

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 5974 OF 2014**

K.K.Bajpayee S/o Late S.N.Bajpayee, Aged About 61 Years Retired Legal Inspector, S.E.C.L. Bilaspur, R/o A-5, Shakuntala Heights, Seepat Road, PS Sarkanda, Dist Bilaspur, Chhattisgarh.

...Petitioner(s)

Versus

1. South Eastern Coalfields Limited Through Chairman-Cum-Managing Director, South Eastern Coalfield Ltd, Seepat Road, Bilaspur, Chhattisgarh.
2. General Manager Personnel/administration, South Eastern Coalfields Ltd, Seepat Road, Bilaspur, Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Chandresh Shrivastava, Advocate.
For Respondents	:	Shri Abhishek Sinha, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09.07.2018

1. The grievance of the petitioner is that though the petitioner had superannuated from service of the respondents on 31.10.2013, he was paid gratuity only on 15.07.2014 that too after the petitioner had approached the Controlling Authority under the Payment of Gratuity Act for releasing of the gratuity amount.
2. Learned counsel for the petitioner submits that though there is an award in favour of the petitioner by the Controlling Authority for releasing of the gratuity, but the respondents though have deposited the entire amount awarded, but has not granted interest on the said amount which he is otherwise entitled for. He referred to the provisions of Sub-section (3A) of Section 7 of the Payment of Gratuity Act, 1972 (in short, the Act, 1972) wherein it has been mentioned that in case of delay, the employer shall pay from the

date on which the gratuity becomes payable, simple interest as notified by the State Govt. from time to time. The petitioner thus is legally entitled for interest on the said delayed payment of gratuity.

3. The counsel for the respondents opposing the petition submits that firstly the petition is not maintainable for not availing statutory alternative remedy that he had by way of preferring an appeal. Secondly, the petitioner would not be entitled for interest on the gratuity amount for the reason that his gratuity was withheld for his own fault as he had not vacated the official accommodation that he was granted while in service. That, unless he vacated the accommodation, no due certificate would not be furnished which was a necessary formality for release of gratuity amount. The respondents also submit that the controlling authority who has decided the case in favour of the petitioner also has not awarded interest to the petitioner.
4. Having considered the rival contentions put forth on either side, what is undisputed is the fact that the petitioner was an employee of the respondents. He superannuated on 31.10.2013 having put in 28 years, 3 months and 12 days of service. The petitioner indisputably was entitled for gratuity amount on his superannuation. For the reason of his retention of the official accommodation beyond the permissible limit, the respondents withheld the gratuity payable to the petitioner. The petitioner moved before the controlling authority for release of the same which stood allowed vide award dated 13.02.2014 wherein the controlling authority had ordered for release of Rs.8,37,686/- as gratuity amount to the petitioner.

5. At this juncture it would be relevant to refer Sub-section (3A) of Section 7 of the Act, 1972, which is being reproduced herein as under :

“(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.]”

6. Bare perusal of the aforesaid provision itself clearly reveal that the employer is duty bound to pay interest on the gratuity amount if there is any delay in payment of gratuity from the date it fell due. Indisputably, there is a delay of approximately 7-8 months from the date of retirement which was on 31.10.2013. Inspite of Controlling Authority also passing the order on 13.02.2014, the gratuity amount was ultimately paid after 5 months from the date of order of Controlling Authority i.e. 15.07.2014.
7. What is pertinent to take note of is the fact that the petitioner was not granted gratuity on his superannuation on 31.10.2013 only on the ground of his having retained the official accommodation that was allotted to him. Under the Act, 1972, the employee is supposed to be paid his gratuity on the date his retirement. The retention of official accommodation or not vacating the accommodation is not a factor by which the respondents could be permitted to withhold the gratuity. Neither does the Act, 1972 envisage any such clause which

empowers the employer for withholding the gratuity on the ground of the employee not vacating the official accommodation.

8. Once when the petitioner became entitled for payment of gratuity and the Controlling Authority also ordering that withholding of gratuity by the management not being proper, legal and justified and also holding that the petitioner's unauthorized occupation of the official accommodation cannot be a ground for withholding gratuity, all these means that the respondents were supposed to release gratuity by calculating the interest as is provided under Sub-section (3A) of Section 7 of the Act, 1972.
9. In the given circumstances, this court has no hesitation in holding that the respondents were duty bound to also calculate the interest on the gratuity amount payable to the petitioner from the date of retirement till the date of actual payment. The writ petition therefore to the aforesaid extent deserves to be and is accordingly allowed.
10. So far as objection of the respondents that the petitioner has alternative statutory remedy of appeal and having not done so the writ petition deserves to be dismissed is concerned, this court is of the opinion that the writ petition was entertained by this court in the year, 2014, it is now four years time since entertaining of the writ petition by the High Court and notices being issued to the respondents, therefore, it would not be justified at this juncture that the petitioner be relegated to avail the alternative remedy by directing him to challenge the order of controlling authority. Moreover, once when Sub-section (3A) of Section 7 of the Act, 1972 itself provides that in the event of any delay in payment of gratuity,

the employer shall pay simple interest on the said amount, it would be an empty formality asking the petitioner again to go back to the Appellate Authority under the Act, 1972, seeking for interest.

11. Thus, the objections raised by the respondents stand overruled and it is directed that the respondents shall pay simple interest to the petitioner on the gratuity amount paid to him from the date of retirement till actual payment was made at the rate of 9 percent per annum.
12. The writ petition accordingly stands allowed.

Sd/-
(P. Sam Koshy)
Judge