

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 241 of 2016**

- Prakash Rao S/o Shri A. V. Rao, Aged About 64 Years R/o M I G 571, Padmanabhpur, Durg, (Chhattisgarh)

---- Petitioner**Versus**

1. Dena Bank Through The Chairman Cum Managing Director Dena Bank, Dena Corporate Centre, C-10, G- Block Bandra Kurla Complex, Bandra East, Mumbai 400051 (M. S.)
2. The Appellate Authority Under The Payment Of Gratuity Act 1972 And The Deputy Chief Labour Commissioner, (C) Govt. Of India, Ministry Of Labour & Employment, D- 06, Adarsh Society, Sector 01, Avanti Vihar, Raipur, (Chhattisgarh)

---- Respondents

For Petitioner
For respondent No.1

Mr. Neeraj Choubey, Advocate
Mr. Vinod Deshmukh, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****02.01.2017**

1. The present Petition has been preferred assailing the order dated 17.06.2016 passed by the Appellate Authority under the Payment of Gratuity Act, 1972, whereby the appeal preferred by the Respondent Bank against the order of the Controlling Authority dated 23.11.2015 in case No. R.P. - 48(54)/2014-ALC was decided upholding the Petitioner to be entitled for payment of gratuity with effect from 18.07.2009 i.e. from the date of order of termination of his service however modifying the order to the extent that the payment of interest on gratuity was made applicable from the date the present Petitioner had moved the application before the Controlling Authority for release of payment of

gratuity.

2. Learned Counsel for the Petitioner submits that the order passed by the Appellate Authority modifying the order of the Controlling Authority is bad in law for the reason that the Appellate Authority ought to have considered the fact that it was the Responsibility of the employer Bank to promptly make the payment of gratuity to which the Petitioner was otherwise legally entitled for, which the Respondent – Bank had not done so. The Respondent can not be discharged of its liability of payment of interest which the Act otherwise provides for in the event of delayed payment of gratuity by the employer. It was also contended by the Counsel for the Petitioner that the Petitioner in the present case was terminated from the service on 18.07.2009 and had preferred an appeal against the order of termination. Since the appeal against order of termination was pending consideration before the Appellate Authority the application for release of payment of gratuity was not moved for the reason that in case if the appeal would have been allowed, he would have been reinstated in employment and claim of gratuity would not have arisen.
3. Learned Counsel for the Petitioner further submits that on the other hand the Bank has not deposited the gratuity amount before the Controlling Authority immediately when it stood due to the Petitioner. Thus Counsel for the Petitioner prays for quashment of the impugned order so far as the interest is concerned.
4. Learned Counsel for the Respondent-Bank submits that it is the fault on part of the Petitioner as much as in not approaching the Controlling Authority promptly or within reasonable time after his service was terminated by the Respondent Bank. The Petitioner slept over his right for about 4 to 5 years. Thereafter he moved the application for grant of

payment of gratuity. Therefore for the intervening period i.e. the period that he had not availed the legal remedy by moving application to Controlling Authority he would not be entitled for interest. Thus order of the Appellate Authority is proper, legal and justified.

5. The Counsel for the Bank submits that infact the Petitioner, the employee is not entitled for any gratuity as his services were terminated for an act which had caused huge financial loss to the Bank. According to him the Act itself permits for forfeiture of payment of gratuity in such circumstances.
6. Having considered the rival contention put forth on either side and on the record shows that undoubtedly the Petitioner was an employee of the Respondent Bank. His services were terminated vide the order dated 18.07.2009. He preferred an appeal before the appellate authority which stood rejected on 15.06.2010. Against the said rejection of the appeal the Petitioner again preferred mercy petition before the Chairman of the Respondent Bank which too got rejected on 20.10.2010. Subsequently it is only on 12.11.2014, the Petitioner for the first time moved an application before the Controlling Authority for release of payment of gratuity to the Petitioner. The Controlling Authority vide its order dated 23.11.2015 allowed the application directing the Respondent Bank for release of the payment of gratuity to the Petitioner along with interest at the rate 10% from the date gratuity fell due i.e. 18.07.2009 i.e. the date on which the service of the Petitioner was terminated. Against this order of the Controlling Authority the Respondent Bank had preferred appeal which was registered as PGA-04/2015. The Appellate Authority after considering the total factual matrix of the case reached to the conclusion that the order of the Controlling Authority to the extent of granting payment of gratuity to the

Petitioner does not warrant any interference and the same has been upheld. However, the Appellate Authority reached to the conclusion that so far as the grant of interest is concerned, the fact that the Petitioner had not approached to the Controlling Authority promptly after the date of termination or within reasonable time after the appeal was rejected and acted only after more than 5 years of time from the date of termination, the Petitioner would not be entitled for interest on payment of gratuity for the period in between i.e. from 18.07.2009 to 12.11.2014 the date on which the Petitioner himself had filed the application for grant of gratuity before the Controlling Authority.

7. This Court taking into consideration the reasons assigned by the Appellate Authority finds the reasons assigned in the said order to be sufficient and plausible reasons, exercising its Writ jurisdiction does not find any scope of interference with the impugned order. Only because another view is possible alone cannot be a ground for interfering with an order while exercising Writ jurisdiction under Article 226/227 of the Constitution of India.
8. This Court exercising the Writ jurisdiction does not act as an appellate authority. All it has to look into is whether there is any blatant error of law committed by the Court or Authority whose order is under challenge. Which in this case this Court does not find any.
9. The Petition thus is bereft of merits accordingly stands rejected.

Sd/-

(P. Sam Koshy)
JUDGE