

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.25 of 2011

Raja Ram Singh, Aged about 67 years, S/o Late Bairagi Singh, R/o Q.No.1/B/220, At and PO: Bishrampur Colliery, Distt. Sarguja (C.G.), PIN 497 226.

---- Petitioner

Versus

1. Appellate Authority under the Payment of Gratuity Act / Regional Labour Commissioner (Central), L-7, Avanti Vihar, Sector 1 (Extension), Raipur (C.G.)
2. Controlling Authority under the Payment of Gratuity Act / Assistant Labour Commissioner (Central), Torwa, Distt. Bilaspur (C.G.)
3. Sub Area Manager, Bishrampur Open Cast Mines, PO Bishrampur, Distt. Sarguja (C.G.), PIN 497 226.

---- Respondents

For Petitioner: Mr. Gary Mukhopadhyay, Advocate.

For Respondent No.3: Mr. Vivek Verma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/01/2018

1. The petitioner was working as Office Superintendent in the Office of Sub Area Manager, Bishrampur Open Cast Mines, South Eastern Coalfields Limited (SECL) and stood superannuated on 30-11-2003 with an allotted accommodation / quarter No.1-B/220 in his favour. He applied for the amount of gratuity due to him, but was not extended the privilege of gratuity by the SECL holding that he had not vacated the quarter allotted to him and ultimately, the said quarter earlier allotted to him came to be allotted to his son with effect from 20-10-2004 though son of the petitioner was in the service of SECL with effect from the year 1995, but now, on 23-11-

2004, the petitioner was paid gratuity after deducting ₹ 19,500/- towards penal rent for non-vacation of the accommodation allotted to him. The petitioner filed application before the controlling authority for payment of balance amount of ₹ 19,500/- with interest at the rate of 10% per annum. The controlling authority granted that application on 10-10-2008 directing for payment of gratuity along with interest which was assailed by the SECL by filing appeal before the appellate authority. The appellate authority by its impugned order set aside the order granting balance amount of gratuity with interest holding that since the petitioner has not vacated the allotted accommodation, penal rent has rightly been deducted from 1-12-2003 to 23-11-2004. Feeling aggrieved and dissatisfied against the order of the appellate authority, this writ petition has been preferred.

2. Mr. Gary Mukhopadhyay, learned counsel appearing for the petitioner, would make two fold submissions, firstly, that deduction of ₹ 19,500/- towards penal rent for non-vacation of the allotted accommodation is per se illegal and bad in law, as there is no provision in the Payment of Gratuity Act, 1972 (for short, 'the Act of 1972') for deducting the said amount as such the amount of gratuity of an employee cannot be withheld for non-vacation of quarter and secondly, that no penal rent from gratuity can be deducted for the said lapse, if any, on the part of the employee. Section 13 of the Act of 1972 protects the amount of gratuity even from attachment in execution of any decree or order of any civil, revenue or criminal court. The Act of 1972 has an overriding effect

by virtue of the provisions contained in Section 14 of the said Act. Mr. Mukhopadhyay would further submit that interest on gratuity is payable by virtue of the provisions contained in the proviso to sub-section (3A) 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. No such permission was obtained by the respondent SECL for making delayed payment of gratuity, as the amount of gratuity was paid to the petitioner only after the quarter was allotted to the petitioner's son, on 23-11-2004.

3. Mr. Vivek Verma, learned counsel appearing for respondent No.3 – SECL, while vehemently opposing the submissions made by learned counsel for the petitioner, would submit that the petitioner's conduct is not trustworthy, as he did not vacate the SECL quarter allotted to him even after his superannuation on 30-11-2003 and ultimately, the said quarter was allotted to his son on 20-10-2004 and thereafter, on 23-11-2004, the petitioner was paid gratuity after deducting the penal rent of ₹ 19,500/- for non-vacation of quarter. Therefore, the petitioner is neither entitled for return of ₹ 19,500/- deducted as penal rent for retaining the SECL quarter nor for interest on the said amount, as the amount of gratuity has already been paid to him on 23-11-2004.
4. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also went through the record with utmost circumspection.

