

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 09 of 2017**

Sri Vijay S/o Late Shri Dalel, aged about 63 years, R/o 1B/116 SECL Colony, Post: Bishrampur Colliery, P.S.- Bishrampur, District- Sarguja, (Now Surajpur) (Chhattisgarh)

---- Petitioner**Versus**

1. The General Manager, Bishrampur Area of S. E. C. L, Post-Bishrampur Colliery, District- Sarguja, (Now Surajpur), Chhattisgarh
2. The State of Chhattisgarh through the Appellate Authority & the Regional Labour Commissioner (Central) Raipur, Chhattisgarh
3. The State of Chhattisgarh through the Controlling Authority Under the Payment of Gratuity Act 1972 and the Assistant Labour Commissioner (Central), Torwa, Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri J. K. Gupta, Advocate
For Respondent no.1	:	Shri K. K. Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11/01/2017**

The present petition has been preferred assailing the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972 dated 10.06.2016 whereby the Appellate Authority has modified the order of the Controlling Authority to the extent that the petitioner shall be entitled for payment of gratuity but shall not be entitled for interest on the said gratuity amount on account of the fact that the petitioner has been illegally retaining the Company's quarter.

2. The petitioner superannuated on 30.06.2013 from the office of the respondent No.1 from the post of Accountant. At the time of retirement, since the petitioner did not furnish the clearance certificate which is mandatory for releasing gratuity, the gratuity amount was not released to the petitioner as the petitioner was in occupation of the company's quarter

and unless he vacates the same, the clearance certificate could not be given to him.

3. The petitioner filed an application before the Controlling Authority under PG Act & the Assistant Labour Commissioner (C), Bilaspur where the case was registered as BSP-36 (22)/2014-RLC. After the proceedings were drawn, the Controlling Authority vide its order dated 09.11.2015 allowed the application and directed the respondent No.1 to pay rupees 10 lakhs as gratuity along with 10% simple interest from the date the payment became due.

4. This order of the Controlling Authority dated 09.11.2015 was put to challenge in an appeal before the Appellate Authority under payment of Gratuity Act 1972 & Dy. Chief Labour Commissioner (Central), Raipur where the case was registered as PGA-17/2016. The Appellate Authority vide its order dated 10.06.2016 taking into consideration the various judicial pronouncements in this regard specifically under the payment of Gratuity Act has held that in the given factual background where the petitioner has not vacated the quarter and is retaining illegally, he is not entitled for interest on the said gratuity amount and thus, modified the order of the Controlling Authority to that extent. However, the Appellate Authority maintained the entitlement of the petitioner for gratuity amount which was awarded by the Controlling Authority. The said amount was also deposited at the time of the appeal which already stands released and disbursed to the petitioner.

5. It is this order of the Appellate Court dated 10.06.2016 which has been questioned by the petitioner by way of this writ petition.

6. Counsel for the petitioner submits that the order of the Appellate Authority withholding interest of the gratuity amount is bad in law and deserves to be set aside. He submits that since the respondent employer was duty bound to deposit the entire gratuity amount from the date of

superannuation of the petitioner and having not done so, under the Statutory provisions of the gratuity Act, the amount would carry interest and the Appellate Authority could not have interfered with the same as the order of the Controlling Authority was strictly in accordance with the provisions of the Gratuity Act. He further submits that if at all if the petitioner has been in possession of the Company's quarter, the respondent employer have the appropriate remedy available for eviction of the same but withholding of the interest of gratuity amount is not the remedy. Thus, prayed for setting aside of the impugned order and releasing of the interest on gratuity amount.

7. Per contra, counsel appearing for respondent no.1 submits that it is a case where the petitioner is illegally retaining the company quarter from the time of superannuation and he has not paid even the rent which is otherwise payable after the prescribed period of time. Therefore, the petitioner is liable to pay the rent at market rate which has also not been paid by him. It is under the said factual background, the respondent employer had retained the gratuity amount. He submits that the petitioner cannot be permitted to have the benefit of both retaining the Company's quarter illegally and enjoying the interest on gratuity which has been bonafidely retained unless the petitioner gives clearance certificate which is mandatorily required for releasing of the gratuity amount. Thus, prayed for rejection of the petition.

8. Having considered the rival contentions put forth on either side and on perusal of the record what clearly reflects is that the Appellate Authority while deciding the appeal has taken into consideration the contentions put forth on either side elaborately and has also relied upon various decisions of the high Court as well as the Supreme Court while reaching to the conclusion of the petitioner not being entitled for interest on the gratuity amount against which the present petition has been filed under Article 226

of the Constitution of India. It is settled position of law that in exercise of its writ jurisdiction this Court would not exercise its appellate power nor would sit over the order as an Appellate Authority. The High Court would also not conduct a roving enquiry to reach to the conclusion whether the petitioner is entitled for the interest or not. While exercising writ jurisdiction, all that this Court would see is whether the Appellate Court in exercise of its jurisdiction has rightly exercised its power within the limits of the Appellate Authority or not and whether the finding arrived at by the Appellate Authority is a plausible finding or not? The perusal of the impugned order would show that the finding arrived at by the Appellate Authority is a plausible finding which cannot be said to be illegal or contrary to law and the same is based upon various judicial pronouncements. Thus, there is no scope of interference with the impugned order.

9. Thus, the present writ petition being devoid of merit deserves to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE