

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 19 of 2019

Sub Area Manager, South East Coalfield Limited, Banki Colliery, P.O.
Banki Mongra District Korba Chhattisgarh

---- Petitioner

Versus

1. The Appellate Authority, Under The Payment Of Gratuity Act/ Deputy Chief Labour Commissioner (Central) Raipur D-6, Adarsh Society Sector-1, Awanti Vihar, Raipur District Raipur Chhattisgarh
2. The Controlling Authority, Under The Payment Gratuity Act-1972 (Assistant Labour Commissioner), (Central), Torwa Bilaspur District Bilaspur Chhattisgarh
3. Shri Sukhi Ram S/o Tangu R/o Sumedha, P.O. Balagi Project, District Korba Chhattisgarh

---Respondents

For Petitioner	:	Mr. Vivek Verma, Advocate
For Respondent No.3	:	Mr. Saleem Kazi, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/02/2019

1. The challenge in the present writ petition is to the order dated 09.11.2018, passed by the Appellate Authority under the Payment of Gratuity Act i.e. the respondent No.1 in case No. PGA/05/2018. Vide the said impugned order, the Appellate authority under the Payment of Gratuity Act has awarded interest to the respondent No.3 on the gratuity payable @ 10% per annum from the date, it fell due i.e. the date of dismissal of the respondent No.3 from service, which was on 29.11.2005.
2. The brief facts relevant for adjudication of the present dispute is that the respondent No.3 on account of being convicted in a Criminal Case No. 2649/1997, passed by the Judicial Magistrate First Class, Katghora, District Korba for the offence punishable under Sections

326/149, 323/149 and 148/149 got dismissed from service on 29.11.2005 after a departmental enquiry was conducted. The respondent No.3, the employee otherwise was to attain the age of superannuation on 30.11.2005, as such he stood dismissed from service one day prior to his retirement.

3. Since the petitioner's services were dismissed, the respondents did not release the gratuity payable to the respondent No.3 and the employee thereafter preferred a claim application before the Controlling Authority under the Payment of Gratuity Act, who vide its order dated 25.08.2008 rejected the application of the respondent No.3 holding that since the respondent No.3 stood dismissed from service upon being convicted in a criminal case, the employee as such would not be entitled for gratuity.
4. The said order of the Controlling Authority was subjected to challenge by the employee before the Appellate authority under Section 7(7) of the Act and the Appellate authority also vide its order dated 22.06.2010 rejected the appeal preferred by the employee. The said two orders of the Controlling Authority and the Appellate authority was questioned before the High Court vide WPL No. 4548/2010. The High Court vide its order dated 21.08.2017 allowed the writ petition and remitted the matter back to the Controlling Authority for reconsideration of the case of the respondent No.3 for grant of gratuity and to pass a fresh order in the light of a decision rendered by the High Court in the case of "**Shyam Das v. Sub Area Manager, SECL**" decided on 11.04.2017 in WPL No. 5373/2011.

5. Thereafter, the Controlling Authority is said to have allowed the claim application vide its order dated 09.02.2018 allowing the application of the employee and ordering the Management to pay gratuity to the employee without interest. This order of the Controlling Authority was not further challenged by the Management and in compliance of the said order, the Management deposited the gratuity amount, which in due course of time has also been released to the employee. However, the employee i.e. the respondent No.3 had challenged the order of the Controlling Authority before the Appellate authority, so far as non-granting of interest is concerned. The Appellate authority, thereafter, has passed the impugned order allowing the claim of the respondent No.3 for interest and ordered for payment of interest @ 10% per annum from the date it fell due i.e. the date of dismissal in the instant case, which was 29.11.2005. It is this order, which is under challenge before this Court.
6. The contention of the Management is that since the delay caused in the releasing of the gratuity was not on the part of the Management, therefore they should not have been burdened with the liability of payment of interest. It was further contended by the Management that the Controlling Authority as well as the Appellate authority also on an earlier occasion had reached to the conclusion that the respondent No.3 was not entitled for gratuity. Moreover, the contention of the Management is that the respondent No.3 admittedly is a convict and stands convicted for the offence mentioned in the preceding paragraph and since he is a convict, even as on date, he would not be entitled for gratuity in view of Section 4(6)(b)(ii) of the Act, 1972.

