

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.59 of 2017

Order reserved on: 1-3-2017

Order delivered on: 17-3-2017

Umashankar Pandey, aged 63 years, S/o Late Shri Mohan Lal Pandey, R/o 1B/202, SECL Colony, Post Bishrampur Colliery, PS Bishrampur, Distt. Sargua (now Surajpur) (C.G.)

(Petitioner)
---- Appellant

Versus

1. The General Manager, Bishrampur Area of SECL, Post Bishrampur Colliery, Distt. Sarguja (now Surajpur) (C.G.)
2. The State of Chhattisgarh, through, The Appellate Authority & The Regional Labour Commissioner (Central), Raipur (C.G.)
3. The State of Chhattisgarh, through the Controlling Authority under the Payment of Gratuity Act, 1972 and the Assistant Labour Commissioner (Central), Torwa, Bilaspur (C.G.)

---- Respondents

For Appellant: Miss Sharmila Singhai, Advocate.

For Respondent No.1: Mr. K.K. Shrivastava, Advocate.

For State/Respondents No.2 and 3: -

Mr. Y.S. Thakur, Additional Advocate General.

Hon'ble the Acting Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

Sanjay K. Agrawal, J

1. "Pension and gratuity are no longer any bounty to be disbursed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment

of interest at the current market rate till actual payment.”

2. The aforesaid mandate of the Supreme Court rendered in the matter of **State of Kerala and others v. M. Padmanabhan Nair**¹ aptly and squarely applies to the factual matrix of the present case in which the appellant herein / petitioner has been denied the statutory interest payable on gratuity as incorporated and mandated by sub-section (3-A) of Section 7 of the Payment of Gratuity Act, 1972 (for short, 'the Act of 1972') on wholly untenable ground.
3. The essential facts shorn of all paraphernalia to judge the correctness of the plea raised at the Bar are as under: -
 - 3.1) The appellant herein was superannuated on 28-2-2014 on attaining the age of superannuation by respondent No.1 herein – South Eastern Coalfields Limited (SECL). His amount of gratuity was not paid leading to filing of an application by him before the jurisdictional controlling authority under the Act of 1972, under Section 7(1) of the Act of 1972 read with sub-rule (1) of Rule 10 of the Payment of Gratuity (Central) Rules, 1972 (Form 'N') claiming the amount of gratuity along with interest and CPF amount stating inter alia that the respondent No.1 SECL has unauthorisedly detained the amount of gratuity which he is lawfully entitled for and therefore the respondent SECL be directed to make payment of the amount of gratuity along with interest.
 - 3.2) The respondent SECL, after being noticed, appeared before

¹ (1985) 1 SCC 429

the jurisdictional controlling authority and filed its written submission stating inter alia that though the appellant herein has superannuated from service on 28-2-2014 and he was required to obtain no dues certificate from the concerned department including the vacation of allotted official quarter, but he did not submit the same and the maximum permissible period of retention of the official quarter beyond the period of admissibility is three months and as such, he ought to have vacated the SECL quarter on 31-5-2014, which he did not vacate, and thereafter he is liable to pay penal rent for retention of SECL quarter unauthorisedly. It was the common stand of the respondent SECL before the controlling authority that simultaneously, the SECL has deposited the gratuity dues of ₹ 10,00,000/- before the controlling authority. Therefore, the appellant is not entitled for interest on gratuity amount.

3.3) In rejoinder reply, the appellant submitted that there is no provision in the Act of 1972 or the Rules of 1972 for withholding of gratuity and the management – SECL has no power to withhold the gratuity for any reason whatsoever including non-vacation of SECL quarter and he has caused no loss to the Company. It was further submitted that SECL had not given any notice to the controlling authority under sub-section (2) of Section 7 of the Act of 1972 or in Form 'M' under Rule 8 (1) (ii) of the Rules of 1972 informing and specifying the reasons why the claim of gratuity is not considered admissible, therefore, he is entitled for interest on the amount of gratuity.

3.4) The learned controlling authority by its order dated 9-11-2015 held that though the appellant has served in the SECL for a total period of 35 years plus and retired on 31-8-2013, he failed to submit the no dues certificate particularly the quarter vacation certificate. The controlling authority further held that the SECL had deposited ₹ 10,00,000/- as gratuity and gratuity can be withheld only on the grounds mentioned in sub-section (6) of Section 4 of the Act of 1972. It has also been observed by the controlling authority that conduct of the appellant in holding back the possession of the quarter is not appreciable and acceptable and still that is not sufficient ground to deprive him of the right to gratuity. Thereafter, the controlling authority considered the decision of the Supreme Court in the matter of **Union of India and another v. K. Balakrishna Nambiar**² and also the decision of this Court passed in a Division Bench in **W.A.No.384/2015**³ in which it was held that since the appellant is continuing in possession of the allotted accommodation unauthorisedly and penal rent is due, the appellant is only entitled for the amount of gratuity already deposited and accordingly, partly allowed the application for payment of gratuity, but declined to grant interest. However, liberty was granted to the respondent SECL to take recourse for eviction of premises and recovery of penal rent.

3.5) Feeling unhappy with the non-grant of interest in terms of sub-section (3-A) of Section 7 of the Act of 1972, the appellant laid

² (1998) 2 SCC 706

³ South Eastern Coalfields Ltd. and others v. Raghuvansh Sharma, decided on 30-12-2015

an appeal before the appellate authority under the Act of 1972 claiming interest on the gratuity amount from the date it became due to him. The appellate authority considered the appeal and also considered various judgments cited by both the parties and confirmed the order of the controlling authority mainly and principally relying upon the decision of the Supreme Court in **K. Balakrishna Nambiar's** case (supra) and dismissed the appeal of the appellant herein.

3.6) Impugning the legality, validity and correctness of the order passed by the controlling authority duly affirmed by the appellate authority under the Act of 1972, the appellant herein filed a writ petition under Article 226 of the Constitution of India before this Court. The learned Single Judge of this Court by its impugned order declined to entertain the writ petition on the ground that the writ court would not sit over the decision of the appellate authority as the finding recorded by the appellate authority is a plausible finding which cannot be said to be illegal or contrary to law warranting interference in exercise of jurisdiction under Article 226 of the Constitution of India.

3.7) Assailing the order passed by the learned Single Judge, this intra-court appeal under sub-section (1) of Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 has been preferred by the appellant herein on the ground that the order passed by the writ court is contrary to Section 7 (3-A) of the Act of 1972.

4. Miss Sharmila Singhai, learned counsel for the appellant herein, would submit that gratuity is a right accrued to an employee and the employer is obliged to make payment of gratuity within 30 days from the date it becomes due to the employee by virtue of the provision contained in sub-section (3) of Section 7 of the Act of 1972. She would further submit that the consequence of non-payment of gratuity within 30 days from the date it becomes due is provided in sub-section (3-A) of Section 7 of the Act of 1972 by which the employee is entitled for simple interest at the rate not exceeding the rate notified by the Central Government and the provision of statutory interest payable under sub-section (3-A) is mandatory in nature, as such delay attributable in the instant case is not attributable to the fault of the employee and the employer SECL has not obtained permission in writing from the controlling authority over the delayed payment on this ground as provided in the proviso to Section 7(3-A) of the Act of 1972 and as such, interest is statutory as well as peremptory in nature. She would also submit that the alleged overstaying by the appellant in the allotted accommodation / quarter will not dis-entitle the employee to claim and obtain statutory interest as enumerated in Section 7(3-A) of the Act of 1972. Therefore, the order of the learned Single Judge be set aside and it be held that the appellant is entitled for statutory interest.
5. Mr. K.K. Shrivastava, learned counsel appearing for the SECL / respondent No.1, while replying the contentions made by learned counsel for the petitioner as well as referring to his written

submission submitted before this Court, would submit that the appellant has failed to submit no dues certificate including the quarter vacation certificate and has not vacated the SECL quarter till this date and is still occupying the same illegally even after his superannuation with effect from 28-2-2014. Thus, due to non-submission of clearance certificate which also includes the quarter vacation certificate, the amount of gratuity payable to the appellant was deposited with the controlling authority as per Section 4 (1) (a) of the Act of 1972. Mr. Shrivastava heavily relied upon the decision of the Supreme Court in **K. Balakrishna Nambiar's** case (supra) and supported the order of the controlling authority as well as the appellate authority and submitted that the learned Single Judge has rightly declined to grant interest to the appellant.

6. We have heard learned counsel for the parties and considered the rival submissions made herein and also gone through the order passed by the learned Single Judge carefully and critically and examined the record with utmost circumspection.
7. Before entering into the dispute raised herein at the Bar, it would be most appropriate to consider the nature of gratuity and the right of an employee to receive gratuity.
8. P.B. Gajendragadkar, J, speaking for the Supreme Court in the matter of **The Garment Cleaning Works, Bombay v. The Workmen**⁴ defined the meaning of gratuity as under: -

“5. On principle if gratuity is earned by an employee for long and meritorious service it is difficult to

4 AIR 1962 SC 673

understand why the benefit thus earned by long and meritorious service should not be available to the employee even though at the end of such service he may have been found guilty of misconduct which entails his dismissal. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer, and when it is once earned it is difficult to understand why it should necessarily be denied to him whatever may be the nature of misconduct for his dismissal. Therefore, the general argument that in all cases where the service of an employee is terminated for misconduct gratuity should not be paid to him, cannot be acceded to. ...”