5. The first question would be, whether the amount of gratuity of an employee can be withheld for non-vacation of quarter allotted to him while he was in service or towards penal rent.
6. It is not in dispute that there is no notification under Section 5 of the Act of 1972 and Section 4 of the said Act is applicable and gratuity was payable to the petitioner on the date of his superannuation on 30-11-2003, but he was paid gratuity on 23-11-2004 on account of retention of SECL quarter and when his son who was also an SECL employee was allotted the said quarter on 20-10-2004.
7. The Payment of Gratuity Act, 1972 was enacted to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incident thereto.
8. In the matter of **Bakshish Singh v. M/s. Darshan Engineering Works and others**¹, Their Lordships of the Supreme Court have analysed number of judgments dealing with the concept of gratuity and it has been observed that the Act was placed on the statute book as a welfare measure to improve the service conditions of the employees. Their Lordships further held that the Payment of Gratuity Act is of the genre of Minimum Wages Act, the Payment of Bonus Act, the Provident Funds Act, Employees State Insurance Act and other like statutes. In this judgment, Their Lordships referred to Article 38 of the Constitution of India and mentioned that the requirement of the State to strive to promote the welfare of the

1 AIR 1994 SC 251

people by securing and protecting as effectively as it may, a social order in which, among other things, social and economic justice shall inform all the institutions of the normal life. Reference was also made in the aforesaid case to Articles 39 and 41 of the Constitution.

9. In the matter of **D.V. Kapoor v. Union of India and others**², Their Lordships of the Supreme Court have categorically held that in order to deprive an employee of the amount of pension as well as of gratuity, deprivation should be in accordance with the procedure established by law and also held that right to gratuity is also a statutory right. Their Lordships observed as under: -

“10. Rule 9 of the Rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under [Article 41](#) of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction.”

10. The aforesaid note clearly indicates that the Payment of Gratuity Act, 1972 is a welfare legislation and the amount of gratuity can be withheld only in accordance with the procedure established by law.

² (1990) 4 SCC 314

11. At this stage, it would be appropriate to notice Section 13 of the Act of 1972 which states 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.

12. A focused glance of the aforesaid provision would show that gratuity payable under this Act cannot be attached in execution of any decree or order of any civil, revenue or criminal court. Likewise, Section 14 of the Act of 1972 provides that the provisions of the Act or any rule made thereunder shall have overriding effect and is a provision inconsistent therewith. Section 14 of the Act of 1972 reads as follows: -

“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.”

13. Sections 13 and 14 of the Act of 1972 came-up for consideration before the Supreme Court in the matter of **Calcutta Dock Labour Board and another v. Smt. Sandhya Mitra and others**³. In this case, the Supreme Court has held that once gratuity was payable to an employee in accordance with the Act of 1972, he is entitled for immunity by virtue of the provisions contained in Section 13 of the Act and observed as under: -

“In 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

³ (1985) 2 SCC 1

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

14. Now, the question would be, whether the amount of gratuity can be deducted towards penal rent by the SECL for retention of SECL accommodation / quarter / non-vacating the Governmental accommodation.
15. What flows from Section 13 of the Act of 1972 read with the intention of the Payment of Gratuity Act, 1972 being a welfare provision is when the amount of gratuity is protected from any decree or order of any civil, revenue or criminal court, then by virtue of Section 13, the amount of gratuity is protected from penal rent payable to the respondent SECL.
16. In the matter of **R. Kapur v. Director of Inspection (Painting and Publication) Income Tax and another**⁴, 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

4 (1994) 6 SCC 589

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.”

17. Likewise, in the matter of **Gorakhpur University and others v. Dr.**

Shitla Prasad Nagendra and others⁵, 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 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 overstay in the allotted accommodation.

18. In the matter of **M/s Texmaco Limiteds v. Shri Roshan Singh**

and others⁶, a Division Bench of the Delhi High Court speaking through Dalveer Bhandari, J, (as then His Lordships was) has clearly held that the Payment of Gratuity Act is a welfare legislation, the amount of payment of gratuity cannot be withheld for non-vacation of the quarter allotted to a particular employee.