7. According to the Management, the conviction itself dis-entitles the respondent No.3 for his gratuity and in the instant case the act on the part of the respondent No.3 is one, which would squarely fall within the ambit of a moral turpitude, which would further dis-entitle him for payment of gratuity.
8. Per contra, the counsel for the employee opposing the petition submits that it is a case where the provision which has been invoked by the Management i.e. Section 4(6)(b)(ii) of the Act, 1972 would not attract, as the alleged offence committed by the respondent No.3 is not one which occurred in the course of his employment. Therefore the said provision would not be applicable and the respondents would not be entitled for forfeiting the gratuity of the petitioner. It was the further contention of the respondent No.3 that since the Management themselves have now not questioned the payment of gratuity part and have released the gratuity amount, under the circumstances, the respondent No.3 is entitled for interest on it from the date it fell due till the date it was paid to the employee. The further contention of the respondent No.3 is also that there is no delay on the part of the employee in seeking gratuity from the authority. The employee had been litigating before the Controlling Authority and the higher authority right from the initial stage itself and the earlier order of the Controlling Authority and the Appellate authority has been set-aside by the High Court itself holding it to be bad, therefore the respondent No.3 for all practical purposes would be entitled for interest on the gratuity amount in the light of Sub-section 3(a) of Section 7 of the Act of 1972 and thus prayed for the dismissal of the writ petition.

9. Having heard the contentions put forth on either side and on perusal of record, what clearly reflects from the pleadings, which have been made by the parties is that, there is no dispute, so far as the alleged offence committed by the employee concerned to be not one in the course of his employment, neither does it seem to be an offence committed within the premises of the Management. Dismissal of the employee is only on the basis of the employee being convicted in a criminal case.
10. At this juncture, it would be relevant to refer to Sub-section 6 of Section 4 of the Act, which deals with the circumstances under which the gratuity of an employee would be forfeited:

“4. Payment of gratuity. —

(1) xxxxxxxx

(2) xxxxxxxx

(3) xxxxxxxx

(4) xxxxxxxx

(5) xxxxxxxx

(6) Notwithstanding anything contained in sub-section (1)-

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited]—

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

11. Plain reading of the aforesaid statutory provision would clearly reflect that it is not the case of the respondents that the act on the part of

the petitioner/Management in forfeiting the gratuity was one which could be brought under the ambit of clause (a) of Sub-section 6 of Section 4 as the allegation is not that of an act of willful omission or negligence causing any damage or loss or destruction of the property belonging to the employer.

12. So far as clause (b)(ii) of Sub-section 6 of Section 4, which has been invoked by the Management, that also would be only in respect of an offence, which has been committed by the employee in the course of his employment. The undisputed fact in the present case is that the Management also accepts the fact that the alleged offence was one, which did not occur during the course of the employment. On this admitted factual matrix also the provision of Section 4(6)(b)(ii) gets excluded.
13. Under the circumstances, more particularly when the Management themselves are not challenging the order of the Controlling Authority dated 09.12.2018, whereby it has been ordered that the employee would be entitled for gratuity. The fact only which remains to be considered is, whether the interest would be payable to the employee or not, and if yes, from which date, he would be entitled for. It is settled position of law as is also envisaged under Section 7(3) that an employer shall arrange for payment of gratuity of an employee, whose services stands discontinued by way of superannuation or for any other reasons (other than those envisaged under Sub-section 6 of Section 4) within a period of 30 days from the date of discontinuance.

14. It is also relevant at this juncture to refer to Sub-section 3(a) of Section 7 of the Act of 1972, which for ready reference is reproduced herein under:

“7. Determination of the amount of gratuity.—

(1) xxxxxxxx

(2) xxxxxxxx

(3) xxxxxxxx

(3A) 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.]”

15. The plain reading of the aforesaid provision clearly reflects that any amount, which if not paid within the period specified under Sub-section 3 of Section 7 would carry simple interest as notified by the Central Government from time to time and the said provision further reveals that the interest would be payable from the date on which the gratuity becomes payable. Undisputedly, a gratuity for an employee becomes payable on the date, he stands discontinued from service. In the instant case the employee stood discontinued on 29.11.2005. The record shows that right from the time of his discontinuance, the employee has been pursuing his claim for gratuity before the different forum under the Payment of Gratuity Act and as such it cannot be said that the employee was responsible for the delay in claiming for his gratuity.

16. On the other hand, it would reveal that the Management also has been contesting the case right from the first date itself and have been banking upon their stands of the employee not being entitled for payment of gratuity at all and it finally stood decided vide order dated 09.12.2018 that to after an order passed by the High Court in WPL No. 4548/010.
17. Given the aforesaid situations, this Court has no hesitation in reaching to the conclusion that under the circumstances, the employee is entitled for interest on the said amount from the date it fell due, which in the instant case was 29.11.2005. This Court does not find any illegality or perversity on the part of the Appellate authority in reaching to the said conclusion of granting interest to the employee vide its order Annexure P/1 dated 09.11.2018.
18. The writ petition therefore suffers from merits and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge