205

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 19376 of 2012 (O/M)
Date of decision : 13.2.2017

The Chairman-cum-Managing Director, Allahabad Bank .... Petitioner (s)

Versus

Appellate Authority under the Payment of Gratuity Act and others
.... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vikas Chatrath, Advocate, for the petitioner.

Mr. Raj Kaushik, Advocate, for respondent No. 3.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

-.- -.-

KULDIP SINGH J. (ORAL)

Impugned in the present writ petition is the order dated 1.8.2011 (Annexure-P-7), order modified on 25.8.2011 (Annexure-P-8) as well as order dated 19.9.2011 (Annexure-P-9), passed by respondent No. 2, vide which simple interest at the rate of 9% per annum under the Payment of Gratuity Act, 1972, was granted on a sum of Rs. 3,50,000/- under Section 3-A of the said Act for the period 26.3.2002 to 1.11.2010. Also impugned in the present writ petition is the order dated 16.7.2012 (Annexure-P-11), modified on 30.7.2012 (Annexure-P-12), passed by respondent No. 1 i.e. Appellate Authority under the Payment of Gratuity Act, whereby the appeal against the said orders was dismissed.

The facts of the case are that respondent No. 3, namely, Sulakshan Kumar Arora, Ex. Senior Manager, retired from the service of Allahabad Bank on 17.3.2001 after seeking voluntary retirement under the special voluntary retirement scheme, called 'Allahabad Bank (Employees') Voluntary Retirement Scheme, 2000m (ABEVRS-2000). All the dues including the gratuity of Rs. 3,50,000/- were released to the petitioner on 2.8.2001. Thereafter, a new pension scheme (Annexure-P-1) came into operation. Respondent No. 3 applied for the said bank's pensions scheme, giving undertaking dated 26.3.2002 (Annexure-P-2). He also deposited back the amount of gratuity amounting Rs. 3,50,000/- with the petitioner-bank on 26.3.2002. It also comes out that the matter regarding gratuity was in issue before the Hon'ble Supreme Court of India in Civil Appeal No. 1478 of 2004, which was decided on 15.12.2009 (Annexure-P-4) between Allahabad Bank and the retired employees of the Allahabad Bank. The Apex Court in its judgment dated 15.12.2009 (Annexure-P-4) held as under :-

> "27. xxxxx Even on merits the conclusions drawn by the Controlling Authority that the Pension Scheme (old) offered by the Bank is more beneficial since the amount of money the pensioners got under the Pension Scheme is more than the amount that could have been received in the form of gratuity under the provisions of the Act is unsustainable. The Controlling Authority failed to appreciate that sub-section (5) of Section 4 of the Act, protects the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer than the benefits conferred under the Act. The comparison, if any, could be only between the terms of gratuity under any award or agreement or contract and payment of gratuity payable to an employee under Section 4 of the Act. There can be no comparison between a Pension Scheme which does not provide for payment of any gratuity and right of an employee to receive payment of gratuity under the provisions of the Act. Viewed from any angle the order of the Controlling Authority is unsustainable. The order is liable to be set aside and the same is accordingly set aside.

28. However,t he judgment of ours is applicable to only such of those employees/workmen who retired from the service between 1.1.1986 and 31.10.1992.

29. In the result, the appeal preferred by the bank is dismissed with costs quantified at Rs. 25,000/- and the writ petitions are allowed without any order as to costs."

A clarification/modification of the said order was sought, which was granted on 29.1.2010 (Annexure-P-5), in which it was clarified that those officers of the bank, who were working prior to 1.7.1979 and have retired after coming into force of the said Act on 31.10.1993, shall alone be entitled to such benefit. Thereafter, the gratuity of Rs. 3,50,000/- which was deposited back by respondent No. 3, was credited by bank into his account on 1.11.2010. Thereafter, respondent No. 3 moved an application dated 8.5.2010 (Annexure-P-6), claiming interest for the period during which the gratuity was retained by the bank i.e. from 26.3.2002 to 1.11.2010. Vide the impugned order, the Controlling Authority under the Payment of Gratuity Act, 1972, allowed simple interest at the rate of 9% per annum, which was affirmed by the Appellate Authority under the Payment of Gratuity Act, 1972.

