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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No.835 of 2008

1. South Eastern Coalfields Limited through its Chairman-cum-Managing Director, SECL, Seepat Road, Bilaspur (CG).
2. Sub Area Manager, Banki Sub Area, South Eastern Coalfields Ltd. P.O. Banki, District Korba (CG).

----Petitioners

Versus

1. The Appellate Authority under the Payment of Gratuity Act, 1972, Raipur (CG).
2. The Controlling Authority under the Payment of Gratuity Act, 1972 Assistant Labour Commissioner, Central, Bilaspur (CG).
3. Shri Lala Ram, S/o Shri Sakharam, C/o Mahamaya General Stores, Champa Seoni, P.O.Champa Seoni, District Janjgir-Champa (CG).

---- Respondents

For Petitioners : Mr. Sudhir Kumar Bajpai, Advocate
For State : Mr. Gary Mukhopadhyay, Dy.Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Onder on Board

19.06.2017

- (1) The respondent No.3-Shri Lala Ram herein was retired from the service on 31.12.2003, but the amount of gratuity was not paid to him which persuaded him to file an application for payment of gratuity before the Controlling Authority. The Controlling Authority by impugned order dated 07.03.2006 allowed the application directing the payment of gratuity as well as interest @ 10% per month from 01.01.2004 till date of actual payment.

- (2) Against that order, the petitioners-SECL preferred an appeal before the appellate authority. The Appellate authority by its order dated 21.8.2007 dismissed the appeal holding that the respondent No.3 is entitled for gratuity of Rs.3,22,126/- with simple interest thereon at the rate of 10% per annum for the period from 1.1.2014 to 2.8.2006.

- (3) Feeling aggrieved against that order, the instant writ petition has been preferred by the petitioners-SECL claiming that the interest liability ought not to have been upon the petitioners-SECL as the amount of gratuity was already deposited by the SECL on 07.06.2005 and the petitioner has waived the amount of interest on account of delay on his part in not vacating the quarter due to his family problem, as is evident from Annexure P/5.

- (4) Mr. Sudhir Kumar Bajpai, learned counsel appearing for the petitioners-SECL would submit that since the petitioners have already deposited the gratuity amount of Rs.3,22,126/- before the controlling authority and that the respondent No.3 himself stated vide Annexure P/5 that the delay in not vacating the quarter was on his part and that he shall not claim any interest amount, the fastening of liability of payment of interest on the gratuity amount by the controlling authority as well as affirming the same by the appellate authority is illegal and it deserves to be set-aside.

- (5) On the other hand, Mr. Gary Mukhopadhyay, learned counsel appearing for the State/respondents would oppose the submissions and submit that the statutory provision contained in Section 73-A of 7(1)(A) of the Payment of Gratuity Act is mandatory. In support of his case, he placed the reliance upon the decision of the Supreme Court in the case of **Kerala State Cashew Development Corporation Limited and Another v. N. Asokan** reported in 2009 (16) SCC 758.

- (6) I have heard learned counsel for the parties and perused the impugned order.

- (7) The question for consideration is:- whether the controlling authority as well as appellate authority under the Payment of Gratuity Act is justified in imposing the interest liability upon the SECL or not.

- (8) Section 7 of the Act of 1972 is the key provision which we are concerned in the present case, where the entitlement of statutory interest on gratuity is in dispute. Sections 7(1) to 7(3-A) are also reproduced herein-below for ready reference: -

> "**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.
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> (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.

(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:

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."

(9) A focused and studied perusal of the aforesaid provisions would show that under Section 7 (3) of the Act of 1972, the employer is obliged to make payment of gratuity within 30 days from the date it becomes due to the person to whom the gratuity is payable. So, thirty days' period has been given to the employer to deposit the amount of gratuity once it becomes payable. Sub-section (3-A) of Section 7 provides for consequence of not making payment of gratuity within 30 days from the date it becomes due and the employer is saddled with statutory interest at the simple rate, not exceeding the rate notified by the Central Government. Therefore, once the peremptory provision incorporated in Section 7(3) of the

Act of 1972 is not complied with, the statutory consequence follows and the employer is statutorily bound to make payment of interest to the employee at simple rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as the Government may, by notification specify, as such, the provision is imperative in nature.

(10) The question involved herein is no longer *res integra,* as the question of interest payable under sub-section (3-A) of Section 7 of the Act of 1972 came up for consideration before the Supreme Court in the matter of **H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd.** in which Their Lordships have held in no uncertain terms that payment of interest on delayed payment of gratuity in terms of Section 7(3-A) is mandatory and statutory compulsion, and pertinently observed as under in following two paragraphs of the said report: -

> "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 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(3-A), 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 v. M. Padmanabhan Nair (supra). Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3-A) was added to Section 7 by an amendment, which came into force with effect from 1-10-1987. In the case of Charan Singh v. Birla Textiles 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."
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> 9. ... 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. ..."

(11) The aforesaid judgment has been followed by one of us (Sanjay K. Agrawal, J) in the matter of **Vandana Vidhut Limited, Bilaspur (CG) v. O/o. Labour Commissioner, Raipur (CG) and another**.

(12) The above determination would bring us to the proviso to sub-section (3-A) of Section 7 of the Act of 1972 which provides 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. So, the *sine qua non* to escape payment of statutory interest in terms of proviso to sub-section (3-A) of Section 7 is two fold, firstly, that the delay in payment of gratuity must be attributable to the fault of the employee and secondly, that the employer has obtained permission in writing from the controlling authority for the delayed payment. Unless the above-said two conditions are satisfied, the employer is bound to make payment of interest on the amount of gratuity to the employee who is entitled for gratuity.

(13) Their Lordships of the Supreme Court had an occasion to consider the proviso to sub-section (3-A) of Section 7 of the Act of 1972 in the matter of **Kerala State Cashew Development Corporation Limited and another v. N. Asokan** and it has been held that no permission having been taken by employer from controlling authority for delayed payment of gratuity and provision contained in Section 7 (3-A) being mandatory in nature, sub-section (3-A) of Section 7 is squarely attracted and employer is liable to make payment of interest on delayed amount of gratuity as per the rate specified in Section 7 (3-A), and succinctly observed as under: -

> "4. ... On a plain reading of this provision, as noted hereinabove, it is absolutely clear that if any amount of gratuity, which is payable under Section 7 is not paid by the employer within the period specified in sub-section (3), the employer is liable to pay interest 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, but on those delayed payments, where the employer has obtained permission in writing from the controlling authority for delayed payment, in that case, no such interest shall be payable to the employee. So far as the present case is concerned, no such permission was obtained by the employer in writing from the controlling authority and, therefore, sub-section (3-A) and its term would be squarely applicable in the facts of this case.
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> 5. ... However, considering the aforesaid mandatory provision of Section 7(3-A) of the Act and considering the fact that more than eight years have elapsed since the retirement of the respondent, we are of the view that the High Court was perfectly justified in dismissing the appeal and

> affirming the judgment of the learned Single Judge which also directed payment of interest to the respondent."

(14) Recently, in the matter of **<u>Y.K. Singla v. Punjab National Bank and others</u>**, Their Lordships of the Supreme Court revisited the scope and extent of interest on payment of gratuity amount and condensely held as under: -

> "18.Sub-section (3-A) of Section 7 of the Gratuity Act is the most relevant provision for the determination of the present controversy. A perusal of the sub-section (3-A) leaves no room for any doubt that in case gratuity is not released to an employee within 30 days from the date the same becomes payable under sub-section (3) of Section 7, the employee in question would be entitled to "… simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term loans, as the Government may, by notification specify". There is, however, one exception to the payment of interest envisaged under sub- section (3) of Section 7 of the Gratuity Act. The aforesaid exception is provided for in the proviso under sub-section (3-A) of Section 7. A perusal of the said proviso reveals, that no interest would 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". The exception contemplated in the proviso under sub-section (3-A) of Section 7 of the Gratuity Act incorporates two ingredients. Where the two ingredients contemplated in the proviso under sub-section (3-A) are fulfilled, the employee concerned can be denied interest despite delayed payment of gratuity. Having carefully examined the proviso under sub-section (3-A) of Section 7 of the Gratuity Act, we are of the view that:
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> (i) The first ingredient is that payment of gratuity to the employee was delayed because of some fault of the employee himself.

(ii) The second ingredient is that the controlling authority should have approved such withholding of gratuity (of the employee concerned) on the basis of the alleged fault of the employee himself.

None of the other sub-sections of Section 7 of the Gratuity Act would have the effect of negating the conclusion drawn hereinabove.

23.Based on the conclusions drawn hereinabove, we shall endeavour to determine the present controversy. First and foremost, we have concluded on the basis of Section 4 of the Gratuity Act that an employee has the right to make a choice of being governed by some alternative provision/instrument other than the Gratuity Act, for drawing the benefit of gratuity. If an employee makes such a choice, he is provided with a statutory protection, namely, that the employee concerned would be entitled to receive better terms of gratuity under the said provision/instrument, in comparison to his entitlement under the Gratuity Act. This protection has been provided through Section 4(5) of the Gratuity Act.

25.We, therefore, have no hesitation in concluding that even though the provisions of the 1995 Regulations are silent on the issue of payment of interest, the least that the appellant would be entitled to are terms equal to the benefits envisaged under the Gratuity Act. Under the Gratuity Act, the appellant would be entitled to interest on account of delayed payment of gratuity (as has already been concluded above). We therefore hold that the appellant herein is entitled to interest on account of delayed payment, in consonance with sub-section (3-A) of Section 7 of the Gratuity Act."

(15) The proposition of law laid down in **M. Padmanabhan Nair's** case (supra) and in **Y.K. Singla** (supra) has been followed with approval by Their Lordships of the Supreme Court in the matter of **State of Uttar Pradesh and**

<u>others v. Dhirendra Pal Singh</u>.

(16) Following the principles of law laid down in the aforesaid cases, we are unhesitatingly as well as unreservedly of the considered opinion that unless the delay in payment of gratuity is attributable to the fault of the employee and necessary permission in terms of proviso to sub-section (3-A) of Section 7 of the Act of 1972 is obtained by the employer in writing from the controlling authority for delayed payment, the payment of interest in terms of Section 7 (3-A) of the Act of 1972 is imperative and the employer is statutorily liable to make payment of interest and he cannot escape the liability to make payment of interest on the amount of gratuity.

(17) Applying the principle of law laid down herein-above to the factual matrix of the present case, it is quite vivid that the respondent No.3 had retired from SECL on 31-12-2003 and gratuity amount become due on 31-1-2004, but the same was not paid within one month from 31-1-2004 as required under Section 7(3) of the Act of 1972 and it has been deposited only after the respondent No.3 filed an application before the controlling authority on 7-6-2004. It is the case of the SECL that the respondent No.3 could not submit any document therefore, no interest is payable and further that the gratuity amount was deposited on 7-6-2005. But, the fact remains that no permission was obtained by the employer SECL in writing from the controlling authority for delayed payment on that

ground in terms of proviso to sub-section (3-A) of Section 7 of the Act of 1972 attributing the cause of delay to the respondent No.3 herein and therefore the petitioner-SECL is liable to make payment of interest on the amount of gratuity in terms of sub-section (3-A) of Section 7 of the Act of 1972.

(18) For the aforesaid view, I am fortified by the decision rendered by this Court in Writ Appeal No. 56 of 2017 in the case of **Karnail Singh v. The General Manager & Others**, decided on 17.3.2017.

(19) Consequently, the writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own costs.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-