

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION NO.6 OF 2018
IN
APPEAL NO.605 OF 2006
IN
WRIT PETITION NO.637 OF 2004

- 1 M/s National Textile Corporation Ltd.
(Western Region), Ballard Estate,
Mumbai – 400 001
Unit Sitaram Mills which was formerly
known as NTC (North Maharashtra)
 - 2 M/s Sitaram Mills
Unit of National Textile Corporation,
(North Maharashtra) Ltd.,
erstwhile subsidiary of NTC Limited
- Petitioners
(Ori. Respondent nos.
1 and 2)

Vs.

- 1 Shri. Dnyanoba Vishnu Sawant
At : Karande Budruk,
Post : Karandi, Tal. Bhor, Dist Pune
- 2 Pandurang Maruti Khodade,
Behind Santoshi Temple,
R. No.B/104, Jijamata Nagar,
Parel Tank, Kalachowki,
Mumbai – 400 033

- 3 Sadanand Muniraj Kurmi
 Ajay Kirana General Stores
 Narpoli, Dhamankar Naka,
 Balaji Nagar, Post : Bhiwandi,
 Dist. Thane.
- 4 Deoraj Bhijnath Kurmi
 At & Post : Bhiwandi
 Dhamankar Naka, Mehta Compound,
 Narayan Seth Chawl,
 Room No. 5, Tal. Bhiwandi,
 Dist. Thane.
- 5 Yeshwant Tatoba Karamalkar
 Ch. Shahu Sadan, Room no. 47,
 Currey Road, N.M. Joshi Marg,
 Mumbai – 400 013.
- 6 Maruti D. Patil
 Prabhat, Hind Bekari Ahead,
 Bawala Masjid,
 N.M. Joshi Marg, Mumbai – 400 013
- 7 Shantaram Babaji Jadhav
 Darshan Chawl, Room no.4,
 Shastri Nagar, Kanjur Village,
 Mumbai – 400 042
- 8 Maruti Appa Patil
 B.D.D. Chawl No. 5/69,
 N.M. Joshi Marg, Mumbai – 400 013
- 9 Anant Narayan Kadam,
 Digvijay Mills Chawl No.147,
 Room No.81, 2nd Floor,

Kala Chowki Road,
Mumbai – 400 033.

- 10 Gangaram Ramchandra Bane
Rampyare Gupta Chawl,
Laxman Nagar, Kurar Village,
Malad (East), Mumbai – 400 017
 - 11 Pandurang Janba Dhegaskar
B.D.D. Chawl, N.M. Joshi Marg,
Mumbai – 400 013
 - 12 Madhukar Sabrao Kanerkar
16/20, B.D.D. Chawl,
N.M. Joshi Marg, Mumbai – 400 013
 - 13 Gulap Genoo Padekar
Room No. 19, Lane – 3,
Laxmi Nagar, Ghatkopar (E)
Mumbai – 400 075
 - 14 Rangnath Shiva Chougule
18/44, Horhewada Building,
Mumbai – 400 011.
- ... Respondents
(Ori. Appellants-
Ori. Petitioners).

Ms. Meena H. Doshi for the Petitioners.

Mr. S.N. Deshpande and Smt. Swarna P. Munshi for
Respondents.

Coram : R.M. Savant AND
Sarang V. Kotwal, JJ
Date : 9th March, 2018

JUDGMENT (Per R.M. Savant, J.)

1 The above Review Petition has been filed seeking review of the judgment and order dated 24th January 2017 passed in the above Appeal being No. 605 of 2006. The review is restricted to the directions contained in Clauses (ii) and (vi) of the said judgment and order dated 24th January 2017. The operative part of the said judgment and order, which comprise the said Clauses (ii) and (vi) are reproduced herein under for the sake of ready reference.

“ (i) The order passed by the learned Single Judge of this court in Writ Petition No.637 of 2004 and the impugned orders passed by the Controlling Authority and the Appellate Authority are hereby quashed and set aside.

(ii) The Respondents are directed to deposit with the Controlling Authority the admitted amount of the gratuity payable to the respective claimants, as has been admitted and specified by the Respondents in the replies submitted in respective applications before the Controlling Authority, alongwith

the interest on the said amount at the rate of 15% per annum from the date the gratuity, has become payable till the realisation of the said amount, within three months from the date of this order.

(iii) The Controlling Authority shall on deposit of such amount, forthwith release the said amount in favour of the respective claimants.

(iv) In so far as the claim not admitted by the Respondents, the matter be remitted back to the Controlling Authority for its adjudication in accordance with the law by giving necessary opportunity to the parties for adducing necessary evidence in respect of their respective contentions.

(v) The Controlling Authority shall decide the said claims, as expeditiously as possible and preferably within the period of four months from the receipt of the writ from this court.

(vi) The Respondents shall pay Rs.5,000/- to each of the present appellants towards costs of the litigation.

The appeal stands allowed in the aforesaid terms”

Hence, in effect the review is sought of the directions contained in Clause (ii), which directs the review petitioner to deposit the admitted amount @ 15% per annum from the date the gratuity has become payable till realisation. By Clause (vi), the review petitioners have been directed to pay Rs.5,000/- each to the workmen i.e. the respondents herein towards costs of the litigation. Before proceeding to consider the review petition, a brief narration of the facts involved would be necessary.

2 The respondents herein were working in Sitaram Mills, which is the Unit of M/s National Textile Corporation Limited, North Maharashtra. The said Mill was nationalised in the year 1983. The respondents made an application to the Controlling Authority for payment of gratuity on the ground that

after nationalisation of the said Sitaram Mill, they continued in the services upto the year 1990 on a continuous basis and therefore entitled for the payment of gratuity. Suffice, it would be to state that the said application filed by the respondents was rejected by the Controlling Authority. However, it seems that the National Textile Corporation (“NTC”) admitted that the workmen were entitled to receive gratuity for the period from 18th October 1983 till their date of retirement. The NTC had accordingly admitted that certain amount was payable to the workmen. The rejection by the Controlling Authority was on the ground of limitation.

3 Aggrieved by the said order passed by the Controlling Authority, the workmen preferred an Appeal before the appellate authority constituted under the Payment of Gratuity Act, 1973 (for short the “PGA 1973”). The appeal filed by the workmen came to be dismissed by the appellate authority by an order dated 23rd June, 2003 and thereby the order passed by the Controlling Authority dismissing the application on the

ground of limitation was confirmed. The workmen thereafter filed a writ petition in this Court being Writ Petition No. 637 of 2004. A learned Single Judge of this Court by order dated 20th June 2006 dismissed the said writ petition. This resulted in the workmen filing a Letters Patent Appeal on the Original Side of this Court being Appeal No. 605 of 2006. The said Appeal came to be admitted and thereafter came up for final hearing before a Division Bench of this Court comprising of Anoop V. Mohta and P.R. Bora, JJ. The said Appeal came to be allowed by the Division Bench by the judgment and order dated 24th January 2017 and the directions, which are reproduced in the earlier part of this order came to be issued.

4 In so far as the grant of interest against which the above review petition has been filed, the reasons for the same are appearing in paragraph 21 of the said judgment and order. The sum and substance of the reasons as can be seen from the said paragraph was that the Division Bench found fault with the Controlling Authority as well as Appellate Authority and termed

their conduct as callous, which according to it has resulted in depriving the workmen from receiving the amount of gratuity, which had become payable to them way back in the year 1990. The Division Bench thereafter has relied upon the judgment of the Apex Court in the case of State of Kerala & Ors. Vs. M. Padmanabhan Nair, reported in (1985) 1 Supreme Court Cases, page 429, wherein the Apex Court has held that “Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment”. Relying upon the said judgment, the Division Bench directed the payment of interest at the rate of 15% per annum on the admitted amount to be deposited by the N.T.C.

5 In the facts and circumstances of the case, the Division Bench also directed the payment of costs of Rs.5,000/-

to each of the workmen towards costs of litigation. As indicated hereinabove, the above review petition is restricted only to seeking review of the direction in respect of deposit of the admitted amount with interest calculated at 15% per annum and the payment of costs of Rs.5,000/- to each of the workmen. Since the interest is payable on the admitted amount, what is the admitted amount, therefore assumes importance, the admitted amount can be found in a table which is an annexure to the letter dated 24th April 2017 of the N.T.C., which is Exhibit "C" to the review petition. The N.T.C. has calculated the total admitted amount in respect of 14 workmen to be Rs.62,228/-. If the said admitted amount is juxtaposed with the table, on which reliance is placed on behalf of the workmen, as the amount which is due to each of the workmen, then one can find that there is a vast difference between the amount claimed by the workmen and the admitted amount by the N.T.C. and the said difference can be said to be substantial.

6 The learned counsel appearing on behalf of review petitioners in so far as the compliance of the directions as contained in clause (ii) and clause (vi) of which review is sought has stated that the N.T.C. has deposited the said amount of Rs.62,228/- with an equal amount as interest which the Controlling Authority purportedly calculated at the rate of 10% with the Controlling Authority. The said amount is deposited as per conception of the N.T.C. as the amount which was to be deposited in terms of the directions in clause (ii). In so far as the payment of costs is concerned, it is fairly admitted by the learned counsel that the costs have not been forwarded to the workmen concerned.

7 Heard the learned counsel for the parties. The learned counsel for the review petitioner i.e. the N.T.C., Mrs. Doshi would contend that having regard to Section 7(3-A) and Section 8 of the PGA, 1973, the direction to deposit the interests at the rate Rs.15% per annum could not have been passed. It was the submission of the learned counsel that the said direction

has been issued oblivious of Sections 7 and 8 of the PGA 1973. It was the submission of the learned counsel that in terms of Section 8 of the PGA 1973, the amount of interest payable under the said provisions shall, in no case, exceed the amount of gratuity payable under the said Act and it is having regard to the said provisions that the N.T.C. has deposited an equal amount i.e. Rs.62,228/- as interest with the Controlling Authority. The aforesaid two submissions were pressed into service by the learned counsel appearing for the review petitioners to seek review of the directions as contained in clause (ii). It was also submitted by the learned counsel that in so far as the costs are concerned, the Division Bench had erred in imposing costs as the claim of the workmen had been accepted for the first time by the Division Bench and that the application was filed only in the year 2000, though the claim for gratuity was from an anterior period of time i.e. since the year 1990.

8 Per contra, the learned counsel, Mr. Deshpande appearing for the workmen would submit that the workmen

have been unnecessarily deprived of their gratuity and it is in the said circumstance that the Division Bench had directed the deposit of the amount with interest calculated at the rate of 15%. It was the submission of the learned counsel that the same was as and by way of penalty imposed on the N.T.C., so as to balance the equities between the parties. The learned counsel sought to draw our attention to paragraph 21 of the judgment of the Division Bench as also the observations made by the Division Bench wherein the factum of the workmen being unnecessarily deprived of the gratuity has been mentioned as also the conduct of the Controlling Authority, which the Division Bench termed as callous. The learned counsel in support of his contention that the directions to deposit the amount with 15% interest is justifiable, sought to place reliance on the judgment of a learned Single Judge of this Court in the case Prabhavati Ramgarib B. (Mrs.) Vs. Divisional Railway Manager, Western Railways, Mumbai, reported in (2010) 1 CLR, High Court, Bombay, page 1039.

9 The learned counsel relied upon the observations made by the learned Single Judge in paragraph 35 of the said judgment, wherein the learned Single Judge has crystalised the claim for interest by observing that even if the statute provides for payment of interest at a particular rate, still penal interest can be directed to be paid taking recourse to Section 34 of the Interest Act, if the facts and circumstances so warrants.

10 Having heard the learned counsel for the parties, we have bestowed our anxious consideration to the rival contentions. This is unfortunate case where about 14 workmen are yet to receive the gratuity to which they would be entitled to for having been in continuous services of the Sitaram Mills, which was taken over by the N.T.C., which having regard to the manner in which the claim of the workers was being adjudicated upon, that the Division Bench deemed it fit to make the observations which are found in paragraph 21 of the judgment and order, of which as indicated hereinabove a restricted review

is sought. Since, we have already adverted to the said observations in the earlier part of this order, we do not wish to dilate on the same further. The question that arises whether a case for review of the directions contained in clause (ii) and the directions in clause (vi) of the said order is made out.

11 In the said context, the statutory regime, in so far as the payment of interest is concerned is required to be noted. The said statutory regime would be Sections 7 and Section 8 of the PGA 1973. The same are therefore reproduced hereinunder for the sake of ready reference. (Excerpt)

“7. Determination of the amount of Gratuity....
.....

[(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3-A) 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].

8. Recovery of Gratuity.-- If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same together with compound interest thereon [at such rate as the Central Government may, by notification, specify] from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.

Provided that the Controlling Authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate.

Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.]”

A reading of Section 7 discloses that the same determines the manner in which the gratuity payable to an employee is to be calculated. Sub-Section 3 of Section 7 mandates an employer to arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable. Sub-Section 3-A postulates that if the amount of gratuity payable under Sub-Section 3 is not paid, then the employer is obligated to pay simple interest at such rate, not exceeding the rate notified by the Central Government from time to time from the date, on which the gratuity becomes payable of the date on which it is paid, simple interest at such rate. By Standing Order 874(E) dated 1st October 1987, the rate of interests notified by the Central Government is 10% per annum. The proviso to Sub-Section 3-A directs that interest shall be payable if the delay in payment is due to the fault of employee and the employer has obtained permission in writing from the Controlling Authority for the delayed payment on this ground. In so far as Section 7 is concerned, as afore-stated

Section 3 and 3-A alongwith the proviso, which are relevant for the purposes of the present review petition.