9. Further, Their Lordships of the Supreme Court in the matter of

Calcutta Insurance, Ltd. v. The Workmen⁵ held as under: -

“The Gratuity is a reward for good, efficient and faithful service rendered for a considerable period and there will be no justification for awarding the same when an employee voluntarily resigns and brings about the termination of his service except in exceptional circumstances. The Gratuity is earned by an employee for a long and meritorious service. It is paid to a workman to ensure good conduct throughout the period he serves the employer. Long and meritorious service must mean long and unbroken period of service meritorious to the end.”

10. V.R. Krishna Iyer, J, speaking for the Supreme Court in the matter

of **The Straw Board Manufacturing Co. Ltd. v. Its Workmen**⁶

held as under: -

“8. Gratuity for workers is no longer a gift but a right. It is a vague, humanitarian expression of distributive justice to partners in production for long, meritorious service. We have, therefore, to adopt a broad and generous approach to the problems posed before us by Shri Shroff without being mechanistically precedent-bound or finically looking into evidence.”

11. Likewise, in the matter of **Ahmedabad (P) Primary Teachers'**

5 AIR 1967 SC 1286

6 (1977) 2 SCC 329

Assn. v. Administrative Officer⁷ Their Lordships of the Supreme

Court have explained the concept of gratuity and held as under: -

“The main purpose and concept of gratuity is to help the workman after retirement, whether retirement is a result of rules of superannuation or physical disablement or impairment of vital part of the body. The expression “gratuity” itself suggests that it is a gratuitous payment given to an employee on discharge, superannuation or death. Gratuity is an amount paid unconnected with any consideration and not resting upon it, and has to be considered as something given freely, voluntarily or without recompense. It is a sort of financial assistance to tide over post-retiral hardships and inconveniences.”

12. In a recent decision in the matter of **State of Jharkhand and**

others v. Jitendra Kumar Srivastava and another⁸, the Supreme

Court has held that pension and gratuity are not bounty but property within the meaning of Article 300-A of the Constitution of India. Paragraphs 16 and 17 of the report state as under: -

“16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in “property”. Article 300-A of the Constitution of India reads as under:

“300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law.”

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

7 (2004) 1 SCC 755

8 (2013) 12 SCC 210

17. It hardly needs to be emphasised that the executive instructions are not having statutory character and, therefore, cannot be termed as “law” within the meaning of the aforesaid [Article 300-A](#). On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory Rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different.”

13. Thus, from the aforesaid judgments, it is quite apparent that gratuity is a property within the meaning of Article 300-A of the Constitution of India and as such, it is a constitutional right which cannot be taken away except by authority of law.

14. Now, it would be appropriate to notice the provisions of the Payment of Gratuity Act, 1972. Section 4 of the Act of 1972 deals with payment of gratuity. Section 4(1) deals with payment of gratuity after rendering continuous service for not less than five years and Section 4(6) deals with the cases in which gratuity can be forfeited. For ready reference, Sections 4(1), 4(2) and 4(6) of the Act of 1972 are reproduced herein-below: -

“4. Payment of gratuity.—(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation.—For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Explanation.—In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

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(6) Notwithstanding anything contained in sub-section (1),—

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or

negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited—

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

15. 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.

(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.”

16. 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.
17. 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.⁹ 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.

9 (2003) 3 SCC 40

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](#)¹⁰ 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. ..."

18. 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**¹¹.

19. 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

¹⁰ (1988) 4 SCC 212

¹¹ 2016 LAB. I. C. 629

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.

20. 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**¹² 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.

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.”

21. Recently, in the matter of **Y.K. Singla v. Punjab National Bank and others**¹³, 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:

(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.”

22. 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 Singh¹⁴.

23. 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.
24. Applying the principle of law laid down herein-above to the factual matrix of the present case, it is quite vivid that the petitioner had retired from SECL on 28-2-2014 and gratuity become due on 31-3-2014, but the same was not paid within one month from 28-2-2014 as required under Section 7(3) of the Act of 1972 and it has been deposited only on the appellant's filing application before the controlling authority. It is the case of the respondent SECL that the appellant could not submit no dues certificate including the quarter vacation certificate, therefore, no interest is payable, 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 appellant herein and therefore the respondent SECL is liable to make payment of

14 (2017) 1 SCC 49

interest on the amount of gratuity in terms of sub-section (3-A) of Section 7 of the Act of 1972.

