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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 25.01.2019

+ W.P.(C) 4513/2018 & CM APPL. 17341/2018

NATIONAL INSTITUTE OF FASHION TECHNOLOGY

..... Petitioner

Through Mr.Pratap Shaker with Ms.Rishu
Agarwal, Advs.

versus

RAM SARAN

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner impugns order dated 29.01.2018 passed by the Appellate Authority in Gratuity Appeal No.36(29)/2017 P.A. NYC in Claim Petition No.ALC-II/36(61)/2016/2016-AKB, whereby the petitioner's appeal against the order passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as Act) has been rejected. The Controlling Authority had vide its order dated 30.08.2017 directed the petitioner to pay to the respondent simple interest @ of 10 % per annum for the delay in releasing the amount of Rs. Rs.95,792/- payable to him as gratuity.

2. Learned counsel for the petitioner does not dispute the fact that there was a delay in releasing gratuity to the respondent, but contends that there was no wilful default on the part of the petitioner in remitting the gratuity as the petitioner/Institute had to take a

considered decision whether its employees should be granted gratuity as per the Act. He further submits that once a decision was taken by the petitioner/organisation on 29.10.2015 to pay gratuity to its employees as per the provisions of the Act, the petitioner immediately remitted the gratuity amount to the respondent on 15.01.2016. He, therefore, prays that the award of interest, in these circumstances is wholly unwarranted.

3. I have considered the submissions of the learned counsel for the petitioner and also perused the records.

4. In the light of the admitted position that the petitioner was always governed by the mandatory provisions of the Act, which it decided to follow only after if Board of Governors to pass a resolution on 29.10.2015 deciding to adopt the Act cannot be a reason to deny statutory interest to the petitioner on account of delay in his gratuity being released to him.

5. Before dealing with the contentions of learned counsel for the petitioner, it would be appropriate to refer to Section 7(3) and 7(3A) of the Act, which reads as under:-

“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.

(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.]”

6. Even otherwise, interest imposed is not always by way of a penalty, but is also way of compensation to the person who is deprived of the amount payable to him, once it is evident that the statute itself mandates grant of interest on the delayed amount of gratuity by use of the word ‘shall’ in Section 7(3A). In the present case, the amount due and payable to the respondent on or within 30 days from 06.03.2014 as per the Act, was released to him only on 15.01.2016 and, thus, was definitely deprived from using the said amount from 06.03.2014 till 15.01.2016 and in these circumstances, the grant of interest to him by the Controlling Officer, as upheld by the Appellate Authority was fully justified and I find no infirmity with the orders passed by the Controlling Authority as upheld by the Appellate Authority.

7. The present petition being meritless is dismissed alongwith the pending application.

(REKHA PALLI)
JUDGE

JANUARY 25, 2019

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