

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 224 of 2016**

- Kamleshwar S/o Medra, Aged About 65 Years R/o. Village Gangikot, District Surajpur (Chhattisgarh)

---- Petitioner**Versus**

1. South Eastern Coalfield Limited Through Chairman-Cum- Managing Director, Seepat Road, Bilaspur (Chhattisgarh)
2. Sub Area Manager, South Eastern Coalfield Limited, Bishrampur, Amgaon, Sub Area, Post Bishrampur Colliery, District Surajpur (Chhattisgarh)
3. Controlling Authority Under Payment Of Gratuity Act And Regional Labour Commissioner (Central), Bilaspur, District Bilaspur (Chhattisgarh)

---- Respondents

For Petitioner
For SECL

Mr. K.P. Gupta, Advocate
Mr. H.B. Agrawal, Sr. Advocate along with Mr. Vipin Tiwari, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****29.11.2016**

1. The present Petition has been preferred assailing the order dated 12.11.2015 passed by the Controlling Authority, Payment of Gratuity Act and Regional Labour Commissioner (Central), Bilaspur.
2. Learned Counsel for the Petitioner assailing the said judgment submits that the Petitioner is also entitled for interest on the amount of gratuity payable which has been awarded by the Controlling Authority vide the impugned order and prays for modification in the order to that limited extent.
3. The relevant facts for the adjudication of the present petition is that the Applicant in the instant case was working as foreman in the Open Cast Mine of South Eastern Coalfields Limited, Bishrampur and retired at the age of superannuation on 30.10.2012. Since the Respondent S.E.C.L. did not

release the payment of gratuity payable to the Petitioner he had preferred application for release of the same before the Controlling Authority under the Payment Gratuity Act. The Respondent through their written submission submitted before the Controlling Authority that the Applicant while he was in service has unauthorisedly encroached and occupied land belonging to the S.E.C.L. and further constructed his house on that land and was not vacating therefore the payment of gratuity had been withheld. It was also contended in the reply of the S.C.E.L. before the Controlling Authority that the department had initiated departmental action against the Petitioner but no action could be initiated as he had retired in between.

4. The Controlling Authority vide its impugned order dated 12.11.2015 allowing the application of the Petitioner held that retention of the payment of gratuity is not permissible under the provisions of the gratuity act. The Controlling Authority specifically held that the payment of gratuity is entirely different when compared to the illegal or unauthorized occupation on the land belonging to the SECL is concerned. The Controlling authority therefore vide the impugned order ordered for release of payment of gratuity of Rs. 8,58,883/- to the Petitioner within a period of 30 days. However, the Controlling Authority has not granted interest on the payment of gratuity payable to the Petitioner, leading to the filing of the present Petition.
5. Learned Senior Counsel opposing the Petition submits that the present Petition is not maintainable on account of the fact that there were two avenues open to the Petitioner for redressal of his grievance; first according to the senior Counsel the impugned order being appealable he ought to have preferred appeal under the provisions of Section 7(7) of the Payment of Gratuity Act. Secondly, in case of non grant of interest the Petitioner could have also moved an appropriate review application before the Controlling Authority seeking modification in the order to that limited extent.
6. According to the senior Counsel in absence of availing the aforesaid two remedies the Petitioner cannot straight away file Writ Petition invoking Writ

jurisdiction of this Court when alternative remedies are available to the Petitioner and prayed for dismissal of the present Writ Petition.

7. True it is that the objection of the Senior Counsel appearing for the Respondent appears to be justified, proper and legal, but what is also to be considered is the fact that on a plain perusal of the impugned order dated 12.11.2015 it clearly reflects that the Controlling Authority perhaps also intended to grant interest to the Petitioner but it appears that incidently the term interest is missing from the impugned order as in the operative part of the order it shows that the Petitioner is entitled for the amount of Rs. 8,58,883/- from the Respondent from the date it became payable till the date of payment which impliedly was in context of the interest which the Petitioner was entitled for. It appears that the either it was a clerical error or a minor slip in the course of passing of the impugned order on part of the Controlling Authority in not reflecting interest in the impugned order.
8. Though the impugned order is an appealable order and also the Petitioner could have moved review petition but at this juncture when the issue is grant of interest alone, this Court is of the opinion that it would not serve any purpose if the matter is remanded back to the Controlling Authority or to the Appellate Authority for redressal of his grievance as he has approached this Court with a limited prayer for grant of interest on the said amount of gratuity payable to him.
9. Without entering into the merits of the case leaving open the question of alternative remedy, this Court is of the opinion in the peculiar facts and circumstances of the case that the Petitioner has been held entitled for payment of gratuity and also it has been authoritatively held by the Controlling Authority that withholding of the payment of gratuity by the S.E.C.L. was not proper and legal the Petitioner would in the normal course would also be entitled for interest on the said amount payable to him.
10. The order of the Controlling Authority has not been challenged by the management of S.E.C.L. Thus his claim for Gratuity stands adjudicated and

has also attained finality.

11. It would be trite at this juncture also to refer to Sub-section 3(A) of Section 7 of the Payment of Gratuity Act which reads as under:

“7. Determination of the amount of gratuity -

(3-A) 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.”

12. In the light of the aforesaid provision the Petitioner in the given facts and circumstances is legally entitled for interest on the said amount of gratuity and Accordingly, this Court allows the Petition.

13. Consequently, the impugned order of the Controlling Authority stands modified to the extent that the Petitioner shall also be entitled for simple interest at the rate 6% per annum on the gratuity amount from the date it became payable till the date it was released.

14. The present Petition stands allowed accordingly.

**Sd/-
(P. Sam Koshy)
JUDGE**