25. This would bring us to the next question, whether on account of the appellant's overstaying in the SECL allotted accommodation / quarter even after his retirement, the appellant is not entitled to claim and obtain interest in terms of sub-section (3-A) of Section 7 of the Act of 1972.

26. The SECL has vehemently submitted and heavily relied upon the fact that the appellant has overstayed in the accommodation allotted by it therefore, he is not entitled to claim interest. Whereas, it is the case of the appellant that gratuity is not only a statutory right, but also a constitutional right under Article 300-A of the Constitution of India, therefore, for the reason of overstaying in the allotted quarter, gratuity cannot be withheld by the respondent SECL and alleged overstaying cannot be made basis for not awarding the statutory interest which the appellant is legally entitled for.

27. In order to adjudicate the issue so raised, it would be appropriate to notice the provisions contained in Sections 13 and 14 of the Act of 1972 which provide as under: -

“13. Protection of gratuity.—No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under Section 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

14. Act to override other enactments, etc.—The provisions of this Act or any rule made thereunder shall

have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.”

28. Section 13 of the Act of 1972 clearly states that no gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court, whereas Section 14 of the Act gives overriding effect upon the provisions of this Act or any other law or instrument or contract.
29. The Supreme Court had an occasion to consider the provisions contained in Section 13 of the Act of 1972. In the matter of **Calcutta Dock Labour Board and another v. Smt. Sandhya Mitra and others**¹⁵, the Supreme Court has noticed that Section 13 has been amended with effect from 1st of July, 1984 and also held that Section 14 has overriding effect and it was held that Section 13 gives total immunity to gratuity from attachment. Section 14 of the Act of 1972 gives an overriding effect upon the provisions contained in any other enactment, as the Payment of Gratuity Act is a self-contained Code, under which, the amount of gratuity can be recovered by approaching the controlling authority. In **Smt. Sandhya Mitra's** (supra), the Supreme Court has held as under: -

“6. ... In the absence of any notification within the meaning of [Section 5](#) of the Act the amendment is not relevant for consideration. [Section 14](#) has overriding effect and [Section 13](#) gives total immunity to gratuity from attachment. The preamble of the Act clearly indicates the legislative intention that the Act sought to provide a scheme for payment of gratuity to all employees engaged in, inter alia, ports and under this Act gratuity was payable to workers like Md. Safiur Rehman. The gratuity which was payable to him

15 (1985) 2 SCC 1

squarely came within the purview of the Act and, therefore, become entitled to immunity under Section 13 thereof.”

30. Their Lordships of the Supreme Court also in **Y.K. Singla** (supra) considered Sections 13 and 14 of the Act of 1972 and held that a superior status has been vested to the provisions of the Gratuity Act vis-a-vis any other enactment inconsistent therewith and further held that statutory gratuity as incorporated in the Act of 1972 under Section 7 (3) can be denied only by proviso to sub-section (3-A) of Section 7 and it cannot be denied to an employee who is governed by the Payment of Gratuity Act, 1972 and observed as under: -

“24. Furthermore, from the mandate of [Section 14](#) of the Gratuity Act, it is imperative to further conclude that the provisions of the [Gratuity Act](#) would have overriding effect with reference to any inconsistency therewith in any other provision or instrument. Thus viewed, even if the provisions of the 1995 Regulations had debarred payment of interest on account of delayed payment of gratuity, the same would have been inconsequential. The benefit of interest enuring to an employee, as has been contemplated under [Section 7\(3-A\)](#) of the Gratuity Act, cannot be denied to an employee whose gratuity is regulated by some provision/instrument other than the [Gratuity Act](#). This is so because, the terms of payment of gratuity under the alternative instrument have to ensure better terms than the ones provided under the [Gratuity Act](#). The effect would be the same when the provision concerned is silent on the issue. This is so because the instant situation is not worse than the one discussed above, where there is a provision expressly debarring payment of interest in the manner contemplated under [Section 7\(3-A\)](#) of the Gratuity Act. Therefore, even though the 1995 Regulations are silent on the issue of payment of interest, the appellant would still be entitled to the benefit of [Section 7\(3-A\)](#) of the Gratuity Act. If such benefit is not extended to the appellant, the protection contemplated under [Section 4\(5\)](#) of the Gratuity Act would stand defeated. Likewise, even the mandate contained in [Section 14](#) of the Gratuity Act deliberated in detail hereinabove would stand negated.

