rate of interest payment under the said Section is 15%. A combined reading of Sections 7 and 8 discloses that the maximum interest on gratuity payable shall not exceed the principal gratuity amount.

17. In this case, by way of filing writ petition, the employees have sought for payment of interest and in any event, the rate of interest payable under Section 7 (3A) or under Section 8, shall not be over and above the principal amount of gratuity as stated supra. The employees have been deprived gratuity in the year 2004 after they were made to leave the respondents under the Golden Handshake Scheme and their retiral benefits were paid only after 15 years in the year 2018.

18. It is pertinent to mention here that the demand of gratuity together with interest is a statutory right, which cannot be deprived to employees. The interest shall be payable along with the principal, in case of delay by the employer as mentioned earlier. In this case, as there is a delay in payment of gratuity, the employees are entitled to the rate of interest as applicable in terms of Section 7 (3A), more so, second proviso to Section 8 of the PG Act. In terms of Section 14 of the PG



Act, payment of gratuity along with interest cannot be taken away by means of an agreement or instrument. It is no doubt true in the present case on hand, the employees have not demanded interest either before the Single Judge or up to the Supreme Court. Of course, the Supreme Court ordered payment of gratuity. Since the Supreme Court had not asserted about the interest on payment of gratuity, the employees cannot be deprived in agitating the relief for interest, as the question of acquiescence may not be applicable, when there is a statutory duty cast upon the employer to pay the amount.

19. The Constitution Bench in a decision reported in **(2002) 2 SCC 244: Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma**, at paragraph 13 held that no provision in the enactment can be made redundant and each provision is meant for a specific purpose. For ready reference, paragraph 13 is extracted below:

“13. ... It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision ... The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. ...”

20. If the employees are deprived of gratuity, it runs counter to the Constitution judgment and the Legislation itself. Of course, for the



delay in claiming interest, more so after receiving the amount in 2018 and agitating the claim in 2021, we are of the view that the employees will have to be deprived interest to some extent, but not in its entirety. Otherwise, after the period of destruction of records by the employer, who has to maintain records for a particular period, the employees may approach the Authority for redressal. He/she may not have worked or worked for a required number of days, it would be difficult for the employer to prove his case. Taking note of the judgment of the Supreme Court in *Krishna District Co-operative Marketing Society Limited, Vijayawada v. N.V. Purnachandra Rao & ors* reported in (1987) 4 SCC 99, there shall be an amendment to PG Act prescribing the maximum time limit for claiming interest on gratuity. For the sake of convenience, the relevant passage of the said judgment is extracted hereunder:

“11. We may incidentally observe that the Central Act itself should be suitably amended making it possible for an individual workman to seek redress in an appropriate forum regarding illegal termination of service which may take the form of dismissal, discharge, retrenchment etc. or modification of punishment imposed in a domestic enquiry. An amendment of the Central Act introducing such provisions will make the law simpler and also will reduce the delay in the adjudication of industrial disputes. Many learned authors of books on industrial law have also been urging for such an amendment. The State Act in the instant case has to some extent met the above demand by



enacting section 41 providing for a machinery for settling disputes arising out of termination of service which can be resorted to by an individual workman. **In this connection we have one more suggestion to make.** The nation remembers with gratitude the services rendered by the former Labour Appellate Tribunal which was manned by some of our eminent Judges by evolving great legal principles in the field of labour law, in particular with regard to domestic enquiry, bonus, gratuity, fair wages, industrial adjudication etc. The Industrial Disputes (Appellate Tribunal) Act, 1950 which provided for an all-India appellate body with powers to hear appeals against the orders and awards of Industrial Tribunals and Labour Courts in India was repealed in haste. If it had continued by now the labour jurisprudence would have developed perhaps on much more satisfactory lines than what it is today. There is a great need today to revive and to bring into existence an all- India Labour Appellate Tribunal with powers to hear appeals against the decisions of all Labour Courts, Industrial Tribunals and even of authorities constituted under several labour laws enacted by the States so that a body of uniform and sound principles of Labour law may be evolved for the benefit of both industry and labour throughout India. Such an appellate authority can become a very efficient body on account of specialisation. There is a demand for the revival of such an appellate body even from some workers' organisations. **This suggestion is worth considering.** All this we are saying because we sincerely feel that the Central Act passed forty years ago **needs a second look** and requires a comprehensive **amendment.**"

21. The Industrial Disputes Act, 1947 did not have a specific time limit for the workman to question the non-employment. Section 2A of the Act of 1947 was amended on 15.10.2010 prescribing the



maximum time limit of three years. As held by the Supreme Court, we are making only the suggestion and not giving any directions that there should be an amendment.

22. Hence, this Court is of the view that instead of paying interest at the rate of 10% per annum or 15% per annum in terms of the second proviso to Section 8, we restrict the rate of interest to 6% per annum, which means the employees will be entitled to 6% of interest on the principal amount payable by the employer to them.

23. The Apex Court, in a decision reported in **(1993) 3 SCC 214: Central Cooperative Consumers' Store Ltd. vs. Labour Court**, categorically held that the employer will have to pay the amount initially and thereafter can recover the amount from the officers, who are responsible for non-payment of gratuity with interest and the observation reads as follows:

“5. Public money has been wasted due to adamant behavior not only of the officer who terminated the services but also due to cantankerous attitude adopted by those responsible for pursuing the litigation before one or the other authority. They have literally persecuted her. Despite unequal strength the opposite-party has managed to survive. We are informed that the opposite-party has been reinstated. This was put forward as bona fide conduct of petitioner to persuade us to modify the order in respect of back wages. Facts speak otherwise. Working life or opposite-party has been lost in this tortious painful litigation of more than twenty years. That for such thoughtless acts of its



officers the petitioner-society has to suffer and pay an amount exceeding three lakhs is indeed pitiable. But considering the agony and suffering of the opposite-party that amount cannot be a proper recompense. We, therefore, dismiss this petition as devoid of any merit and direct the petitioner to comply with the directions of the High Court within the time granted by it. We however leave it open to the society to replenish itself and recover the amount of back wages paid by it to the opposite-party from the personal salary of the officers of the society who have been responsible for this endless litigation including the officer who was responsible for terminating the services of the opposite-party. We may clarify that the permission given shall have nothing to do with the direction to pay the respondent her back wages. Step if any to recover the amount shall be taken only after payment is made to the opposite-party as directed by the High Court.”

24. Admittedly, in the present case, there is a delay in claiming interest and there was no plea seeking interest in the earlier round of litigation. As stated earlier, gratuity is not a gratis or bounty, but a duty cast upon the employer to pay the same to the employees. The monetary value of 2004 has drastically come down in 2024. Hence, we are of the view that in the present set of facts, the interest on gratuity at the rate of 6% per annum on the entire principal amount shall be paid to the employees by the employer within a period of four months from the date of receipt of a copy of this judgment. It is made clear that if the amount is not paid within the time stipulated supra, the respondents shall at first pay the interest amount and thereafter, recover the interest



portion (that was paid beyond the specified time supra) from the officers concerned, who are responsible to comply with the orders of this Court in respect of disbursement of amount in time.

25. Accordingly, with the above observations and directions, WA No. 48 of 2024 is disposed of.

(B. Bhattacharjee)
Judge

(S. Vaidyanathan)
Chief Justice

PRE-DELIVERY JUDGMENT IN
WA No.48 of 2024

