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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 20th September, 2017

\+ W.P.(C) 1558/2017

ARCHANA SHASTRI ..... Petitioner
Through: Mr. Amit Goel, Advocate

versus

UNION OF INDIA AND ORS ..... Respondents
Through: Mr. Vivek Goyal, CGSC with Mr. Harsh Pandit, Adv. for R-1 Mr. Pratap Shanker, Mr. Swetank Shantanu and Ms. A. Shivani, Adv.

\+ W.P.(C) 1559/2017

D.K. BATRA ..... Petitioner
Through: Mr. Amit Goel, Advocate

versus

UNION OF INDIA AND ORS ..... Respondents
Through: Mr. Vivek Goyal, CGSC with Mr. Harsh Pandit, Adv. for R-1 Mr. Pratap Shanker, Mr. Swetank Shantanu and Ms. A. Shivani, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petitions are disposed of by this common order since the same involve identical facts and issues. For the sake of convenience and brevity, facts in W.P.(C) 1558/2017 are being noted.

2. W.P.(C) 1558/2017 assails order dated 06.09.2016 passed in OA No.3478/2013 and also order dated 23.11.2016 passed in Review Application No.270/2016 whereby both the OA and the Review Application filed by the Petitioner have been dismissed. The Petitioner had filed the aforesaid Original Application seeking a direction to the Respondents to release the amount of gratuity payable to her along with 18% interest.

3. The facts relevant for the adjudication of the present writ petition are that the Petitioner had joined the National Institute of Fashion Technology (hereinafter referred to as 'NIFT') as a faculty member in the Department of Art History on 24.03.1988. The Respondent-Institution was set up by and is being run under the aegis of Ministry of Textile. Vide order dated 15.09.1989, she was confirmed on permanent basis w.e.f. 04.04.1989.

4. That after serving for 20 years as Chairperson, Fashion Design and Fashion Communication Departments and Anchor for the first Foundation Programme with NIFT, the Petitioner proceeded on deputation as Principal to the Government College of Art in Chandigarh on 04.04.2008. The application of the Petitioner was

forwarded through the proper channel i.e. with the consent of the standing committee of the Board of NIFT.

5. In April 2009, the Petitioner sought to be relieved from Government College of Art, Chandigarh and returned to rejoin NIFT vide letter dated 11.05.2009. The Petitioner was, however, not permitted to re-join NIFT (Respondent) and vide letter dated 07.08.2009, she was informed that they had accepted her resignation with effect from the date when she had gone on deputation i.e. 04.04.2008. Consequently, vide letter dated 15.09.2009, the Petitioner was asked to deposit the documents for release of her terminal benefits. It appears that some correspondence was thereafter exchanged between the parties regarding terminal benefits to which the Petitioner was entitled. Ultimately, the Petitioner was paid her terminal dues, except the amount of gratuity which was withheld on the ground that as per CCS(Pension) Rules, a Government servant quitting service on resignation is not entitled to any pension, gratuity or any terminal benefits except leave encashment. Aggrieved by the refusal of the Respondent to pay gratuity to her, the Petitioner preferred the OA before the Tribunal seeking release of her gratuity along with interest. In its reply, the Respondent refuted the claim on the plea that a government servant, quitting service on resignation, is not entitled to any gratuity or other terminal benefits except leave encashment. While the matter was still pending before the Tribunal, the case was considered by the Lok Adalat wherein the Respondent initially offered to pay Rs.50,000/- as a lumpsum towards the entire gratuity. Upon the Petitioner declining the said offer, the Respondent

on 10.01.2015 undertook to put a proposal before the Board of Governors (BoG), for considering the case of the Petitioner and six others for grant of gratuity. Finally in January, 2016, the Respondents informed the Tribunal that the matter had been placed before the Board of Governors on 29.10.2015, which had accorded its approval for applicability of the provisions of Payment of Gratuity Act, 1972, (hereinafter referred to as 'Act') retrospectively with effect from 03.04.1997. Once this decision was taken by the Board of Governors, the Respondents released the gratuity for a sum of Rs.3.5 lakhs to the Petitioner. However, no interest was paid to the Petitioner. The Tribunal vide its impugned order held that the Petitioner was entitled to claim gratuity only under the Payment of Gratuity Act, and not under the CCS (Pension) Rules. The Tribunal, therefore, rejected the Petitioner's prayer for claim of Rs.10 lakhs as gratuity amount under the CCS (Pension) Rules, instead of the Rs.3.5 lakhs paid to her under the provisions of the Payment of Gratuity Act. The Tribunal also rejected the Petitioner's prayer for grant of interest on delayed payment of gratuity, by observing that the Respondent had released the gratuity immediately after the decision of the Board of Governors. As per the Tribunal, since there was no deliberate delay on the part of the Respondent in making payment of the gratuity, there was no reason to grant interest on gratuity to the Petitioner.

6. Aggrieved by the order of the Tribunal rejecting her claim for interest on the amount of delayed payment of gratuity, the Petitioner has preferred the present writ petition.

7. Before us, the learned counsel for the Petitioner, confined his challenge only on the issue of interest on the gratuity paid to the Petitioner. He submits that the Payment of Gratuity Act had become applicable to the Respondents immediately upon notification of Payment of Gratuity (Amendment) Act, 2009 on 31.12.2009. This amendment clearly states that the Payment of Gratuity Act would be applicable to all educational institutions w.e.f. 03.04.1997. He, therefore, contends that once the Payment of Gratuity Act is applicable to the Respondent-Institution w.e.f. 03.04.1997, the Respondents were enjoined to abide by all provisions of the Act w.e.f. 03.04.1997, and in any case, w.e.f. 31.12.2009 when the said amendment was notified.

8. The submission of the learned counsel for the Petitioner thus, is that the Respondent was bound to not only pay gratuity to all its employees-including the Petitioner w.e.f. 31.12.2009, but also to abide by all other provisions of the Act. He submits that Section 7(3) and 7(3A) of the Act specifically provide for payment of gratuity within thirty days from the date it becomes payable, and also provide for payment of simple interest at specified rates in case of delay in payment beyond thirty days. We deem it appropriate to reproduce Section 7(3) and 7(3A) of the said Act, in extenso:-

> ***"7. Determination of the amount of gratuity***
> ***xxx xxx xxx***
>
> *[(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].”

9. It would also be apt to refer to Sections 1, 2 and 3 of the Payment of Gratuity (Amendment) Act, 2009 which reads as under:-

*“1. **Short title and commencement**: (1) This Act may be called the Payment of Gratuity (Amendment) Act, 2009*
(2) It shall be deemed to have come into force on the 3rd day of April, 1997

*2. **Amendment of section 2**: In the Payment of Gratuity Act, 1972 (39 of 1972) (hereinafter referred to as the principal Act), in section 2, for clause (e), the following clause shall be substituted, namely:*

‘(e) “employee” means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation , port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government

or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;'

*3. **Insetion of new section 13A**: After section 13 of the principal Act, the following section shall be inserted, namely:-*
*"**13A. Validation of payment of gratuity**: Notwithstanding anything contained in any judgement, decree or order of any court, for the period commencing on and from the 3rd day of April 1997 and ending on the day on which the Payment of Gratuity (Amendment)Act, 2009 receives the assent of the President the gratuity shall be payable to an employee in pursuance of the notification of the Government of India in the Ministry of Labour and Employment vide number S.O. 1080, dated the 3rd day April, 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the Payment of Gratuity (Amendment) Act, 2009 had been in force at all material times and the gratuity shall be payable accordingly:*
Provided that nothing contained in this section shall extend or be construed to extend to affect any person with any punishment or penalty whatsoever by reason of the non-payment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification."

10. Learned counsel for the Petitioner thus submits that in view of the admitted fact that the payment of gratuity was made to the Petitioner only in 2016, the Respondents are, therefore, bound to pay interest as against her entitlement to receive the same on 04.04.2008, or at least on 31.12.2009 for the delay of about 7 years in accordance with Section 7(3A) of the Act. He further submits that the Respondent has failed to give any justification for not following the provisions of

Payment of Gratuity Act w.e.f. 31.12.2009. Merely because the Respondent took about 7 years to pass a resolution for adopting the provisions of Payment of Gratuity Act, it cannot refuse to follow the provisions of Section 7(3A) of the Act. He contends that once the Act was statutorily applicable to the Respondent-Institution w.e.f. 31.12.2009 and that too, retrospectively, w.e.f. 03.04.1997, the Respondent is liable to pay interest on account of delay in payment of gratuity.

11. Reliance has been placed by learned counsel for the Petitioner on the decision of the Apex Court in the case ***Y.K. Singla vs. Punjab National Bank & Ors.,*** (2013) 3 SCC 472 in support of his submission that in case gratuity is not paid to the employee within 30 days from the due date, the employee becomes entitled to interest.

12. Per contra, the learned counsel for the Respondents submits that the right of the Petitioner to receive gratuity under the Payment of Gratuity Act accrued only after 29.10.2015 when the Board of Governor of the Respondents decided to adopt the Payment of Gratuity Act. He further submits that, even otherwise, the initial claim of the Petitioner was that she was entitled to receive gratuity under the CCS Pension Rules and, merely because now the Board of Governors of the Respondent has adopted the Payment of Gratuity Act and released the gratuity to the Petitioner, she cannot turn around and claim interest on payment of gratuity under Section 7(3) and 7(3A) of the Act. He further submits that the action of the Respondent is *bona fide* and the Respondent has released the gratuity to the Petitioner

immediately upon a decision being taken by the Board of Governors to adopt the Act.

13. Learned counsel for the Respondent has relied upon decision of Appellate Tribunal for Electricity, New Delhi in ***North Eastern Power Corporation Ltd. vs. Tripura State Electricity Corporation Ltd. and Central Electricity Regulatory Commission*** in Appeal No.179/2009 decided on 12.07.2010 in support of his plea that the Act became applicable to the Respondent-Institution only after its Board of Governors had adopted the same on 29.10.2015.

14. We have heard learned counsels and perused the impugned judgment and the record.

15. The admitted fact which emerges from the record is that the Payment of Gratuity Act as initially notified, did not include teachers within its ambit and, therefore, the Government amended the said Act vide 'Payment of Gratuity (Amendment) Act, 2009' on 31.12.2009. The said amendment was however, made retrospective in its application and it was clearly stated therein that it would be deemed to have come into force on 03.04.1997. What emerges from the aforesaid discussion is that, the Payment of Gratuity Act was statutorily made applicable to the employees of the Respondent, immediately upon notification of the amendment dated 31.12.2009. Its enforcement was not conditional upon passing of a resolution by the concerned institution/organisation. It was thus, incumbent upon the Respondent to take prompt and expeditious steps to follow the provisions thereof in respect of its employees from 31.12.2009. The Respondent, however, did not take the requisite action and compelled

the Petitioner and other similarly placed employees to approach the Tribunal. Only thereafter, when the matter was referred to the Lok Adalat, the Respondent agreed to place the matter regarding applicability of the Act before its Board of Governors. As noticed hereinabove, the matter was finally placed before the Board of Governors on 29.10.2015, on which date, the Board of Governors accorded its approval for applying the Act retrospectively w.e.f. 03.04.1997. Pertinently, the decision of the Board of Governors taken on 29.10.2015 reads as follows:-

> *"AGENDA ITEM NO.3013*
>
> *APPLICABILITY OF THE PROVISION OF THE GRATUITY ACT 1972*
>
> *The Board accorded its approval for applicability of the provision of "Payment of Gratuity Act, 1972" retrospectively i.e. w.e.f. 3rd April, 1997 when the "Payment of Gratuity Act, 1972" was made applicable to Educational Institutions. The Board directed that a status note on existing system of provisioning for Gratuity/retirement dues and amounts being so provisioned be placed for information of Board at its next meeting."*