31. Thus, the Supreme Court has unmistakably held that the provisions of the Act of 1972 are having overriding effect over any other enactment for the time being in force and payment of interest on gratuity cannot be denied by virtue of the provisions contained in Sections 4(5) and 14 of the Act of 1972.

32. In the matter of **R. Kapur v. Director of Inspection (Painting and Publication) Income Tax and another**¹⁶, the Supreme Court has clearly held that right of a retired employee to obtain gratuity is not dependent on vacating the Government accommodation and imposed 18% interest on the authority concerned for non-payment of gratuity. Relevant paragraph of the report reads as follows: -

“11. The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1-6-1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48-A. Thus, the civil appeal is allowed. However, there shall be no order as to costs.”

33. Likewise, in the matter of **Gorakhpur University and others v. Dr. Shitla Prasad Nagendra and others**¹⁷, the Supreme Court has held that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands and any delay in settlement

16 (1994) 6 SCC 589

17 (2001) 6 SCC 591

and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. The Supreme Court upheld the order of the High Court to pay interest on pension and provident fund in case of overstaying in the allotted accommodation.

34. The principle of law laid down by the Supreme Court in **R. Kapur** (supra) and **Gorakhpur University** (supra) applies to the facts of the present case with full force and as such, overstaying in the allotted accommodation by the appellant even after superannuation would not dis-entitle him from the amount of gratuity with interest.

35. However, to be fair with Mr. Shrivastava, the judgments cited by him may be considered herein. In **K. Balakrishna Nambiar's** case (supra), the Supreme Court relying upon its earlier order in the matter of **Union of India v. S.V. Ramtoke**¹⁸ held that since the respondent therein was in unauthorised occupation of the Government accommodation, interest would not be payable for the period the respondent was in unauthorised occupation of the Government accommodation. This is clearly distinguishable to the facts of the present case, as in **R. Kapur** (supra) and **Gorakhpur**

18 SLP (C) No.14609 of 1995 decided on 4-12-1995

University (supra), the Supreme Court has clearly held that for overstaying in the Government accommodation, gratuity / pension cannot be withheld and interest is payable. Likewise, in **Raghuvansh Sharma** (supra), the Division Bench decision of this Court was not considering the payment of interest under Section 7 (3-A) of the Act of 1972 and, therefore, it is also clearly distinguishable to the facts of the present case.

36. Thus, applying the aforesaid legal proposition to the facts of the present case, the only ground for denial of payment of statutory interest on the amount of gratuity by the employer SECL and the controlling as well as appellate authorities is retention / non-vacation of SECL allotted quarter by the employee / appellant even after superannuation. Since there is no leave granted under the proviso to sub-section (3-A) of Section 7 of the Act of 1972 attributing the delay of payment of gratuity to the employee, payment of statutory interest as incorporated under Section 7(3) cannot be denied as held by Their Lordships of the Supreme Court that overstaying in allotted residential quarter cannot be a ground for withholding of gratuity. Thus, the controlling authority and the appellate authority are wholly and absolutely unjustified in declining to grant interest on the ground of non-vacation of the SECL quarter. The learned writ court has also omitted to consider the above-stated pure question of law involved in the petition.

37. This would finally bring us to determine the rate of interest on the amount of gratuity payable to the appellant. Second part of Section

7 (3-A) of the Act of 1972 provides that simple interest would be payable 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. It is stated at the Bar that at present, such rate is 10% per annum. In Y.K. Singla (supra), Their Lordships of the Supreme Court considered the question of interest payable on the amount of gratuity not paid within time and directed payment of interest at the rate of 8% per annum on the amount of gratuity. The said rate of interest has been followed recently by the Supreme Court in Dhirendra Pal Singh's case (supra), decided on 15-11-2016. Taking clue from the decision of the Supreme Court, we direct that respondent No.1 shall pay interest at the rate of 8% per annum to the appellant after one month from the date of his superannuation i.e. 31-3-2014 till the amount is actually paid to him within four weeks from today, failing which respondent No.1 would be liable to pay interest at the rate of 10% per annum.

38. As a fallout and consequence of the above-stated legal analysis, the order passed by the controlling authority as affirmed by the appellate authority and reaffirmed by the learned Single Judge of this Court, is set aside and the writ appeal is allowed to the extent indicated herein-above.

Sd/-
(Pritinker Diwaker)
Acting Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge