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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 11th December, 2018*

\+ W.P. (C) 3588/2018 & CM Nos. 14207/2018, 14209/2018

UNION OF INDIA & ORS. ..... Petitioners

Through: Ms. Shiva Lakshmi, CGSC for UOI

versus

KUNDAN ..... Respondent

Through: Mr. V.P.S.Tyagi, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. ***(ORAL)***

1. The present writ petition under Article 226/227 of the Constitution of India has been filed seeking quashing and setting aside of the judgment dated 26.09.2016 and 13.09.2017 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 3472/2015, whereby the learned Tribunal has allowed the OA and has directed the petitioners herein to pay leave encashment to the respondent herein as per rules alongwith interest @8% as well as pay interest on delayed payment of gratuity at GPF Rates in accordance with the provisions contained in The Payment of Gratuity Act, 1972.

2. The brief facts necessary for adjudication of the present writ petition are as follows:

(i) Respondent was engaged as daily wager with the Equine Breeding Stud , Babugarh, Hapur, Uttar Pradesh on ‘as required basis’ from March, 1980 to 30.06.1996.

(ii) He was thereafter granted Casual Labourer with Temporary Status (CLTS) on 01.07.1996 in accordance with the DOP&T, OM dated 10.09.1993.

(iii) The respondent retired on superannuation as CLTS on 09.03.2006 on attaining the age of 60 years. Since he was regularized, his status on retirement was that of a CLTS. He therefore served for 1703 days as CLTS from 01.07.1996 to 09.03.2006.

(iv) The respondent, after his superannuation filed OA No. 2624/2006 before the learned Tribunal for grant of pensionary benefits. The same was disposed of vide order dated 29.10.2007 by directing the department to treat the OA as a representation. Petitioners herein sanctioned the gratuity to the respondent vide letter dated 05.02.2008 and passed a speaking order dated 03.03.2008 denying pensionery benefits. On 21.05.2008, the respondent was paid an amount of Rs.33,551/- towards the gratuity.

(v) Another OA bearing No. 554/2009 was filed seeking setting aside the order dated 03.03.2008 and seeking pensionery benefits. This too was dismissed on 21.04.2010. The respondent again filed an OA No. 1199/2011 for claiming benefits under the DOP&T OM dated 10.09.1993 and this was disposed of by the learned Tribunal directing the petitioners to treat the OA as a supplementary representation. This was considered and an order dated 04.05.2011 was passed thereon. This order was again challenged by an OA No. 2549/2011 and which was disposed of on 13.03.2012 by directing the petitioners to grant financial benefits accruing during his engagement period.

(vi) The respondent thereafter filed OA No. 3472/2015 wherein he prayed for grant of leave encashment for the years as CLTS for the leaves accumulated between the period 01.07.1996 and 31.03.2006 alongwith interest @12% per annum as well as interest on delayed payment of gratuity amongst other reliefs.

(vii) Vide judgment dated 26.09.2016, the learned Tribunal allowed the OA and directed the petitioners herein to pay the leave encashment due to the respondent as per the Rules alongwith the interest @8% per annum. Relying on a judgment of a coordinate Bench of Tribunal in OA 4374/2013 as well as Section 7 (3A) of The Payment of Gratuity Act, 1972, the learned Tribunal directed payment of interest on delayed payment of gratuity at GPF Rates. It further directed compliance of its directions within a period of 90 days from the receipt of the certified copy of the order.

(viii) Aggrieved by the order dated 26.09.2016, the petitioners filed a review application before the Tribunal which was allowed and the OA was listed for re-hearing. Finally, vide order dated 13.09.2017, the learned Tribunal disposed of the OA and directed the petitioners to grant leave encashment alongwith interest @8 % as well as interest on delayed payment of gratuity at GPF rates.

3. When the present writ petition came for admission before this Court on 12.04.2018, the learned counsel for the petitioners stated, on instructions, that the respondent had filed a contempt petition for execution of the impugned judgment and it was listing before the learned Tribunal on 18.04.2018. This court had then directed the petitioners to deposit the amount payable to the respondent on account of leave encashment as well as the entire interest on delayed payment of gratuity, in terms of the impugned judgment in favour of the respondent, within four weeks from the date of the order and subject to this, the operation of the impugned judgment was stayed till further orders. Further this Court had directed that the amount so deposited will be placed in a FDR by the registry for a period of 6 months, to be renewed thereafter from time to time till further orders. Finally, the petitioners paid Rs.5,904/- to the respondent on 24.05.2018 towards the interest on delayed payment of gratuity and a receipt to that effect was placed on record of this Court. A demand draft dated 24.05.2018 was also prepared for a sum of Rs.89,016/- and was deposited with the registry of this Court.

4. Learned counsel for the petitioners has argued that the respondent was engaged only as a daily wager and at the time of his superannuation, he was a casual labourer with temporary status and had never been regularized. She submits that benefit of leave encashment is available only to an employee whose services have

been regularized. She pointed out that the respondent had superannuated in the year 2006 as a temporary employee and thus was not entitled to leave encashment. In support of her submissions, learned counsel has relied upon an OM dated 10.09.1993 which relates to grant of temporary status and formulation of a scheme for regularization of casual workers. The attention of this Court has been drawn to Para 5 (III) to contend that in accordance with this Para, only an employee who is regularized can carry forward the leave at his credit and there is no entitlement of a temporary employee to leave encashment. It was also contended that as per this paragraph, an employee will not be entitled to encashment of leave on termination of service for any reason or on his / her quitting the service. She therefore contended that the learned Tribunal has erred in granting the leave encashment benefit to the respondent.

5. On the other hand, learned counsel for the respondent has submitted that there is no error in the judgment of the learned Tribunal as the learned Tribunal has correctly appreciated and interpreted Para 5(III) of the DOP&T, OM dated 10.09.1993. He submitted that the leave encashment can be granted to an employee who has temporary status and the only exception to such a grant is that his/ her services have been terminated or he/she has quit the services. He further submitted that the respondent was granted a temporary status and he had superannuated in 2006 as CLTS on attaining the age of 60 years and so his services had neither been terminated nor had he quit the services and was thus clearly entitled to leave encashment.

6. In so far as the payment of gratuity is concerned, the same had been paid in 2008 itself. The only dispute raised in the present petition was with regard to the interest on delayed payment. Although at the stage of admission of this petition, the deposit of the interest component was without prejudice to the rights and contentions of the petitioners, but when the matter was argued today, learned counsel for the petitioners fairly conceded that she would not press or contest the issue of interest component on payment of gratuity.

7. This Court is therefore now only concerned with adjudication of the issue with respect to leave encashment payable to the respondent. In so far as the entitlement to leave encashment of the respondent is concerned, a bare perusal of Para 5 (III) of the OM dated 10.09.1993 shows that it stipulates the benefits to which a casual labourer will be entitled on account of his temporary status. The relevant para is being extracted hereinunder for ready reference:

> *" 5. Temporary status would entitle the casual labourers to the following benefits:-*
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> ……
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> *III) Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of works casual or any other kind of leave except maternity leave will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularization. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service."*

8. The above provision, on its own reading is very clear and needs no interpretation. It clearly stipulates that for a casual labourer with

temporary status, leave entitlement will be on a pro-rata basis @ of one day for every 10 days of work. Casual or any other kind of leave, except maternity leave, would not be admissible. The only bar as discernible from this para, for the grant of leave encashment, is on the contingency of termination or of an employee quitting the service. This para also entitles an employee, on regularization, to carry forward the leave at his credit. There is nothing in this provision which even remotely suggests that leave encashment will be given only on regularization, and that a temporary status employee will not be entitled to the same. If a temporary status employee is entitled to avail of leave, there is no reason to deny him encashment of his accumulated leaves which he did not avail of, though entitled. It is an undisputed fact that the respondent had superannuated and his services were neither terminated, nor he had quit the service. This Court thus finds that by virtue of Para 5 (III) of the OM dated 10.09.1993, respondent was clearly entitled to leave encashment and the learned Tribunal has rightly allowed the OA granting the said benefit to the respondent. Additionally, the learned Tribunal has also relied on two judgments of the coordinate Benches of the learned Tribunal in OA No. 4374/2013 decided on 22.08.2016 and OA No. 1255/2013 decided on 13.03.2015, respectively, wherein leave encashment benefits were granted to the applicants, who were identically placed as Casual Labourers with Temporary Status. As regards interest and delayed payment of gratuity, the learned Tribunal has relied on the judgment in OA 4374/2013 *(Supra)* as well as Section 7(3A) of The Payment of Gratuity Act, 1972 which clearly stipulates that if the amount of gratuity payable by an employer is not paid within the period specified, then the employer will be liable to pay simple interest at such rate not exceeding the rate notified by the Central Government from time to time. We thus find no infirmity in the judgment of the learned Tribunal.

9. There is no merit in the petition and same is hereby dismissed with no order as to costs. Pending applications also stand disposed of accordingly.

10. Since the amount towards leave encashment has already been deposited in this Court, the registry is directed to release the said amount to the respondent alongwith accrued interest on the respondent taking necessary steps for its release.

JYOTI SINGH, J.

VIPIN SANGHI, J.

DECEMBER 11, 2018
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