

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 494 of 2018**

- Gunnu Gop S/o Late Maduli Gop, Aged About 68 Years R/o Talbapara, Baikunthpur, Near Petrol Pump Baikunthpur, District Korea Chhattisgarh.

---- Appellant**Versus**

1. South Eastern Coalfields Limited Through Its Chairman and Managing Director, Head Office, Basant Vihar, Seepat Road, Bilaspur, District Bilaspur Chhattisgarh.
2. Sub Area Manager, S.E.C.L. Kusmunda, Churha Mines (Ro), Baikunthpur Area, Churha Colliery, District Korea Chhattisgarh.

---- Respondents

For Appellant	:	Shri Yogesh Kumar Chandra, Advocate
For Respondents/SECL	:	Shri Vivek Chopda, Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Prashant Kumar Mishra, Judge****Judgment on Board****Per, Ajay Kumar Tripathi, Chief Justice****24.07.2018**

1. Writ appeal has been filed against order of learned Single Judge dated 28.03.2018 in WP(S) No.1727 of 2018. The prayer made in the writ application was for a direction upon the Respondent authorities of South Eastern Coalfields Limited (SECL) to pay interest on delayed payment of gratuity.
2. The learned Single Judge, while going through the order of the Controlling Authority under the Payment of Gratuity Act, a copy of which was annexed as Annexure-P/2 to the writ application, held that since there is a provision for appeal under Section 7(7) of the Payment of Gratuity Act against the order of the Controlling Authority, therefore he is not willing to exercise his discretion under Article 226 of the Constitution of India.
3. Counsel for the Appellant has drawn the attention of this Court to an order dated 29.11.2016 which has been passed by the same learned Single

Judge in WP(L) No.224 of 2016, whereas similar objection of alternative remedy was not entertained and the matter came to be decided on merits with regard to payment of gratuity and interest thereon.

4. In view of the same, there is a genuine grievance of the Appellant that the learned Single ought to have also considered the matter on merits in the writ application and not relegated the Appellant / Petitioner before the Appellate Authority specially when the poor Petitioner had already spent time, money and energy in invoking the jurisdiction of the writ Court.
5. The issue is limited. Delay in payment of gratuity is not a matter of dispute. The only reason given by the Controlling Authority in his order dated 14.11.2017 for not granting interest on delayed payment of gratuity which was withheld, is failure of the employee i.e. Appellant to vacate the official quarter allotted to him and for non demolishing the illegal constructions done by him in the said quarter. Since the Appellant insisted upon settling his post retiral dues, he was not willing to vacate the quarter because he had no where to go.
6. Reliance has been placed by the counsel for the Appellant on a Division Bench matter which had been rendered in ***Karnail Singh versus The General Manager, Bishrampur Area of SECL***, which is **Writ Appeal No.56 of 2017 decided on 17.03.2017**. The Division Bench, while dealing with identical matter has rightly opined that pension and gratuity are no longer bounty to be disbursed by the Government or an Employer at their will. It is a valuable right guaranteed to an employee and is a constitutional right under Article 300A of the Constitution of India. The Division Bench

had further, taken note of various decisions, also held that merely because a poor paid employee had not vacated his residential quarter, that cannot become the reason for non payment of pension or gratuity. **{See R. Kapur v. Director of Inspection (Painting and Publication) Income Tax and another, reported in (1994) 6 SCC 589}**.

7. Since the reason given for refusal to pay interest on gratuity, which is a statutory interest, has been non vacation of the official quarter by the Appellant, keeping in mind the principle of law in relation to illegal occupation not to be linked with settlement of post retiral dues or gratuity, the Controlling Authority obviously has erred in not allowing payment of statutory interest to the Appellant on the gratuity which was admittedly withheld by the Company.
8. The appeal is allowed. The impugned order dated 28.03.2018 of the learned Single Judge is set aside. A direction is issued upon the Respondents-SECL that they will pay statutory interest on the gratuity amount to the Appellant from the date it was due till the date it will be paid. Settlement and payment of interest must be done or paid within a period of four weeks from the date of receipt of a copy of this order.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Prashant Kumar Mishra)
Judge