

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 4100 of 2010**

B.C.Bhukta, Aged about 71 years, S/o Late Bhaskar Bhukta, R/o. Q.No.1/B/247 At
and PO: Bishrampur, Distt: Sarguja (C.G.), PIN 497226

----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 Labor Commissioner (Central) Torwa, Distt. Bilaspur (C.G.)
3. Sub Area Manager, Bishrampur Open Cast Mines PO : Bishrampur, Distt: Sarguja (C.G.), PIN 497226

---- Respondents.

For Petitioner	: Shri Gary Mukhopadhyaya, Advocate.
For Respondent No. 3	: Shri Vinod Deshmukh, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/07/2018

(1) Learned counsel appearing for the petitioner would submit that the Controlling Authority has granted gratuity with no interest to the petitioner and the Appellate Authority has affirmed the order passed by the Controlling Authority. 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 (henceforth "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, the order passed by the Controlling Authority as affirmed by the Appellate Authority is liable to 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 appearing for the parties.

(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 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 17.05.2018.

(5) Thus, in view of the fact that no leave was granted under provision 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 controlling authority as well as appellate authority in non granting interest is set aside and it is held

that petitioner is entitled for interest @ 10% per annum from the date of non-payment to the date of payment.

(7) The writ petition is allowed to the extent indicated hereinabove. However, the respondent No. 3 is at liberty to recover the penal rent from the petitioner in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

