

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No.116 of 2014**

Vandana Vidhut Limited, through its President (Commercial), Sirgitti
Industrial Area, Sector-B, Bilaspur (CG)

---Petitioner

Versus

1. Appellate Authority under the Payment of Gratuity Act, 1972 and
Dy. Labour Commissioner, O/o. Labour Commissioner, Raipur
(CG)
2. P.T. Rao, C/o. P. Kurmaiya, Makan No.152, Ward No.38, RNT
Lane, Hemu Nagar, Bilaspur (CG)

---Respondents

For Petitioner : Mr.Vaibhav Shukla and MsAshtha
Sharma, Advocates

For Respondent No.1 : Mr.Varun Sharma, Panel Lawyer

For Respondent No.2 : Mr.Gary Mukhopadhyay, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

16/12/2015

1. In the present writ petition, the only question of interest is involved.
2. The petitioner has filed this writ petition questioning the amount of
interest awarded on the amount of gratuity.
3. Ms Ashtha Sharma, learned counsel appearing for the petitioner,
would submit that amount of gratuity has already been determined
by the Controlling Authority and amount of gratuity so determined
has already been deposited on 4.9.2013, therefore, no amount of

interest is payable to respondent No.2.

4. At this stage, it would be appropriate to notice Section 7 (3) of the Act of 1972, which mandates the payment of gratuity by the employer to the employee within the period specified in sub-section (3), which states as under:-

7. Determination of the amount of gratuity.-

- | | | | |
|-----|---|-----|-----|
| (1) | xxx | xxx | xxx |
| (2) | xxx | xxx | xxx |
| (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. | | |

5. Section 7 (3A) of the Act of 1972 provides as under:-

“7(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, be 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.”

6. Thus, the aforesaid provision makes the employer liable to pay amount of gratuity within 30 days from the date it becomes payable to the employee and once there is default in payment of gratuity within 30 days, the statutory liability of the employer comes in and employer is liable to make payment of interest on amount of gratuity not exceeding the rate notified by the Central Government from time to time by virtue of the provision contained in Section 7 (3A) of the Act of 1972.

7. The question of interest payable under sub-section (3A) of Section 7 of the Act of 1972 came to be consideration before the Supreme Court in the matter of **H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd.**¹, in which Their Lordships have held in no uncertain term that interest on delayed payment of gratuity is mandatory, it is a statutory compulsion and pertinently observed as under:-

“7. It is evident from [Section 7\(2\)](#) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to 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 of gratuity. Under [Section 7\(3\)](#), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under sub-section 3(A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-section (3), he 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; 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 that ground. From the provisions made in [Section 7](#), a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. However, under the proviso to [Section 7\(3A\)](#), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. Under [Section 8](#), provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the person entitled. A penal provision is also made in [Section 9](#) for non-payment of gratuity. Payment of gratuity with or without interest as the case may be, does not lie in the domain of discretion but it is a statutory compulsion. Specific

1 (2003) 3 SCC 40

benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in [State of Kerala & Ors. vs. M.-Padmanabhan Nayyar](#) [(1985) 1 SCC 429]. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3A) was added to [Section 7](#) by an amendment, which came into force with effect from 1st October, 1987. In the case of [Charan Singh vs. M/s. Birla Textiles and Another](#) [(1988) 4 SCC 212], this aspect was noticed in the following words: (SCC pp.214-15, para 4)

"4. There was no provision in the Act for payment of interest when the same was quantified by the Controlling Authority and before the Collector was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about the incorporation of sub-[section 3\(A\)](#) in [Section 7](#). That provision has prospective application."

9. It is clear from what is extracted above from the order of learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled for payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to [Section 7\(3A\)](#) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of [Section 7](#) to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case amount of gratuity payable was not paid by the employer in terms of [Section 8](#) of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to [Section 7\(3A\)](#), no discretion was left to deny the interest to the appellant on belated payment of gratuity...."

7. In view of the provision contained in sub-section (3A) of Section 7 of the Act of 1972 and statement of law laid-down by the Supreme Court in the matter of **H. Gangahanume Gowda (supra)**, I do not

find any jurisdictional error in the impugned order holding that respondent No.2 is entitled for 10% interest on the amount of gratuity of ₹ 45,346/- from the date of retirement till the date of actual payment by the petitioner.

17. The writ petition being without substance is liable to be and is hereby dismissed. No order as to cost(s).

**Sd/-
(Sanjay K. Agrawal)
JUDGE**

B/-