

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.23230 of 2002

ORDER:

This writ petition is filed seeking quashing of order dated 26.08.2002 passed by the 1st respondent-The Regional Labour Commissioner (Central), Hyderabad in Application No.42/ 2000, confirming the decision of the Controlling Authority for payment of gratuity amount of Rs.1,04,050/- together with interest of Rs.16,474/- and further interest till date of actual payment to the 2nd respondent.

2. The facts, which are necessary for disposal of this writ petition, are that the petitioner is a mining industry; it has constructed residential quarters, which were allotted as per terms and conditions laid down in the allotment orders; one of the conditions is that once an employee retires, he/she has to handover the quarter and the settlement of terminal benefits are consequent upon the same; since several employees tend to overstay in the quarters beyond retirement period, a settlement was entered into under Section 12(3) of the Industrial Disputes Act between the Management and the Union on 03.01.1999; Item No.III of the said Settlement specifically states that the gratuity due on the date of cessation of employment will be released on surrendering the quarters in vacant position; it is also agreed that gratuity due on the date of cessation of employment will be released, only on allotment of quarter to her/his dependent or her/his surrendering the quarter in vacant position; that the un-official 2nd respondent, who is an employee of the petitioner's organization, has not vacated the quarter, though she ceased to be an employee from 02.11.1991; the 2nd respondent workman made an application for release

of gratuity and she was informed by the petitioner that she has to vacate the quarter and only thereafter her terminal benefits will be settled; the 2nd respondent has no right to be in occupation of the quarter beyond 02.11.1991; the 2nd respondent approached the Controlling Authority under the Payment of Gratuity Act, alleging non-payment of the gratuity even after retirement; the said Authority by decision dated 03.07.2000 held that the gratuity amount of Rs.1,04,050.56 is payable to the 2nd respondent together with simple interest at the rate of 10% per annum for the period of delay in payment of gratuity i.e., for the period from 17.10.2000 to 08.07.2002 amounting to Rs.18,209/- and further interest till date of actual payment of gratuity; questioning the said decision, the petitioner filed an Appeal before the Appellate Authority under the Payment of Gratuity Act, which is numbered as Application No.42 of 2000; the Appellate Authority vide order dated 26.08.2002, dismissed the Appeal, confirming the decision of the Controlling Authority; aggrieved by the said order, the present writ petition has been filed.

3. The writ petition was admitted on 21.11.2002 and interim stay was granted. It is further ordered that the principal amount of gratuity, which the petitioner has deposited with the authority, can be withdrawn by the 2nd respondent without furnishing any security. It is submitted by the counsel for the petitioner that pursuant to the interim direction, principal amount of gratuity, was withdrawn by the 2nd respondent and that the petitioner is questioning the impugned order only insofar as the interest part is concerned.

4. During pendency of the writ petition, the 2nd respondent died and her LRs were brought on record as Respondent Nos.3 to 5 as per order dated 15.01.2004 in WP MP No.28339 of 2003.

5. Heard Sri J. Srinivasa Rao, learned standing counsel for the petitioner, Sri K. Lakshman, learned Asst. Solicitor General for the 1st respondent and Sri A.K. Jayaprakash Rao, learned counsel for the respondent Nos.3 to 5.

6. Learned counsel for the petitioner would submit that the Controlling Authority and the Appellate Authority have failed to hold that the delay in payment of gratuity is only on account of the 2nd respondent, who failed to vacate the quarter and surrender vacant possession of the same immediately after her retirement on 02.11.1991. He further submits that at the time of filing of the Appeal, interest amount was deposited before the first Appellate Authority and that the petitioner is entitled for the refund of the said amount.

