

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.5485 OF 2002

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ORDER:

This writ petition is filed challenging the order dated 08.02.2002 passed in Application No.37/2001, by the 1st respondent confirming the order dated 23.10.2000 passed by the Controlling Authority with regard to payment of Gratuity, wherein the Controlling Authority held that the 2nd respondent is entitled for payment of gratuity amount of Rs.79,407.90 together with simple interest @ 10% p.a. for the period of delay in payment of gratuity i.e., for the period from 17.05.1999 to 23.10.2000 amounting to Rs.11,249/- and further interest till the date of actual payment of gratuity amount to the concerned.

The case of the petitioner is that it is a Mining Industry engaged in Exploration, Excavation, Extraction and selling of coal in four districts of Andhra Pradesh, namely, Khammam, Warangal, Karimnagar and Adilabad. It employs nearly more than 1,00,000 workers/employees and executives in its day to day operations and that since the Mines are located in remote and inaccessible area and in order to keep the workers and officers satisfied, it has constructed residential quarters which were allotted as per the terms and conditions laid down in the allotment orders. One of the important conditions is that once an employee retires, he has to handover the quarter and the settlement of terminal benefits are consequent upon the same. Since several employees tend to overstay in the quarters beyond retirement period, a settlement was entered under Section 12(3) of the Industrial Disputes Act by the management and Union on 03.01.1999. As per the aforesaid

terms and conditions the 2nd respondent was also allotted quarter. While so, the 2nd respondent left the company service on 16.05.1999. But, since the 2nd respondent has not vacated the quarter even after relieving from service, his gratuity amount was withheld by the petitioner. As such, the 2nd respondent filed an application before the Controlling Authority requesting for issue of direction for payment of his gratuity amount and the Controlling Authority after considering various Judgments held as follows;

“As per the provisions of the Law and findings of the hearings held in the case, I hereby decide that the gratuity amount of Rs.79,407.90 payable to the applicant be paid to him in full together with simple interest at the rate of 10% p.a. for the period of delay in payment of gratuity i.e., for the period from 17.05.1999 to 23.10.2000, amounting to Rs.11,249/- and further interest till date of actual payment of gratuity amount to the concerned.”

Aggrieved by the afore said order passed by the Controlling Authority, the petitioner herein preferred an appeal before the Appellate Authority in Application No.37/2001 which was dismissed by the Appellate Authority on 08.02.2002, directing the appellant management to pay the simple interest @ 10% for the period from 24.10.2000 to 29.11.2001 which comes to Rs.8,603/- within 30 days from the date of receipt of the order under intimation to the Controlling Authority and Appellate Authority. Aggrieved by the same, present writ petition is filed stating that the delay in payment of gratuity is not on account of the petitioner, but it is only on account of the 2nd respondent who failed to vacate the quarter, as such, awarding of interest is erroneous and illegal.

Heard Sri J.Srinivasa Rao, learned standing counsel for the Singareni Collieries appearing for the petitioner.

Though notice is served on the 2nd respondent, none appeared on his behalf.

Learned counsel for the petitioner submits that both the Controlling Authority as well as Appellate Authority has not considered the aspect that the delay in payment of gratuity is only on account of the 2nd respondent who failed to vacate the quarter. He also relied on the Judgment in ***Union of India v. Ujagar Lal*** [\[1\]](#).

In the present case the admitted fact is that the 2nd respondent has not surrendered the quarter immediately after relieving from the service of the petitioner company. The said aspect is not considered by both the authorities as rightly contended by the learned counsel for the petitioner.

Further, in the Judgment relied on by the petitioner in **Union of India v. Ujagar Lal case** the Supreme Court held as follows;

“The admitted position is that the respondent was unauthorisedly in occupation of the quarter allotted to him and, therefore, he was not paid death-cum-retirement gratuity since the respondent had remained in possession unauthorisedly for more than two years. This question was considered by this Court in *Raj Pal Wahi v. Union of India* and held that in those circumstances, the Court was unable to hold that the petitioners are entitled to get interest for the delayed payment of death-cum-retirement gratuity as the delay in payment occurred due to the order passed on the basis of the said circular of the Railway board and not on account of administrative lapse. In this case, in view of the circular issued by the administration directing not to make payment of death-cum-retirement gratuity till the retired employee surrenders possession, the delay in payment was not due to any administrative lapse but on account of the circular issued by the Board. Under these circumstances,

the respondent is not entitled to the interest as directed by the Tribunal.”

In view of the above judgment relied on by the petitioner, the vital aspect that the delay in payment of gratuity is not on account of the petitioner, but it is only on account of the 2nd respondent who failed to vacate the quarter of the matter, is not considered by both the authorities while awarding interest which is not justified and the petitioner cannot have any grievance regarding payment of gratuity. Further, this Court does not find any reason to disturb the payment of principal amount towards gratuity to the petitioner. But, in view of the aforesaid Judgment of the Supreme Court relied on by the petitioner, the order passed by the 1st respondent, to the extent of directing the petitioner herein to pay interest for the delayed payment of gratuity @10% p.a, is set aside.

Accordingly, the writ petition is allowed in part as indicated above. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

09.07.2015
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[\[1\]](#) (1996) 11 Supreme Court Cases 116