

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No.59 of 2011**

R.S. Gill Aged about 79 years, S/o Late P.S. Gill R/o. Q.No.B/56 At
and PO: Bishrampur Colliery, Dist : Sarguja (CG) PIN 497226

---- Petitioner

Versus

1. Appellate Authority under the Payment of Gratuity Act/Regional Labour Commissioner (Central) L-7, Avanti Vihar, Sector 1 (Extnesion) Raipur (CG)
2. Controlling Authority Under the Payment of Gratuity Act/Assistant Labour Commissioner (Central) Torwa Dist-Bilaspur (CG)
3. Manager, SECL, Open Cast Mines PO: Bishrampur Colliery Dist: Sarguja (CG) PIN 497226

---- Respondents

For Petitioner	:	Mr.Gary Mukhopadhyay, Advocate
For Respondent No.3	:	Mr.Vinod Deshmukh, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

2/7/2018

1. Learned counsel for the petitioner would submit that the Controlling Authority has granted gratuity along with interest to the petitioner, but the Appellate Authority has set aside the part of order granting interest to the petitioner. He would further submit that the petitioner is also entitled for interest as amount of gratuity was not paid right in time as provided under Section 7 (3-A) of the Payment of Gratuity Act, 1972 (hereinafter called as 'the Act of 1972') and no leave was obtained from the Controlling Authority for withholding the amount of gratuity, therefore, the petitioner is entitled for interest, as such, that part of order passed by the Appellate Authority be set aside.
2. On the other hand, learned counsel for respondent No.3 would

oppose the writ petition.

3. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.
4. Question of payment of interest was considered by a Division Bench of this Court in Writ Appeal No.56 of 2017 (Karnail Singh v. The General Manager, Bishrampur Area of SECL and others), decided on 17.3.2017, in which it has been held as under:-

“36. Thus, applying the aforesaid legal proposition to the facts of the present case, the only ground for denial of payment of statutory interest on the amount of gratuity by the employer SECL and the controlling as well as appellate authorities is retention / non-vacation of SECL allotted quarter by the employee / appellant even after superannuation. Since there is no leave granted under the proviso to sub-section (3-A) of Section 7 of the Act of 1972 attributing the delay of payment of gratuity to the employee, payment of statutory interest as incorporated under Section 7(3) cannot be denied as held by Their Lordships of the Supreme Court that overstaying in allotted residential quarter cannot be a ground for withholding of gratuity. Thus, the controlling authority and the appellate authority are wholly and absolutely unjustified in declining to grant interest on the ground of non-vacation of the SECL quarter. The learned writ court has also omitted to consider the above-stated pure question of law involved in the petition.”

The aforesaid judgment was challenged before the Supreme Court in SLP (C) Nos.27265/2017 (General Manager Bishrampur Area of SECL v. Karnail Singh). Said SLP was dismissed on 17.5.2018.

- 5.** Thus, in view of the fact that no leave was granted under proviso to sub-section (3-A) of Section 7 of the Act of 1972 attributing the delay of payment of gratuity to the employee, payment of statutory interest cannot be denied to the petitioner.
- 6.** As a fallout and consequence of the aforesaid discussion, the order of the Appellate Authority is partly set aside to the extent of grant of interest and it is held that the petitioner is entitled for interest at the rate of 10% from the date of non-payment to the date of payment.
- 7.** The writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-