

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No.178 of 2016**

Prasen Singh Kshatriya S/o Shri Dani Singh Kshatriya, Age about 56 years, R/o Purani Basti Akaltara, P.S. Akaltara, Distt.Janjgir-Champa (CG)

---Petitioner

Versus

- 1.** Appellate Authority under Payment of Gratuity Act and Dy. Labour Commissioner, Office of Labour Commissioner, Meera Datar Road, Raipur (CG)
- 2.** Controlling Authority under Payment of Gratuity Act, Distt.-Janjgir Champa (CG)
- 3.** Dy.General Manager, Lafarge India Pvt. Ltd. Aarasmata Cement Plant, Gopal Nagar, Distt.Janjgir-Champa (CG)

---Respondents

For Petitioner	:	Mr.S.P.Kale, Advocate
For Respondent No.3	:	Mr.N.K.Vyas, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

08/05/2017

- 1.** In this writ petition, short point is involved whether the petitioner is entitled for statutory interest as provided in Section 7(3A) of the Payment of Gratuity Act, 1972 (hereinafter called as "Act of 1972").
- 2.** The petitioner was discontinued from his service by the Lafarge India Private Limited on 9.1.2004, he was not paid gratuity leading to filing of the application before the

Controlling Authority under the Act of 1972, which was rejected by the said authority on 26.2.2008. Against that order, the petitioner preferred an appeal before the Appellate Authority, which was also rejected on 9.3.2011. In the writ petition filed by the petitioner being WP (L) No.90 of 2012, this Court vide order dated 29.10.2015 directed the Appellate Court to decide the appeal of the petitioner by reasoned order.

- 3.** By the impugned order, the Appellate Authority has directed for payment of gratuity of ₹ 57,330/-, but omitted to grant of interest on the said amount.
- 4.** Being aggrieved and dissatisfied with the said order, the petitioner has filed this writ petition claiming interest on the amount of gratuity in terms of Section 7 (3A) of the Act of 1972.
- 5.** Respondent No.3 has filed its return opposing the writ petition stating inter-alia that there was dispute pending under Section 4(1) of the Act of 1972 to the amount of gratuity payable to the petitioner, therefore, the petitioner is not entitled for interest.
- 6.** Mr.S.P.Kale, learned counsel for the petitioner, would submit that statutory interest cannot be denied to the petitioner in terms of Section 7 (3A) of the Act of 1972 unless the permission is obtained by the respondent in

writing from the Controlling Authority for delayed payment attributing the delay due to fault of the employee.

7. On the other hand, Mr.N.K.Vyas, learned counsel appearing for respondent No.3, would submit that after the order of the Appellate Authority dated 8.7.2016 gratuity amount has already been paid to the petitioner on 26.10.2016. He would further submit that the petitioner has a right to get payment crystallized on 8.7.2016 and therefore, no interest on the amount of gratuity is payable to the petitioner.
8. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
9. It is not in dispute that the petitioner is entitled for gratuity and order of the Appellate Authority dated 8.7.2016 with regard to amount of gratuity has become final. It is only the employee who has challenged that order claiming interest on the gratuity amount under Section 7 (3A) of the Act of 1972.
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.¹ 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

¹(2003) 3 SCC 40

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](#)² 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 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,**

²(1988) 4 SCC 212

Raipur (CG) and another³.

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**⁴ 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

32016 LAB. I. C. 629

4(2009) 16 SCC 758

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.

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 **Y.K. Singla v. Punjab National Bank and others**⁵, Their Lordships of the Supreme Court revisited the scope and extent of interest on payment of gratuity amount and condensely held as

⁵(2013) 3 SCC 472

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:

(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 others v. Dhirendra Pal Singh**⁶.

16. Following the principles of law laid down in the aforesaid cases, I am unhesitatingly as well as unreservedly of the considered opinion that unless the

⁶(2017) 1 SCC 49

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 by the Supreme Court in the above-stated judgments (*supra*), if the facts of the present case are examined, it is quite vivid that the petitioner was discontinued from service on 9.1.2004 and gratuity become due on 8.2.2004, but same was not paid to him within one month from 9.1.2004 as required under Section 7(3) of the Act of 1972 and it has only been paid to him on 26.10.2016. No permission has been obtained from the Controlling Authority under the provisions contained in Section 7 (3A) of the Act of 1972 attributing the fault of the employee. Even there is dispute under Section 4(1) of the Act of 1972, permission has not been obtained from Controlling Authority as mandatory under Section 7 (3A) of the Act of 1972, therefore, interest would be payable to the petitioner.

18. Accordingly, it is held that the petitioner will be

entitled for interest at the rate of 8% per annum from 9.1.2004 till the amount is actually paid to him within a period of four months, failing which, respondent No.3 would be liable to pay interest at the rate of 10% per annum.

19. As a fallout and consequence of the aforesaid discussion, the order passed by the Appellate Authority is modified to the extent indicated hereinabove. The writ petition is allowed in part.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-