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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2811 OF 2014

Lasanna Venkanna Dharap
since deceased through LR.

Smt.Ammai Lasanna Dharap

...Petitioner

vs.

The General Manager,
Kohinoor Mills & Ors.

...Respondents

Mr.Vivek Walavalkar a/w Vishwajeet Kapse a/w Rajesh
Dharap I/b Ajit Kenjale for the Petitioner
Ms Kumud Bhatia I/b Ms Meena H. Doshi for the
respondent No.1

Mr.P.P.More, AGP for respondent No.3

CORAM : A.S.OKA, &

SANDEEP K. SHINDE, JJ.

DATE : DECEMBER 4, 2018

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Rule. The learned counsel for the first respondent waives service. The learned AGP waives service for the third respondent. Considering the narrow controversy involved in this petition, the same is forthwith taken up for final hearing.

2 On an application made by the petitioner under section 7(4) of the Payment of Gratuity Act,1972 and the Rules framed thereunder, the Controlling Authority under the said Act of 1972 passed an order directing the first respondent to pay gratuity with interest thereon. The operative part of the order dated 12th January 2009 passed by the Controlling

Authority reads thus:

"(1) That the application filed by the applicant is allowed.

(2) That the opponent is directed to pay the gratuity to the Applicant along with interest as under:-

Rs.15,943.70+10% interest per annum with effect from 30 days from the date of relieving i.e 20.6.1984 to the actual date of payment.

(3) Both the parties shall bear their own costs."

3 The prayer in this petition under Article 226 of the Constitution of India is for issuing a writ of mandamus directing the first respondent to comply with the order dated 12th January 2009. The contention raised in the petition is that though amount of Rs.36,857.40 was paid to the original petitioner, the entire amount due and payable is not paid. The petitioner therefore made an application dated 17th April 2014 to the first respondent calling upon the first respondent to pay the balance amount.

4 A reply has been filed to this petition by Shri Prabhashankar Rajai Mishra, Assistant Manager (Administration) of the first respondent. The stand taken in the reply was that as the gratuity amount payable to the petitioner was quantified at Rs.15,943.70, as per the second proviso to section 8 of the said Act of 1972, there is a ceiling on the payment of interest and therefore, maximum amount of Rs.15,943.70 is payable by way of interest and the payment of interest over and above the said amount

cannot be made.

5 We have heard the learned counsel for the parties. The stand of the first respondent is that though the order dated 12th January 2009 directs the total payment of interest at the rate of 10% per annum from the expiry of the period of 30 days from 20th June 1984 till the actual date of payment, interest as directed is not payable as there is a ceiling on payment of interest and the interest amount cannot exceed the amount of gratuity payable.

6 We fail to understand the logic of such a stand. The first respondent has not challenged the order dated 12th January 2009 and therefore, cannot raise the contention that the first respondent is not liable to pay the amount of interest as per the said order which binds the first respondent. Therefore, there is no option for the first respondent but to pay the entire amount of interest as directed.

7 The learned counsel for the petitioner submitted that even the aspect of correct calculation of interest be gone into, as there is every possibility that the first respondent will make a default by failing to pay the entire amount. We do not agree with the said submission. Once there is a direction by this Court to pay interest as per the order dated 12th January 2009, the first respondent who is the General Manager of Kohinoor Mills Unit of National Textile Corporation cannot

take a risk of committing the breach of the order of this Court. The petitioner has already submitted his calculations along with a letter dated 17th April 2014 which will be looked into by the first respondent.

8 Hence, the petition must succeed and we pass the following order:

(I) We direct the first respondent to pay to the petitioner balance amount payable as per the order dated 12th January 2009 (Exhibit C to the petition). We make it clear that the interest at the rate of 10% p.a will be payable by the first respondent with effect from the expiry of period of 30 days from 20th June 1984 till the date of payment of the principal amount;

(II) We also make it clear that the contention of the first respondent that interest exceeding the principal amount is not payable stands rejected and the first respondent is under an obligation to pay interest strictly in terms of the order dated 12th January 2009;

(III) The balance amount of interest payable shall be paid by the first respondent to the petitioner within a period of one month from the date on which this Judgment is uploaded. While determining the balance amount, the first respondent shall take into consideration calculations submitted by the petitioner along with application dated 17th April

2014 (Exhibit-A to the petition);

(IV) Rule is made absolute on above terms with no order as to costs.

(SANDEEP K.SHINDE,J.)

(A.S.OKA,J.)