16. There is no doubt, that once the Board of Governors accorded its approval for applying the Act, the Respondents have released the gratuity of Rs.3.5 lakhs under the Payment of Gratuity Act to the Petitioner. But the issue which still remains is, as to whether the Petitioner, who was entitled to receive gratuity at least soon after 31.12.2009, and has admittedly received the same after about 7 years, can be denied interest in view of the specific provision of Section

7(3A) of the Act. The only defence raised by the Respondent for not releasing the gratuity to the Petitioner soon after 31.12.2009, is that the Board of Governors decided to accord its approval for applicability of the Act only on 29.10.2015 and, therefore, it is contended that there is no delay in payment of interest and, therefore, Section 7(3A) of the Act would not apply.

17. We are unable to appreciate the submission of learned counsel for the Respondents. Immediately upon notification of the Payment of Gratuity (Amendment) Act, 2009, it became incumbent upon the Respondents to follow the provisions of the Payment of Gratuity Act, 1972 w.e.f. 31.12.2009 and all employees who were covered by the same had to be granted gratuity in accordance with the provisions thereof. On this aspect, the Respondent is unable to show any reason as to why the provisions of the said Act were not applied to its employees for almost good 7 years, and it is not understood as to why a Court order was needed to remind the Respondent of its duties, to follow the law.

18. There is also no dispute about the fact that Section 7(3A) of the Act in very unambiguous terms, provide for payment of interest in all such cases where the payment of gratuity is not made within the prescribed period of thirty days. The only exception thereto is that when the employee is at fault, and in such a case also, the employer has to obtain permission in writing from the controlling authority for the delayed payment on this ground. Section 7(3A) of the Act, as noticed hereinabove does not curtail the right of the employee to get interest merely because he may not be able to point out the specific

fault of the employer. Thus, the interest, in our view, is payable as a part of the statutory liability of the employer. In the present case, even though, we find that there is a lapse on the part of the Respondent inasmuch, as, it failed in following the provisions of the Act for good seven years, but even if we accept the submission of the learned counsel for the Respondents that there has been no deliberate delay on the Respondents' part to release the gratuity immediately after the Board of Governors had granted approval, we are of the view that the liability to pay interest is not at all related to any deliberate delay on the part of the employer. The liability to pay interest is strict and statutory, and is part of the beneficial scheme of the Act and, therefore, in our view, the Tribunal has erred in overlooking this aspect of the matter.

19. In this connection, we are fortified in our view by the decision of the Supreme Court in ***Y.K. Singla*** *(supra)* wherein the Supreme Court held that a perusal of Section 7(3A) leaves no room for any doubt that in case gratuity is not released within thirty days from the date it becomes due, employee would be entitled to interest. It would be apt to reproduce Para 18 of the said decision:-

> "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."

20. We have also considered the judgment of the Appellate Tribunal for Electricity referred to by the Respondents. Although, we are not obligated to even refer to this judgment, however, we find that even this judgment relied upon by the Respondent, supports the view which we are taking and clearly states that the moment a regulation providing for interest is notified, the liability to pay interest would arise from the said date. In the present case, since we find that the Amendment Act was notified on 31.12.2009, the Petitioner would be entitled to receive interest w.e.f. 01.01.2010. In these circumstances,

the order of the Tribunal is not sustainable in law and the same is set aside.

21. The Petitioner would be entitled to interest on the payment of gratuity w.e.f. 01.01.2010 at the rates prescribed under Section7(3A) of the Act.

22. The writ petition is allowed with a direction to the Respondents to calculate and pay to the Petitioner the due interest in accordance with Section 7(3A) of the Act within six weeks.

23. W.P.(C) No.1559/2017 is also allowed in the same terms.

(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

SEPTEMBER 20, 2017
gm