7. Learned counsel for the petitioner submits that the matter is squarely covered by the following judgments. In '*Union of India vs. Ujagar Lal*¹', the Hon'ble Supreme Court in a similar issue held as follows:

"The only question argued in this appeal is whether the respondent is entitled to the payment of interest for failure to release the death-cum-retirement gratuity under the Rules? The Tribunal in the impugned order made on 22.11.1990 in OA No.1383/90 directed interest @ 7% per annum for the first twelve months and @ 10% per annum for the period thereafter. The admitted position is that the respondent was un-authorisedly in occupation of the quarter allotted to him and therefore, he was not paid death-cum- retirement gratuity since the respondent had remained in possession un-authorisedly for more than two years. This question was considered by this Court in *Raj Pal Wahi & Ors. vs. Union of India & Ors.* [SLP (C) Nos.7688-91/ 88] decided on 27.11.1989 and held that in those circumstances the Court unable to hold that the petitioners are entitled to get interest for the delayed payment of death-cum-retirement gratuity as the delay in payment occurred due to the order passed on the basis of the said circular of Railway Board and not on account of administrative lapse. In this case, in view of the circular issued by the administration directing

¹ (1996) 11 SCC 116

not to make payment of death-cum-retirement gratuity till the retired employee surrenders possession, the delay in payment was not due to any administrative lapse but on account of the circular issued by the Board. Under these circumstances, the respondent is not entitled to the interest as directed by the Tribunal.”

8. Following the above said judgment in ‘*Union of India vs. Ujagar Lal*’ (1 supra), this Court in ‘*The Chief General Manager, Sngareni Collieries Co Ltd., Ramagundam Area-III, Karimnagar District vs. Regional Labour Commissioner (Central), Hyderabad*’ (WP No.4194 of 2002 dated 08.07.2010), held as follows:

“If the employer has withhold payment of gratuity only for the sake of securing vacation of the accommodation allotted by it to the employee concerned, the delay in settlement of such gratuity cannot be attributed to the employer but only to the employee. In such circumstances, invoking the provisions for payment of interest on the premise that there was delay in settling the gratuity is attributable to the employee concerned, therefore, if the employer is to be penalized by imposing penal interest to be paid by him, it would amount to paying a premium to the conduct of the retired employee in not surrendering the vacant possession of a residential accommodation allotted to them for their use and occupation during the currency of their employment. Therefore, the employee cannot take advantage of his own lapses and seek to be compensated by payment of interest. It is a settled principle of law that payment of interest for the monies due is a mode of compensating or mitigating the damage sustained by the individual due to non-availability of the money to which he is otherwise entitled to. In fact the judgment of the Supreme Court rendered in the *Union of India v. Ujagar Lal* recognizes this very principle. I therefore do not have any hesitation to set aside the order dated 08.02.2002 passed by the 1st respondent herein to the extent of directing the Sngareni Collieries company to pay interest of Rs.12,674/- for the delayed payment of gratuity of Rs.63,370.35.”

9. Again in ‘*The General Manager, The Sngareni Collieries Company Limited, Mandamarri Area, Adilabad District vs. The Regional Labour commissioner (Central), Hyderabad & another*’ [WP No.1950 of 2002 dated 01.10.2010], this court held that the employee is not entitled for payment of interest for delay in payment of gratuity. Again in ‘*The*

*General Manager, Sngareni Collieries Co Ltd., Ramagundam Area-II, Karimnagar District vs. Regional Labour Commissioner (Central), Hyderabad & another*² this court held as follows:

“In view of the above judgment relied on by the petitioner, the vital aspect that the delay in payment of gratuity is not on account of the petitioner, but it is only on account of the 2nd respondent, who failed to vacate the quarter of the matter, which is not considered by both the authorities while awarding interest which is not justified and the petitioner cannot have any grievance regarding payment of gratuity. Further, this court does not find any reason to disturb the payment of principal amount towards gratuity to the petitioner. But, in view of the aforesaid judgment of the Supreme Court relied on by the petitioner, the order passed by the 1st respondent, to the extent of directing the petitioner herein to pay interest for the delayed payment of gratuity @ 10% p.a. is set aside.”

10. As the facts of the present case are also similar to the facts discussed in the above mentioned judgments, and as the matter is squarely covered by those judgments, which have become final, the impugned order to the extent of directing the petitioner herein to pay interest for the delayed payment of gratuity is set aside. The interest amount which the petitioner has deposited before the Appellate Authority under the Payment of Gratuity Act is directed to be refunded to the petitioner and the petitioner is at liberty to withdraw the same.

11. The writ petition is, accordingly, partly allowed as indicated above. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 16.02.2018
BSS

² 2015(5) ALD 469

HON' BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

248

Writ Petition No.23230 of 2002



Date: 16.02.2018

BSS