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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.1741 of 2002

Secretary, Board of Trustees, NTPC Employees Gratuity Fund,
New Delhi, through General Manager, National Thermal Power
Corp. Ltd. Korba Super Thermal Power Station P.O. Vikas
Bhawan, District Korba.

---- Petitioner

Versus

1. Shri S.N. Bhojasiya, S/o Shri Makhanlal Agrawal, M-623 Vikas Nagar, SECL Colony P.O. Kusmunda, District Korba (CG).
2. The Controlling Authority under Payment of Gratuity Act & Assistant Labour Commissioner, District Korba (CG).
3. The Appellate Authority under Payment of Gratuity Act and Dy. Labour Commissioner, Chhattisgarh Raipur.

---- Respondents

For Petitioner : Mr. Vinod Deshmukh, Advocate
For Respondents: None present, though served

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

04/04/2017

(1) Respondent No.1-Mr. S.N. Bhojasiya was terminated from the post of Vehicle Driver on 22.09.1995 and thereafter he has made an application for payment of gratuity under Section 4 read with Section 7 of the Payment of Gratuity Act, 1972.

(2) The Controlling Authority vide its impugned order dated 07.08.2000 granted an amount of Rs.43,797/- to the respondent No.1 without interest, but later, on 18.09.2001 (Annexure P/2), it

was modified holding that he is also entitled for interest. The petitioner-NTPC depositing an amount of Rs. 43,797/- on 22.06.2001 as per order dated 7.8.2000 towards gratuity to be paid to the workmen. The respondent No.1-Workmen preferred an appeal before the appellate authority under the Payment of Gratuity Act, 1972 claiming that he is entitled for compound interest. By the impugned order dated 10.05.2002, the appellate authority has held that the workmen is entitled for compound interest relying upon the provisions contained in Section 8 of the Payment of Gratuity Act, 1972.

(3) Feeling aggrieved against the impugned order, this writ petition under Article 226 of the Constitution of India has been filed by the petitioner-NTPC.

(4) Mr. Vinod Deshmukh, learned counsel appearing for the petitioner would submit that the respondent No.1 is workmen, therefore, he is not entitled for interest on payment of gratuity as the petitioner's company has already deposited the gratuity amount on 22.06.2001 and no application under Section 8 of the Payment of Gratuity Act, 1972 has been made before the Collector for recovery of the gratuity prior to the order dated 10.05.2002 passed by the Appellate Authority.

(5) None appeared for the respondents, though served.

(6) I have heard learned counsel appearing for the petitioner

and considered his rival submissions made therein with utmost circumspection.

(7) It is not in dispute that the Controlling Authority has directed that the gratuity amount is to be paid, which has been deposited on 22.06.2001 and thereafter by order dated 18.09.2001, the Controlling Authority has also directed for payment of simple interest. Respondent No.1-Workmen has claimed to be paid compound interest upon the gratuity amount.

(8) At this stage, it is appropriate to notice Section 8 of the Payment of Gratuity Act, 1972 which provides as under:-

“8. Recovery of gratuity- If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon [at such rate as the Central Government may, by notification, specify], from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.

(9) A careful perusal of the above-stated provisions, would show that the Controlling Authority is entitled to issue a certificate for amount of gratuity to the Collector on the application made by the persons to issue a certificate for that amount, who shall

recover the same together with compound interest as arrear of land revenue and in that case, the Controlling Authority before issuance of certificate under Section 8 of the Payment of Gratuity Act shall give the employer a reasonable opportunity of showing cause against the issue of such certificate.

(10) Way back in the year 1988, in the case of **Charan Singh v. M/s. Birla Textiles and another**¹, their Lordships of the Supreme Court have clearly held that it is only when the Collector issues a certificate for recovery of the dues as a public demand, then only interest as provided under Section 8 is admissible and it has held as under:-

“The controlling authority had directed interest as provided in Section 8 to be paid which the appellate authority had vacated. From the facts of the case, it is clear that the stage for action under Section 8 had not been reached inasmuch as the appellant had not applied for recovery of gratuity to the Collector. It is only when the Collector issues a certificate for recovery of the dues as a public demand that interest as provided under Section 8 is admissible.

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 realisation. 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

¹ (1988) 4 SCC 212

incorporation of sub-section (3-A) in Section 7. That provision has prospective application.

5. Learned counsel for the appellant tried to rely upon the provisions of the Interest Act and the provisions of Section 34 of the Code of Civil Procedure. We do not find any support for the appellant's stand from either of the provisions. Admittedly, no notice was given demanding interest and the controlling authority is not a court for falling back on Section 34 of the Code. We are satisfied in the facts of the case that the appellant was not entitled to interest on the amount of gratuity found due to him. Since that was the only matter agitated in the appeal with the conclusion indicated, this appeal has to fail and dismissed.”

(11) In the instant case, no such application has been made by the respondent No.1 herein to the Controlling Authority for issuance of certificate and neither opportunity of hearing nor show-cause notice has been given to the petitioner herein. As the gratuity amount has already been deposited by the petitioner, therefore, Section 8 of the Payment of Gratuity Act is not at all attracted and therefore, the compound interest could not have been directed to be paid by the Appellate Authority.

(12) As a fall out and consequence of the aforesaid discussion, the instant writ petition is allowed and the order of the appellate authority dated 10.05.2002 is set-aside and it is held that the respondent No.1 is not entitled for compound interest on gratuity

amount.

(13) The writ petition is allowed to the extent indicated therein.

No other point was urged except above.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-