⁵ (2001) 6 SCC 591

⁶ (2001) II LLJ 982 Del

19. The Bombay High Court in the matter of **Ramjilal Chimanlal Sharma v. M/s Elphinstone Spinning and Weaving Mill Co. Ltd. and another**⁷ has clearly held that it is not permissible under the Payment of Gratuity Act to withhold the amount for any reason. Even though the conduct of the petitioner in holding back possession of the premises is not very praiseworthy still that is not a sufficient reason to deprive him of the right of gratuity. It further held, a right to secure gratuity amount cannot be defeated or cannot be used as lever by the employer for securing back possession of the premises from the employee.
20. Similarly, in the matter of **Swadeshi Cotton Mills v. Asstt. Labour Commissioner (Central) & Controlling Authority under Payment of Gratuity Act, Allahabad and others**⁸, it was observed that non-vacation of the quarter may not be a ground for withholding the payment of gratuity.
21. In the matter of **Anirudh Pandey v. Bihar State Road Transport Corporation and another**⁹, Their Lordships of the Supreme Court have taken the similar view that the Corporation cannot withhold the post-retiral benefits of the appellant on the ground that the appellant had failed to vacate and surrender the house to the Corporation.
22. In view of the aforesaid decisions and taking into consideration the provisions contained in Section 14 of the Act of 1972 and considering that the office memorandum dated 4-7-1977 issued by Coal India Limited for recovery of penal rent will hit by Section 14 of

7 1984 Lab I.C. 1703

8 2000 (1) Lab. L.J. 1221

9 AIR 1995 SC 1129

the Act of 1972, I am unhesitatingly of the opinion that the amount of payment of gratuity of an employee cannot be withheld for non-vacation of Government quarter or the alleged amount of penal rent cannot be deducted from the amount of gratuity, as the amount of gratuity is protected under Section 13 of the Act and SECL cannot claim right of set-off in respect of its penal rent against the amount of gratuity payable on the said amount.

23. This brings me to the next question of payment of interest.

24. Section 7 of the Act of 1972 is the key provision which this Court is concerned in the present case, where the entitlement of statutory interest on gratuity is in dispute. Sections 7(1) to 7(3-A) are 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.”

25. 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.
26. 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.**¹⁰ in which Their Lordships have held in no uncertain terms that payment of interest on delayed payment

¹⁰ (2003) 3 SCC 40

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. 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](#)¹¹. 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](#)¹² 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. ..."

27. The aforesaid judgment has been followed by this Court in the matter of **Vandana Vidhut Limited, Bilaspur (CG) v. O/o. Labour Commissioner, Raipur (CG) and another**¹³.

28. The above determination would bring me 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 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

11 (1985) 1 SCC 429

12 (1988) 4 SCC 212

13 2016 LAB. I. C. 629

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.

29. 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**¹⁴ 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.”

30. Recently, in the matter of **Y.K. Singla v. Punjab National Bank and others**¹⁵, 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.”

31. 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. Dharendra Pal Singh**¹⁶.

32. Following the principles of law laid down in the aforesaid cases, I am 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.

33. Thus, in the instant case, the petitioner having superannuated on 30-11-2003, gratuity becomes due on 29-12-2003, but same was not paid within one month from 29-12-2003 as required under Section 7(3) of the Act of 1972 and it has been paid by respondent No.3 only on 23-11-2004 and that too after deducting ₹ 19,500/-. No leave from the controlling authority has been obtained in writing by the SECL for delayed payment in terms of the proviso to sub-section (3A) of Section 7 of the Act of 1972 attributing the cause of delay to the petitioner herein. Therefore, the SECL is liable to make payment of interest on the amount of gratuity in terms of sub-section (3A) of Section 7 of the Act of 1972.
34. In view of the aforesaid analysis, the writ petition is allowed. It is directed that the petitioner is entitled for 8% interest per annum on the amount of gratuity from 29-12-2003 to the date of payment i.e. 23-11-2004. The petitioner is also entitled for ₹ 19,500/- along with 8% interest on that amount till the date of payment. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge