IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.19708 of 2014 (O&M)
Date of decision: 4.2.2015

Managing Director, DHBVN, Vidut Nagar, Hisar and others

... Petitioners

versus

The Appellate Authority and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Amit Kumar, Advocate, for
Ms.Dilraj Kaur, Advocate,
for the petitioners.

...

AMOL RATTAN SINGH, J. (Oral)

CM No.13287 of 2014

Application is allowed. Amended memo of parties is taken on record.

CWP No.19708 of 2014

1. As already recorded in detail in the order dated 9.1.2015, the dispute is with regard to the payment of interest on the delayed payment of gratuity to respondent No.2.

2. The contention of learned counsel for the petitioners is that since there was a charge sheet pending against the said respondent on the date of his retirement on 31.5.2008, the total amount which otherwise would have been payable to the employee, was in dispute and, as a matter of fact, not payable to him because the amount recoverable from him exceeded the amount of gratuity which was payable to him. The contention, therefore, is that in view of the above, no amount was required to be deposited by the

petitioners with the Controlling Authority, in terms of Section 7(4)(a) of the Payment of Gratuity Act, 1972. Section 7 of the Act is reproduced, in extenso, hereunder:-

> **"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 of 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.

(4)(a). If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit-

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(7) any person aggrieved by an order under sub-section (4) may, within sixty days from the date of receipt of the order, prefer an appeal to the appropriate Government or such other

authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the decision of the controlling authority."

It is not in dispute that the charge sheet issued to respondent No.2 was eventually dropped on 27.4.2011. On query, learned counsel submits that the charge sheet was dropped because it was found that two persons other than respondent No.2 were actually responsible for the loss caused to the petitioners and as such, respondent No.2 was not responsible for the same. Learned counsel further contends that, consequently, gratuity as was payable to the said respondent was paid to him on 11.8.2011.

3. I do not find any substance in the argument raised on behalf of the learned counsel, despite strenuous arguments made by him, in view of the fact that, admittedly, the charge sheet against respondent No.2 had not concluded with any finding of recovery to be made from him. Further, as to whether the amount sought to be recovered was actually to be recovered from him or not would only have been authoritatively decided upon the result of the charge sheet, which was actually dropped, being without any basis. As such, the amount of gratuity to be paid to respondent No.2 was, obviously, disputed at the time of his retirement, with a charge sheet pending against him at that time and was, therefore, required to be deposited with the Controlling Authority, in terms of Section 7(4)(a) of the Act, which was, admittedly, not done.

4. Learned counsel next contended that respondent No.2 did not file an application within time, in terms of Section 7(1) of the Act.

5. However, a perusal of the provision shows that though Section 7(1) casts a duty on the employee to apply to the employer for payment of gratuity, Section 7(2) shifts the responsibility wholly on to the employer, to determine the amount of gratuity payable to the employee, <u>whether an application referred to in sub-section (1) has been made or not by the employee</u>.

Thereafter, upon such determination of the amount of gratuity, as per Section 7(2), the employer is bound to give notice in writing to the person to whom gratuity is payable, <u>as also to the Controlling Authority</u>, specifying the amount of gratuity determined.

6. Thus, under no provision of Section 7, in the present case, did

the onus shift from the petitioners to calculate the gratuity payable to respondent No.2, and to deposit the amount admitted to be payable as gratuity, even in the absence of any application made by him.

As already noticed earlier, during pendency of the charge sheet against respondent No.2, the question of no gratuity being payable, at all, did not arise, unless such finding came about in enquiry proceedings duly concluded against respondent No.2, which, admittedly, was not done, the charge sheet having been dropped.

7. Learned counsel next submits that the amount as was ordered to be paid by the Controlling Authority has already been paid to respondent No.2, however, the amount enhanced by the Appellate Authority has not been paid, as the enhanced amount is not justified.

It is to be noticed here that the Controlling Authority, vide its order dated 30.8.2013, held that respondent No.2 is entitled to gratuity of an amount of Rs.5,14,399/- but had limited the amount of interest thereupon to Rs.46,296/-, holding that since the application by respondent No.2 was made only on 30.10.2010, he cannot be granted interest for the period before that date, even though the gratuity became due to him on 31.5.2008.

The Appellate Authority, on the other hand, vide its order dated 23.7.2014, held that once the Controlling Authority had condoned the delay in filing the claim petition (wrongly referred to as appeal in the concluding para of the order), there was no occasion to deny interest for the remaining two years (i.e. from 31.5.2008 till 30.10.2010).

In this regard, it is to be stated that once this court has come to a finding that the onus to calculate gratuity and to pay such amount, to the

Controlling Authority, during pendency of the charge sheet, was on the employer (the petitioners), with effect from the date that respondent No.2 retired, in terms of Section 7(2) and 7(4)(a) of the Act. Therefore, though the reasoning adopted by the learned Appellate Authority is different to what has been now held by this court, the amount of interest payable to respondent No.2 would still run from 31.5.2008, i.e. the date of his retirement, till the date that actual payment was made to him on 11.8.2011.

Hence, the amount awarded by way of interest, of Rs.92,592/-, to respondent No.2, by the Appellate Authority, vide the impugned order dated 23.7.2014, is also upheld.

8. In view of the above, since respondent No.2 was deprived of the amount of gratuity due to him on the date of his retirement on 31.5.2008, for a period of more than three years, I find no infirmity in the impugned orders, as to the entitlement of the 2nd respondent, to the amount ordered to be paid to him. The impugned orders are, therefore, upheld and the writ petition is dismissed.

4.2.2015 **(AMOL RATTAN SINGH)**
pk **JUDGE**