In the written statement, it is admitted by respondents that the Apex Court, vide judgment dated 15.12.2009 (Annexure-P-4), clarified/held that the employees are entitled to pension in addition to gratuity already paid to them under the Payment of Gratuity Act, 1972. Thereafter, the petitioner-bank refunded the amount of Rs. 3,50,000/- to respondent No. 3, but without any interest. It was stated that the impugned orders passed by the Controlling Authority and the Appellate Authority under the Payment of Gratuity Act, 1972, granting simple interest at the rate of 9% per annum are contrary to Sections 7 and 8 of the Payment of Gratuity Act, 1972.

I have heard the learned counsels for the parties and have also carefully gone through the file.

The admitted facts are that initially the gratuity was released to respondent No. 3. However, on account of the fact that new pension scheme came into operation, respondent No. 3 deposited back the amount of gratuity amounting Rs. 3,50,000/- with the petitioner-bank on 26.3.2002. When the matter was finally decided by the Hon'ble Supreme Court of India in a litigation between the retired employees of the Allahabad Bank and the Allahabad Bank, the Apex Court held that the pension is payable to retired employees and the gratuity cannot be deducted. Consequently, the gratuity was refunded on 1.11.2010 to respondent No. 3. In this way, the bank retained the amount of gratuity of respondent No. 3 from 26.3.2002 to 1.11.2010, for which a simple interest at the rate of 9% per annum was allowed by the Controlling Authority under the Payment of Gratuity Act, 1972. Admittedly, the bank had used the gratuity amount, which ultimately belongs to respondent No. 3, but no interest was paid on the same.

The learned counsel for the petitioner has vehemently argued that in the judgment of the Apex Court, no interest was allowed and that now the matter cannot be reopened to claim the interest. Reliance has been placed upon the authorities of the Apex Court in <u>Director of Settlements, A.P. And others Versus M.R. Apparao and another</u>, 2002 AIR (SC) 1598, <u>State of West Bengal and others Versus Somdeb Bandyopadhayay and others</u>, 2009 AIR (SC) 1989 and authority of this Court in <u>Pritam Kaur Versus Surjit Singh</u>, 1984 (1) RCR (Rent) 399. It has been further argued that the limitation to file such an application is 90 days and even if it is calculated from the last order of the Apex Court, passed on 29.1.2010, the application filed on 8.5.2010 before the Controlling Authority under the Payment of Gratuity Act, 1972, to claim interest on the payment retained by the bank, is time barred. No application for condonation of delay was filed and, therefore, without condoning the delay, such application could not be entertained. It is further asserted that the payment was released to respondent No. 3 on 1.11.2010.

I am of the view that the application to claim interest on the payment retained by bank was filed on 8.5.2010. As per the case of the petitioner-bank itself, it had credited the amount of Rs. 3,50,000/- in the account of respondent No. 3 on 1.11.2010 i.e. after filing of the application. It also comes out that before the appellate authority, no question of limitation was raised and the same was raised for the first time before this Court. Section 7(3A) of the Act regarding non payment of gratuity by employer is reproduced as under :-

> "Section 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.]"

In the present case, there was statutory duty on the part of the petitioner-bank to pay the interest on the gratuity, which was got deposited by them under the wrong implementation of the pension scheme, calling upon the retired employees of the bank to deposit back the gratuity. Otherwise also, the amount remained deposited in the bank and was used by the bank. Therefore, even on the equity, the bank is liable to pay the interest on the same. The interest can be claimed at any time and the delay, if any, cannot stand in the way of justice. Accordingly, I do not find any irregularity or infirmity in the impugned orders. Therefore, the present writ petition is dismissed.

(KULDIP SINGH)
JUDGE

13.2.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes