IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 11023 OF 2015

Mr. Vijaynand Gayaramji Bole … Petitioner

V/s.

Maharashtra State Road Transport
Corporation & Ors. … Respondents

Mr. Meelan Topkar for the Petitioner.
Mr. P. G. Lad for the Respondent.

CORAM : K. K. TATED, J.
DATED : 16/03/2017

P.C.:

. Heard learned Counsel for the parties.

2 By consent of both the parties, matter is taken on board for final hearing at the stage of admission.

3 By this Petition under Articles 226 & 227 of Constitution of India, the petitioner challenges the order dated 29.03.2014 passed by the Appellate Authority under Payment of Gratuity Act, 1972 and Deputy Commissioner of Labour Mumbai in Application No. PGA/1 of 2011 allowing respondent's Application to the extent of payment of interest @ 8% on gratuity amount.

4 The learned Counsel for the petitioner submits that in the present

proceeding, the petitioner was appointed as Officer Trainee (Traffic Class-II) from 11.04.1983. He worked with the Respondent for 21 years 7 months. He submits that Petitioner resigned from the service of respondent and his resignation was accepted by Respondent on 22.11.2004.

5 The learned Counsel for the Petitioner submits that thereafter, the petitioner made application to the Respondent for payment of gratuity. As the same was not paid, the petitioner preferred Gratuity Application No. 97 of 2007 before the Controlling Authority, Nasik under the Payment of Gratuity Act, 1972 (hereinafter refer as 'the said act'). He submits that the Controlling Authority after hearing both the sides passed order dated 06.10.2009 holding that the petitioner is entitled to sum of Rs.2,67,046/- towards the gratuity amount along with 8% interest.

6 The learned Counsel for the petitioner submits that being aggrieved by the order dated 06.10.2009 passed by the Controlling Authority, the Respondent preferred Application No. PGA/1 of 2011 before the Appellate Authority under the payment of Gratuity Act, 1972. He submits that the Appellate Authority without assigning any reason partly allowed the Respondent's Application holding that petitioner is not entitled to any interest on gratuity amount. He submits that the Appellate Authority observed in the impugned order that Respondent received the order dated 06.10.2009 passed by the Controlling Authority on 08.03.2011 and therefore immediately they deposited sum of Rs.2,67,046/- at the time of filing of Appeal. As the Respondent complied the said order immediately, the petitioner is not

entitled to any interest.

7 Hence, the petitioner preferred the present Writ Petition challenging the order dated 29.03.2013 passed by the Appellate Authority.

8 The learned Counsel for the petitioner submits that the impugned order passed by the Appellate Authority is against justice, equity and good conscience and same is required to be set aside. He submits that the bare reading of Section 7(3-A) of the said Act, if there is delay on the part of the employer to pay gratuity amount, they have to pay the same along with interest. Section 7(3-A) reads thus:

> *"7(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."*

9 The learned Counsel for the petitioner in support of his contention relies on judgment of the Apex Court in the matter ***H.***

Gangahanume Gowda v/s. Karnataka Agro Industries Corpn. Ltd. [1].

He relies on paragraphs 7, 9 and 10, which reads thus:

> *"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(3A), 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. 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*

1 2003 I CLR 705

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 & Ors. vs. M.Padmanabhan Nayyar [1985 (50) FLR 145]. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3A) was added to Section 7 by an amendment, which came into force with effect from 1st October, 1987. In the case of Charan Singh vs. M/s. Birla Textiles and Another [1988 (57) FLR 543 SC], this aspect was noticed in the following words:

> *"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 is clear from what is extracted above from the order of learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled for payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3A) of the Act. 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. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to Section 7(3A), no discretion was left to deny the interest to the appellant on *belated payment of gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled for interest, declined to interfere with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary.*

10. In the light of the facts stated and for the reasons aforementioned, the impugned order cannot be sustained. Consequently, it is set aside. The respondent is directed to pay interest @ 10% on the amount of gratuity to which the appellant is entitled from the date it became payable till the date of payment of the gratuity amount. The appeal is allowed accordingly with cost quantified at Rs. 10,000/-."

10 The learned Counsel for the petitioner submits that Madras High Court in the matter of ***Arumuganeri Salt Workers Co-op. Production and Sale Society Ltd. v/s. A.Rajan & Anr***.[2] held that employer has to pay amount of gratuity within 30 days from the date it becomes payable to the employee on his superannuation, retirement, resignation or death etc. In case of default, the employer is liable to pay simple interest on the amount of gratuity at the rate not exceeding the rate of interest notified by Central Government from time to time. He relies on paragraphs 4,5,6 & 8, which reads thus:

"4. The short question that arose before the second respondent was whether the first respondent is entitled for interest on the delayed payment of gratuity. The second respondent, by its

2 2010 III CLR 656

order dated 27.01.2009, found that the first respondent is entitled for interest on the gratuity in terms of Section 7(3) and 7(3A) of the Payment of Gratuity Act, 1972 and, therefore, he directed 10% interest to be paid from the date on which the gratuity becomes due till the date on which it was paid by the petitioner Management. Aggrieved by the said order, the present Writ Petition has been filed.

5. Mr.V.O.S.Kalaiselvam, learned counsel appearing for the petitioner contended that the payment of interest will arise only when there is a delayed payment and in this case, there is no delay, since they have paid gratuity as ordered by the controlling authority and hence, the question of payment of interest will not arise.

6. This Court is unable to accept the said statement, since the entire controversy relevance legal provision. It is necessary to extract Section 7(3) and Section 7(3A) of the Payment of Gratuity Act, 1972, which read as follows:-

"*(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.*

(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. *Therefore, the date i.e., relevant for determination of interest is the date on which the gratuity becomes payable, which in the present case, when the first respondent resigned his employment on 01.06.2003. Thereafter, when the first respondent issued notice for payment of gratuity, the petitioner employer did not honour the notice, nor deposit the amount with the controlling authority raising whatever disputes that*

> *they want to raise. On the contrary, it is only when the workman instituted a claim before the controlling authority, they contended about the irregular nature of his employment and his alleged disqualification from receiving gratuity. Therefore, from the beginning, it is the stand of the petitioner society that the first respondent is not eligible for gratuity. Therefore, there is no gain saying that they have paid gratuity, pursuant to the order passed by the controlling authority. If Section 7(3) and Section 7(3A) of the Payment of Gratuity Act, 1972, are read together, then there is no difficulty in understanding the eligibility for receiving interest. In the present case, the appellate authority has correctly construed the legal provisions and there is no case made out to interfere with the interpretation placed by the authority."*

11 On the basis of these submissions and the authorities, the learned Counsel for the petitioner submits that the impugned order passed by the Appellate Authority dated 29.03.2013 is required to be set aside holding that the petitioner is entitled to interest on gratuity amount of Rs.2,67,046/- @ 8% for the period from 22.11.2004 to 09.03.2011.

12 On the other hand, the learned Counsel for the Respondent vehemently opposed the present Writ Petition. He submits that the Appellate Authority considering the evidence on record and rightly held that the petitioner is not entitled to any interest on gratuity amount. He submits that in the present proceeding, initially petitioner filed application for gratuity amount before the Authority at Tarapur. He submits that petitioner's application was rejected by the authority. Hence, there is no question of entertaining the second application for the same cause of action. He submits that since they received the copy of order dated 06.11.2009 passed by the Controlling Authority holding

that petitioner is entitled to gratuity amount of Rs.2,67,046/-, they immediately preferred an Appeal before the Appellate Authority and deposited the entire amount. Hence, the Appellate Authority rightly held that there is no question of payment of interest on the gratuity amount. Hence, there is no substance in the Writ Petition and same is required to be dismissed with costs.

13 I heard both the sides at length. It is to be noted that admittedly, in the present proceeding, the Controlling Authority as well as Appellate Authority held that petitioner is entitled to gratuity amount of Rs.2,67,046/-. The quantum of gratuity amount is not disputed by the Respondent. Only question is whether petitioner is entitled to interest on the said amount for delay on the part of Respondent to pay. Bare reading of Section 7(3-A) of the said Act shows that if there is delay on the part of employer to pay gratuity amount, the employee is entitled to interest to that effect. In support of this proposition, the learned Counsel for the petitioner cited the judgments in the matter ***H. Gangahanume Gowda(supra)*** and in the matter of ***Arumuganeri Salt Workers Co-op. Production and Sale Society Ltd.(supra)***.

14 Even the Apex Court in the matter of ***Kerala State Cashew Development Corporation Limited & Anr. V/s. N. Asokan***[3] held that if permission is not taken by the employer from the Controlling Authority for delayed payment then they have to pay interest. Paragraph 4 of the said authority reads thus:

3 (2009) 16 Supreme Court Cases 758

"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 payment, 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 (3A) and its term would be squarely applicable in the facts of this case."

15 In the subsequent order, the Apex Court in the matter of ***State of Uttar Pradesh and Ors v/s. Dhirendra Pal Singh***[4] held that if there is delay on the part of the employer to make a payment in that case the employee is entitled to interest. Paragraphs 9 and 10 of the said judgment reads thus:

"9. In State of Kerala and others v. M. Padmanabhan Nair, (1985) 1 SCC 429, this Court has held that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on the retirement but are valuable rights in their hands, and any culpable delay in disbursement thereof must be visited with the penalty of payment of interest. In said case the Court approved 6% per annum interest on the amount of pension decreed by the trial court and affirmed by the High Court.

As to the rate of interest on amount of gratuity Section 7(3-A) of Payment of Gratuity Act, 1972, it is provided that if the amount of gratuity payable is not paid by the employer within the period specified in sub-section (3), the employer shall pay,

4 (2017)1 Supreme Court Cases 49

from the date on which 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. It further provides that no such interest shall be payable if the delay in 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.

In the present case, there is no plea before us that the appellants had sought any permission in writing from the controlling authority. As to the delay on the part of employee, it has come on the record that he made representations, whereafter he filed a suit in respect of withheld amount of gratuity and pension. In Y.K. Singla v. Punjab National Bank and others[2], this Court, after discussing the issue relating to interest payable on the amount of gratuity not paid within time, directed that interest at the rate of 8% per annum shall be paid on the amount of gratuity."

16 Considering the fact that admittedly the Respondent deposited the gratuity amount before Controlling Authority on 08.03.2011, though the petitioner's resignation was accepted on 22.11.2004, petitioner is entitled to interest for this period @ 8% in view of authority as reproduced hereinabove.

15 Hence, Writ Petition is allowed in following terms:

a) Order dated 29.03.2014 passed by the Appellate Authority under Payment of Gratuity Act and Deputy Commissioner of Labour Mumbai in application PGA/1 of 2011 is set aside to the extent of non payment of interest to the petitioner.

b) It is held that petitioner is entitled to interest @ 8% per annum on gratuity amount of Rs.2,67,046/- from 22.11.2004 till 08.03.2011.

c) Respondent No.1 is directed to pay interest amount to the petitioner within two months from today failing which they have to pay interest on that amount @ 12% per annum till realization of the entire amount.

d) Writ Petition stands disposed of.

e) No order as to costs.

(K.K.TATED, J.)