

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5490 OF 2016
(Ananda Rambhaji Gawali Vs.Ahmednagar Jilha Dekhreh Sahakari
Sanstha Maryadit)

Mr.P.V.Barde, Advocate for the petitioner.
Mr.G.B.Rajale, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/02/2017

PER COURT :

1. The petitioner is aggrieved by the judgment of the Appellate Authority/Industrial Court, under the Payment of Gratuity Act dated 03/09/2015 by which Appeal (PGA) No.9/2014 filed by the respondent has been allowed only to the extent of depriving the petitioner of all interest on the unpaid gratuity amount.

2. While issuing notice to the other side on 29/11/2016, I had observed in my order as under :-

“1. The petitioner is aggrieved by the order dated 03/09/2015 passed by the Industrial Court, which is the appellate authority under the Payment of Gratuity Act, thereby setting aside the direction of the Controlling Authority granting 10% interest on the unpaid gratuity amount.

2. *I find that the Industrial Court has set aside the direction of the Controlling Authority of granting 10% interest on the unpaid gratuity amount for the reason that the grant of interest is illegal . Section 7(3A) of the Payment of Gratuity Act, 1972 mandates imposition of simple interest at such rates not exceeding the rate notified by the Central Government for repayment of long term deposits, which is normally 10%, if the gratuity amount is not paid by the employer within 30 days from the date it has become payable and due.*

3. *Issue notice to the respondent returnable on 19/12/2016. Humdast granted on request.”*

3. Learned Advocate for the respondent prayed that an adjournment be granted so that a reply can be filed. I have declined to grant him an adjournment for the reason that this matter purely involves interpretation of Section 7(3A) of the Payment of Gratuity Act, 1972. No reply is necessary.

4. It is an admitted position that the respondent has not challenged the judgment of the Industrial Court concluding that the gratuity amount of Rs.2,02,682/- is liable to be paid by the respondent. As such, the entitlement for Gratuity is now accepted by the respondent.

5. The only grievance that remains is whether the Industrial Court, under its Appellate Authority, has rightly disentitled the petitioner of interest.

6. I have heard Mr.Barde, learned Advocate for the petitioner and Mr.Rajale, learned Advocate for the respondent for quite some time. Both have taken me through the petition paper book and section 7(3A) of the Payment of Gratuity Act, 1972.

7. This case relates only to section 7(3A), which reads as under :-

“7(3A) 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.”

8. It is thus apparent that when an employer who is liable to pay gratuity, does not pay the same after 30 days of severing employer-

employee relationship, when it becomes due and payable, is liable to pay interest. The maximum interest under the Central Government Scheme for repayment of long term benefits was @ 10% p.a. The notification u/s 7(3A) dated 01/10/1987 which is published in the Gazette of India Entry No.493 Part-II, specifies 10% simple interest p.a. payable from time to time. This notification is issued by the Central Government. Mr.Barde submits that that is the last notification as per his knowledge issued on this subject.

9. Mr.Rajale, learned Advocate, though has strenuously contended that no interest should be saddled on the respondent, I am unable to accept his contention since the Controlling Authority / Labour Court as well as the Appellate Authority / Industrial Court have concluded that the petitioner was entitled to gratuity and the respondent was liable to pay gratuity.

10. The maximum interest that can be granted is at the rate of 10% p.a. The gratuity became payable on 01/07/2010 and the entire gratuity amount excluding the interest was deposited before the Appellate Authority in September 2014. Said amount must have generated interest. Considering the above, as well as the poor financial condition of the respondent as is canvassed by Mr.Rajale, I

find that awarding interest @ 6% would meet the ends of justice.

Considering the above and the law applicable, the conclusion of the Industrial Court, "to saddle interest of 10% over appellant society by the Court @ 10% from 30/06/2010 is obviously illegal and wrong and therefore the order to that extent is wrong and illegal", deserves to be quashed and set aside.

11. In the light of the above, this petition is partly allowed. The respondent shall calculate the interest over the amount of 2,02,682/- @ 6% from 01/07/2010 till 30/09/2014 and deposit the said amount before the Industrial Court, Ahmednagar which is the Appellate Authority, within a period of 6 (six) weeks from today, failing which the interest will be enhanced to 10% from July 2010 to September 2014. It is informed that the actual gratuity amount has been withdrawn by the petitioner. After the above direction is complied with, he would be entitled to withdraw the entire interest amount accrued till January 2016 and the interest amount deposited by the respondent.

(RAVINDRA V. GHUGE, J.)