NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No.683 of 2015

M.S. Bhaskaran, S/o Late K. Sankaran, aged 76 years, Ex-chargeman Qr.No. MIG(I) 190, Amdinagar, HUDCO, Bhilai West, Tah. & Distt.Durg (CG)

---Petitioner

Versus

Steel Authority of India Ltd. Through-Its Managing Director (CEO) Bhilai Steel Plant, Bhilai, Tah. & Distt.Durg (CG)

---Respondent

For Petitioner	:	Mr.H.B.Agrawal,Senior Advocate with Mrs.Itu Rani Mukharjee, Advocate
For Respondent	:	Mr.Ashish Surana, Advocate with Mr.T.P.Soni, Assistant Manager (Law), Bhilai Steel Plant, Bhilai

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

22/04/2016

1. The Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter called as "the Act of 1972") by order dated 22.10.2001 directed payment of gratuity of ₹ 19,075/- to the petitioner. In appeal preferred by the respondent herein i.e. Steel Authority of India Limited, the Appellate Authority also directed that an amount of ₹ 19,075/- be returned to the petitioner herein, but declined to grant interest as the respondent has already been deposited the amount with the Appellate Authority. Ultimately, an amount of ₹ 19,075/- has been paid to the petitioner on 20.10.2015.
2. The dispute in the instant writ petition is about the interest. The

amount of ₹ 19,075/- was deducted from the petitioner's account on 5.5.2005, which was already deposited by the respondent herein and after the decision of the Appellate Authority, it was paid to the petitioner on 20.10.2015.

3. Now the petitioner claims interest from 5.5.2005 to 20.10.2015, which the learned counsel for the respondent would submit that the respondent is liable to pay interest only up to 21.7.2014 i.e. date of order of the Appellate Authority.

4. 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

1 (2003) 3 SCC 40

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 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…."

5. Keeping in view the statutory provisions contained in sub-section (3A) of Section 7 of the Act of 1972 and applying the law laid-down by their Lordships of the Supreme Court in the matter of **H. Gangahanume Gowda (supra),** I do not have any slightest hesitation in my mind to hold that failure of the respondent to make payment of amount of gratuity within 30 days from the date it becomes payable to the employee, sub-section (3A) of Section 7 of the Act of 1972 is squarely attracted and payment of interest being statutory and mandatory in nature and thereby the respondent is liable to make payment of interest on the said amount which the Appellate Authority has declined to make payment on the ground that the respondent had already deposited the said amount before the Appellate Authority. Since it was statutory

responsibility of the respondent to make payment of interest, therefore, deduction of such amount from the petitioner's arrears on 5.5.2005 and non-payment of interest is bad and accordingly, the respondent is directed to pay interest to the petitioner on amount of ₹ 19,075/- from 5.5.2005 to 20.10.2015 at the rate of 10%. The petitioner would also be entitled for interest on the amount from 20.10.2015 to the actual date of payment. The petitioner is entitled for cost of ₹ 2000/- from the respondent.

7. Accordingly, the writ petition is allowed to the extent indicated hereinabove.

Sd/-
(Sanjay K. Agrawal)
JUDGE

B/-