12 Now coming to Section 8, the same provides the manner in which the recovery of gratuity can be effected. It postulates that the Controlling Authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same together with compound interest thereon from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto. The second proviso to Section 8 carves out an exception as a result of which the amount of interest payable under the said Section, in no case can exceed the amount of gratuity payable under the PGA 1973. Hence, Section 7 determines the manner in which the amount of gratuity payable to the workmen is to be calculated and Sub-Section 3-A contemplates that if the payment is not made then simple interest at the rate of Rs.10% per annum is payable by

the employer. Hence the first stage ends with the determination of the gratuity under Section 7. If the gratuity determined under Section 7 is not paid by the employer then an aggrieved person has to take recourse to Section 8, which can be stated to be the recovery provision. Hence, Section 8 is attracted only when the aggrieved person applies to the Controlling Authority that the gratuity determined or payable has not been paid to the employee upon which the certificate is issued by the Controlling Authority for that amount to the Collector which is to recover the same with interest and which as per Second proviso of Section 8 cannot exceed the principal amount. Hence, the interest payable under Section 8 is in contradistinction to the interest payable under Section 7. Having regard to the said statutory scheme, we are unable to accept the contention of the learned counsel for the review petitioner that at highest the interest payable would be an amount equal to the principal amount as contemplated by Section 8 of the PGA 1973.

13 In our view, having regard to Section 7 (3-A) of the said Act, the interest payable would have to be at the rate of 10% per annum from the date the amount has become due and payable to the date on which the amount is paid and in the context of the present matter on the admitted amount.

14 Now coming to the contention urged by the learned counsel Mr. Deshpande that the directions to pay interest at the rate 15% was by way of penalty to balance the equities between the parties. It is required to be noted that the PGA 1973 itself stipulates the rate of interest, which is payable in case of default by the employer to pay gratuity within the time stipulated by Section 7(3) of the said Act. Since the matter is remanded back for adjudication so as to calculate the exact amount of gratuity payable to each of the workmen, in our view directing the N.T.C. to pay interest at the rate of Rs.15% per annum on the admitted amount goes against the statutory mandate as

contained in Section 7 (3-A) of the said Act. However, as indicated above, the N.T.C. in terms of the said statutory mandate would be liable to deposit the admitted amount with 10% interest from the date it is payable to the date when the directions were issued by the Division Bench in the present matter. We do not deem it appropriate to express any opinion as regards the applicability of the law as sought to be expounded by a learned Single Judge in the judgment of Prabhavati (Supra). We also do not deem it appropriate to express any opinion as regards whether any penal interest can be imposed on the N.T.C. for the alleged default in payment of gratuity to the workmen.

15 We accordingly leave it to the Controlling Authority to whom the matter is remanded back to adjudicate upon the said aspect. However, we are in complete agreement with the observations made by the Division Bench in so far as the manner in which the gratuity was deprived to the petitioners. In so far

as the payment of costs is concerned, in the facts and circumstances of the case, we do not deem it appropriate to interfere with the award of costs by the Division Bench by the judgment and order of which review is sought. In view of the fact that the respondents workmen have been vexed for a long time to seek their legitimate claim for gratuity.

16 The Review Petition is accordingly partly allowed to the following extent :

Clause (ii) of the impugned judgment and order of which review is sought is modified to the following extent :

ii) The Respondents are directed to deposit with the Controlling Authority the admitted amount of the gratuity payable to the respective claimants as has been admitted and specified by the respondents in the reply submitted by the respective applications before the Controlling Authority alongwith the interest

on the said amount at the rate of 10% per annum from the date the gratuity has become payable till realisation of the said amount.

a) Since the amount has been deposited as per the conception of the N.T.C., the balance amount as per the instant directions to be deposited within six weeks from date.

b) In so far as the amount to be calculated by the Controlling Authority is concerned, this Court does not express any opinion in that regard.

c) In so far as the payment of penal interest is concerned, the entitlement to the said penal interest is left to be adjudicated by the Controlling Authority on remand.

d) In so far as the directions in clause (v) are concerned since the period of four months, which has been stipulated by said clause (v) is over, the Controlling Authority is directed to carry out the adjudication by 31st July 2018 by giving proper opportunity to the parties.

e) The rest of the directions in the judgment and order under review are not interfered with.

(Sarang V. Kotwal, J.)

(R.M. Savant, J.)